NEW HAMPSHIRE EDUCATION LAWS

CONSTITUTION of the STATE OF NEW HAMPSHIRE

PART FIRST

BILL OF RIGHTS

[Art.] 28–a. [Mandated Programs.] The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

[Art.] 36–a. [Use of Retirement Funds.] The employer contributions certified as payable to the New Hampshire retirement system or any successor system to fund the system's liabilities, as shall be determined by sound actuarial valuation and practice, independent of the executive office, shall be appropriated each fiscal year to the same extent as is certified. All of the assets and proceeds, and income therefrom, of the New Hampshire retirement system and of any and all other retirement systems for public officers and employees operated by the state or by any of its political subdivisions, and of any successor system, and all contributions and payments made to any such system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, any other purposes.

PART SECOND

FORM OF GOVERNMENT

GENERAL COURT

[Art.] 6–b. [Use of Lottery Revenues Restricted to Educational Purposes.] All moneys received from a state-run lottery and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively for the school districts of the state. Such moneys shall be used exclusively for the purpose of state aid to education and shall not be transferred or diverted to any other purpose.

ENCOURAGEMENT OF LITERATURE, TRADES, ETC.

[Art.] 83. [Encouragement of Literature, Etc.; Control of Corporations, Monopolies, Etc.] Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: *Provided, nevertheless*, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination. Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within

the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 6

STATE TREASURER AND STATE ACCOUNTS

New Hampshire Excellence in Higher Education Endowment Fund

New Hampshire Excellence in Higher Education Endowment Fund

6:37 Definitions. In this subdivision:

I. "Commission" means the New Hampshire college tuition savings plan advisory commission established in RSA 195–H.

II. "Eligible educational institution" means that which is defined in section 529 of the Internal Revenue Code, as amended.

III. "Trust fund" means the New Hampshire excellence in higher education endowment trust fund as established in this chapter.

Source. 1999, 328:1, eff. Oct. 14, 1999.

6:38 New Hampshire Excellence in Higher Education Endowment Trust Fund Established.

I. There is hereby established in the office of the treasurer the New Hampshire excellence in higher education endowment trust fund which shall be kept distinct and separate from all other funds. Annual assessments less any annual administrative costs received from the New Hampshire college tuition savings plan established under RSA 195–H shall be credited to the trust fund to provide scholarships for the benefit of residents of the state pursuing programs of study at eligible educational institutions within the state.

II. The state treasurer shall be the trustee of the trust fund established in this chapter, and shall invest the trust fund in accordance with RSA 6:8. Any earnings on trust fund moneys shall be added to the trust fund.

III. All moneys in the trust fund shall be nonlapsing and shall be continually appropriated to the commission for purposes of providing education scholarships under this subdivision.

Source. 1999, 328:1, eff. Oct. 14, 1999. 2015, 237:2, eff. Sept. 11, 2015.

6:39 Administration.

I. The trust fund shall be administered by the New Hampshire college tuition savings plan advisory commission established in RSA 195–H:2.

II. The commission shall have the authority to institute promotional programs and to solicit and receive gifts or donations of any kind for the purpose of supporting educational scholarships within the trust fund. Notwithstanding any provision of law to the contrary, the commission may accept gifts to the trust fund including, but not limited to, cash gifts and real or personal property, without the approval of the governor and council.

III. All gifts, grants, and donations of any kind shall be credited to the trust fund.

IV. The commission may enter into agreements with existing departments or agencies, as it deems necessary, to administer the scholarship application, qualification, and award process.

V. No more than one percent of the total amount of scholarships awarded from the trust fund in any fiscal year shall be used for administrative expenses, except upon approval of the commission.

Source. 1999, 328:1, eff. Oct. 14, 1999.

6:40 Rulemaking. The commission shall adopt rules, pursuant to RSA 541–A, relative to:

I. Establishing minimum qualifications of scholarship applicants.

II. Instituting a scholarship application process, which includes but is not limited to requiring that all applicants complete a formal scholarship application on appropriate forms to be developed by the commission and time frames for the application process.

III. Procedures for awarding and disbursing scholarships.

IV. Procedures for determining the amount of funds available to provide annual scholarships through the trust fund.

V. Any other issue which the commission deems relevant to the implementation and administration of the scholarship program.

VI. Requiring disclosure regarding any scholarship funds, or portion thereof, which are or may be returned to the trust fund.

Source. 1999, 328:1, eff. Oct. 14, 1999. 2015, 237:3, eff. Sept. 11, 2015.

6:41 Scholarships; Eligibility.

I. The commission shall determine all scholarship awards in a fair and equitable manner to eligible residents of this state who have satisfactorily met the minimum qualifications established by the commission. Scholarships shall be granted on the basis of merit and need.

II. All scholarships awarded by the commission under this subdivision shall be for the period of one academic year or equivalent and in specified amounts of not less than $100 per fiscal year within the limits established by the commission.

III. No scholarship shall be in excess of the tuition assessed to the student for the academic period in which the scholarship is received.

IV. No person to whom a scholarship is awarded shall be restricted as to the choice of institutions or programs within the state provided the institution selected by the student is an eligible educational institution. Scholarships may be used at public or private institutions by full-time or part-time students enrolled in undergraduate or graduate level programs.

Source. 1999, 328:1, eff. Oct. 14, 1999. 2015, 237:4, eff. Sept. 11, 2015.

6:42 Certification of Available Funds. By April 1 of each year, the commission shall determine the funding level available for scholarships for the next academic year and shall certify such amount to the state treasurer.

Source. 1999, 328:1, eff. Oct. 14, 1999. 2015, 237:5, eff. Sept. 11, 2015.

6:43 Report. By November 1 of each year, the commission shall prepare a report regarding the status of the trust fund. Such report shall be submitted to the president of the senate, the speaker of the house, the governor, and the state library, and shall be posted to the state government Internet site.

Source. 1999, 328:1. 2008, 120:13, eff. Aug. 2, 2008.

CHAPTER 9

BUDGET AND APPROPRIATIONS; REVOLVING FUNDS

Educational Funding Commitments

Educational Funding Commitments

9:13–g Educational Funding Commitments to Local Communities.

[Repealed 1999, 17:58, X, eff. July 1, 1999.]

History

Former RSA 9:13–g, which was derived from 1998, 389:15, related to educational funding commitments to local communities.

CHAPTER 12–H

NEW HAMPSHIRE COUNCIL ON APPLIED TECHNOLOGY AND INNOVATION

[Repealed 2010, 368:1(2), eff. Dec. 31, 2010.]

History

Former RSA 12–H:1, which was derived from 1996, 144:1 and 2000, 320:3–5, related to the establishment of the New Hampshire council on applied technology and innovation.

Former RSA 12–H:2, which was derived from 1996, 144:1, related to reports issued by the applied technology and innovation council.

CHAPTER 21–G

ORGANIZATION OF EXECUTIVE BRANCH

Code of Ethics

21–G:1 Short Title. This chapter shall be known as the Executive Branch Reorganization Act of 1983.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:2 Declaration of Findings. The general court finds that:

I. The state constitution provides for the separation of powers within state government among the legislative, the executive and the judicial branches. The legislative branch has the broad objective and responsibility to determine policies and programs and to review and oversee program performance and implementation of policy previously established. The executive branch has the responsibility to implement and administer these policies and programs. The judicial branch has the responsibility to resolve disputes arising from the interpretation or application of the laws;

II. The growth of the executive branch from 32 constitutional offices and state agencies in 1900, to 96 in 1970, to more than 140 in 1983, has created an unwieldy and confusing state government structure. This structure has developed piecemeal, resulting in lack of policy coordination, excessive costs, inefficient use of personnel and capital, overlapping agency jurisdictions, duplication, and the ineffective use of the state's limited financial resources; and

III. The size and complexity of the executive branch, including the unnecessarily confusing current array of administrative terms, titles, and appointment processes, has unintentionally altered some of the constitutionally contemplated checks and balances by an unplanned shifting of policy direction and implementation toward the independent, non-elected executive branch agencies. This reduces the ability of the legislature to assert its primary role as policymaker and the ability of the governor to manage the implementation of that policy.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:3 Declaration of Policy. The general court declares the following to be the policy and objectives of the state:

I. The organization of state government should assure its responsiveness to popular control, as expressed through the state's elected officials. It is the goal of reorganization to improve legislative policymaking capability and to improve the administrative capability of the executive to carry out these policies.

II. The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function-oriented departments to improve public understanding of government programs and policies, by more clearly defining the jurisdiction of departments, and to improve the relationships between citizens and administrative agencies.

III. The organization of state government should assure efficient, effective and responsive administration of the policies established by the legislature. It is the goal of reorganization to improve the coordination and management of state services by establishing clear lines of authority, responsibility and accountability for program implementation within the executive branch.

IV. The governor should meet regularly with the heads of all agencies. Communication and exchange of information and ideas among the agency heads, as well as between agency heads and the governor, should be the goal of these meetings.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:4 Guidelines for Reorganization. The following provisions shall serve as general guidelines for accomplishing executive branch reorganization consistent with the policy and objectives of the state:

I. In order to allow the chief executive to efficiently and effectively implement legislative policy and programs, the governor should be provided with a manageable administrative structure and the authority to direct its operations.

II. The large number of existing executive branch agencies, departments, boards, commissions, authorities and institutions should be significantly reduced by consolidating them into a reasonable number of departments.

III. The consolidation of agencies in the executive branch should be on a functional basis, so that programs can be coordinated and comprehensive planning can be undertaken.

IV. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs, and the coordination of existing programs, in response to changing public needs.

V. There should be a uniform process for administrative appeals to an impartial body provided for each department established following July 1, 1983.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:5 Definitions. In this chapter, the following words shall have the following meanings:

I. "Administratively attached agency" means an independent agency linked to a department for purposes of reporting and sharing support services.

II. "Advisory committee" means a committee established pursuant to RSA 21–G:11 which shall furnish advice, gather information, make recommendations and perform such other activities as may be instructed or as may be necessary to fulfill advisory functions or to comply with federal funding requirements, but which shall not administer a program or function or set policy.

III. "Agency" means any department, commission, board, institution, bureau, office, or other entity, by whatever name called, other than the legislative and judicial branches of state government, established in the state constitution, statutes, session laws or executive orders.

IV. "Bureau" means the principal unit within a division, which is directly responsible to the division level and is concerned with individual program management.

V. "Commissioner" means the individual in charge of the operations of a department, who is directly responsible to the governor.

VI. "Department" means the principal administrative unit within the executive branch of state government, which is concerned with broad functional responsibilities.

VII. "Division" means the principal unit within a department, which is directly responsible to the department level and is concerned with related major functional programs and activities.

VIII. "Field operations" means district or area offices which may combine division, bureau and section functions.

IX. "Section" means the principal unit of a bureau, which is directly responsible to the bureau level and is concerned with direct provision of services to the public or other state agencies.

X. "Subsection" means the principal unit of a section which is directly responsible to the section level and is concerned with direct provision of services to the public or other state agencies.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:5–a Statements of Financial Interest for Board and Commission Members.

[Repealed 2006, 21:10, II, eff. June 2, 2006.]

History

Former RSA 21–G:5–a, which was derived from 1993, 238:1 and 2001, 231:4, related to filing of financial interest statements by board and commission members.

21–G:6 Structure of Executive Branch. All departments of the state established following July 1, 1983, shall be structured as follows, unless otherwise provided for specifically by the general court:

I. The department shall be the principal administrative unit of the executive branch, and each department shall be headed by a commissioner. Each department shall bear a title beginning with the words "The State of New Hampshire Department of . . . . . ." and continuing with the name designated for the department.

II. All departments shall adhere to the following operational structure and standard terminology:

(a) The principal unit of the department shall be the division; and each division shall be headed by a director.

(b) The principal unit of the division shall be the bureau; and each bureau shall be headed by an administrator.

(c) The principal unit of the bureau shall be the section; and each section shall be headed by a supervisor.

(d) If further subdivision is necessary, sections may be divided into subsections; and each subsection shall be headed by a chief.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:6–a Electronic Credit Card Payments; Authorization to Administer. Notwithstanding any other provision of law to the contrary, the head of any state agency or department and any authorized employee or agent of the head, may accept credit cards or debit cards for the online payment of any of the taxes, penalties, interest, or fees administered by such commissioner or collected by the department.

The amount of any service charge collected shall be disclosed in advance of the transaction to the individual paying the tax, penalty, or fee and shall be at a reasonable and customary rate approved in advance by the comptroller.

Source. 2015, 276:37, eff. July 1, 2015.

21–G:7 Field Operations.

I. A department shall not establish field operations unless specifically authorized to do so by statute; except that temporary field operations may be established upon a specific written declaration by the governor and council that an emergency exists. A temporary field operation shall not be continued beyond the adjournment of the next regular or special session of the general court following a declaration of emergency.

II. Legislative proposals by a department seeking establishment of field operations shall include evidence of the commissioner's written certification to the governor and council that all other agencies with field operations in the same vicinity of the state have been consulted to determine the feasibility of combining such field operations.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:8 Commissioners and Division Directors; Appointment; Term.

I. The commissioners of all departments established after July 1, 1983, shall be appointed by the governor, with the consent of the council, except as otherwise provided by law. Each commissioner shall be an unclassified employee.

II. Each commissioner shall nominate for appointment by the governor, with the consent of the council, each division director within the commissioner's department, for all departments established after July 1, 1983, except as otherwise provided by law. Each division director shall be an unclassified employee.

III. Commissioners shall serve terms of 4 years. Such terms shall end on March 31 of an odd-numbered year. Initial terms for some commissioners may be for approximately 2 years so that the terms of one-half of the commissioners will end in each gubernatorial term.

IV. Division directors shall serve terms of 4 years. Such terms shall end on March 31 of an even-numbered year. Initial terms for some directors may be for approximately 2 years so that the terms of one-half of the directors will end one year after a commissioner's terms commences and one-half 3 years after that date.

Source. 1983, 372:1. 1985, 418:1. 1995, 226:2, eff. Aug. 13, 1995.

21–G:9 Powers and Duties of Commissioners. The commissioner shall be the chief administrative officer of the department and shall have the following powers and duties:

I. The commissioner shall manage all operations of the department and administer and enforce the laws with which the commissioner or the department is charged. The commissioner shall report directly to the governor.

II. To perform the commissioner's duties, the commissioner shall have every power enumerated in the laws, whether granted to the commissioner, the department, or any administrative unit of the department. In accordance with these provisions, the commissioner shall:

(a) Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department and each program and activity of the department.

(b) Adopt all rules of the department, whether the rulemaking authority delegated by the legislature is granted to the commissioner, the department, or any administrative unit or subordinate official of the department. All rules shall be adopted pursuant to RSA 541–A, unless specifically and explicitly exempted by law. The provisions of this subparagraph shall control existing legislative enactments unless the provisions of RSA 21–H through RSA 21–P that created the department specifically and clearly confer rulemaking authority on an administrative unit or a subordinate official. The provisions of this subparagraph shall also apply to subsequent legislative enactments unless such enactments are contained in RSA 21–H through RSA 21–P or are specifically exempted from the application of the provisions of this subparagraph by language expressly referring to this subparagraph. For the purposes of this subparagraph, "commissioner of the department of education" means the state board of education.

(c) Exercise general supervisory and appointing authority over all department employees, subject to applicable personnel statutes and rules.

(d) Delegate authority to subordinates as the commissioner deems necessary and appropriate, except that rulemaking authority shall not be delegated. The commissioner shall provide by delegation for a division director to exercise all authority of the commissioner in the commissioner's absence.

All such delegations shall be made in writing, shall be disseminated to all division directors, shall clearly delineate the authority delegated and the limitations thereto, and shall be kept on file in the commissioner's office.

(e) Adopt practices which will improve the efficiency of the department and the provision of services to the citizens of the state.

(f) Provide cooperation, at the request of the heads of administratively attached agencies, in order to:

(1) Minimize or eliminate duplication of services and jurisdictional conflicts;

(2) Coordinate activities and resolve problems of mutual concern; and

(3) Resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies.

(g) Give bond, and require division directors to give bond, to the state as specified in RSA 93–B.

(h) Where functions of departments overlap or a function assigned to one department could better be performed by another department, a commissioner shall recommend appropriate legislation to the next regular session of the legislature.

III. The commissioner may adopt such reasonable internal practices and procedures as may be necessary to carry out the duties of the department and its divisions consistent with this chapter.

IV. [Repealed.]

V. It shall be the duty of all commissioners of executive branch agencies to continually reassess the organization of their agencies, especially with regard to new programs and functions assigned to them. Commissioners are hereby authorized, notwithstanding any provision of law to the contrary, to:

(a) Transfer or reassign personnel within and between any division, office, unit, or other component of the department.

(b) Delegate, transfer, or assign the authority to administer and operate any program or service of the department to any employee, division, office, bureau, or other component of the department. Such delegation, transfer, or assignment shall include the authority to conduct or perform any act necessary to administer the program or service so assigned.

(c) Propose legislation to the general court to accomplish internal reorganizations deemed desirable.

VI. Notwithstanding any other provision of law, administrative rule, or administrative process to the contrary, the commissioner may advertise requests for proposals and recruitment of personnel by using the Internet rather than traditional newspaper print media. The department shall regularly publish a notice in traditional print media referring prospective service providers and persons seeking state employment to the state's website for detailed information about opportunities.

Source. 1983, 372:1. 1995, 226:3–6. 2009, 144:40. 2011, 131:1, eff. Aug. 6, 2011. 2012, 247:40, I, eff. Aug. 17, 2012.

21–G:10 Administratively Attached Agency.

I. An agency administratively attached to a department shall:

(a) Exercise its powers, duties, functions and responsibilities independently of the department and without approval or control of the department, except as otherwise specifically provided by statute;

(b) Submit the budget requests required by RSA 9 through the department; and

(c) Submit reports required of it by law or by the governor through the department.

II. The department to which an agency is administratively attached shall:

(a) Provide budgeting, recordkeeping and related administrative and clerical assistance to the agency, if mutually agreed to in writing, provided that the agency shall pay the department on a cost allocation basis for such services;

(b) Include the agency's budget requests, as submitted and without changes, in the departmental budget.

III. Unless otherwise provided by law, the administratively attached agency shall hire personnel in accordance with state personnel laws.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:11 Advisory Committees.

I. A commissioner, with the approval of the governor, may create advisory committees.

II. Each department shall file a record of each advisory committee created with the secretary of state, showing the committee's:

(a) Name;

(b) Composition;

(c) Appointed members' names and addresses; and

(d) Purpose and term of existence.

III. The governor shall appoint the members of each advisory committee, with the advice of the commissioner, who shall have prescribed the functions of each advisory committee created.

IV. Each advisory committee created under this section shall be designated by name as follows: the ". . . . . advisory committee of the department of . . .".

V. A majority of the membership of an advisory committee shall constitute a quorum.

VI. No member of an advisory committee shall receive any compensation, for services rendered the advisory committee, except mileage payments at the state employee rate, within the limits of the department's appropriations.

VII. Each advisory committee created under this section after July 1, 1995, shall include a provision for its termination after a 3-year period unless continued by legislative action.

Source. 1983, 372:1. 1995, 257:1, eff. July 1, 1995.

21–G:12 Conflicts of Law. If the provisions of RSA 21–G:9 or RSA 21–G:11 conflict with the powers and duties specifically granted by statute to a particular commissioner, the specific powers and duties shall control. If the provisions of RSA 21–G:9 or RSA 21–G:11 conflict with other statutes specifically limiting the powers of a commissioner, the specific limitations shall control.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:13 Transfer of Functions of Abolished Agencies.

I. The powers, duties, functions, responsibilities, programs and operations of each agency abolished pursuant to acts of the general court relative to executive branch reorganization shall, upon and after the date of each abolition, be exercised and performed by the commissioner of the department to which such powers, duties, functions and responsibilities are transferred.

II. The commissioner of each department shall have full authority, consistent with this chapter, to assign powers, duties, functions, responsibilities, programs and operations of abolished agencies to any division within the department, or may determine that any or all of them shall be exercised in such other manner as shall be allowed by law. The commissioner shall make such assignment or determination in accordance with the general functions of each division, as established by the general court.

III. Upon the abolition of each agency whose powers, duties, functions and responsibilities are transferred in accordance with this section, any pending or unfinished business of each such agency shall be taken over and be completed by the department to which transferred and its commissioner, with the same power and authority as that of the agency abolished. The department and its commissioner shall be the successor in every way to each such agency, and every act done by the department or its commissioner in the exercise of the functions of each shall be deemed to have the same force and effect under any provisions of the constitution and laws in effect on July 1, 1983, as if done by the agency abolished.

IV. Upon the abolition of each agency whose powers, duties, functions and responsibilities are transferred in accordance with this section, the existing rules of each agency shall continue in full effect, without interruption, as the rules of the department to which those powers, duties, functions and responsibilities have been transferred. Rules so continued shall be effective for the remainder of the period originally established under RSA 541–A:17, I.

Source. 1983, 372:1. 1986, 41:32. 1994, 412:4, eff. Aug. 9, 1994.

21–G:14 Legal Proceedings and Documents.

I. For purposes of this section, legal proceeding includes, but is not limited to, any suit, action, incidental demand or action, claim, and any other matter filed or pending before any court, administrative agency, or other quasi-judicial body.

II. For purposes of this section, document includes, but is not limited to, any petition, application, exception, motion, rule, answer, citation, notice, return, affidavit, certificate, oath, bond or other security, summons, subpoena, writ, interrogatory, deposition, inventory, appraisal, evidence, court record, instruction, verdict, judgment, order, injunction, confirmation, appointment, warrant, letter, and any other pleading or instrument whatsoever permitted or required in any legal proceeding.

III. Any legal proceeding to which any agency which is abolished, whose powers, duties, functions, and responsibilities are transferred in accordance with the provisions of this chapter, is a party, and which is filed, initiated, or otherwise pending before any court on the effective date of such abolition and transfer, and all documents involved in or affected by such legal proceeding, shall retain their effectiveness and shall be continued in the name of the agency abolished. All further legal proceedings and documents in the continuation, disposition, and enforce-

ment of such legal proceedings shall be in the name of the original party agency which is abolished; and the department to which the powers, duties, functions, and responsibilities of the agency are transferred shall be substituted for the original party agency without necessity for amendment of any document to substitute the name of the department or the name or title of any subdivision, official, employee, or other agent or representative of the department.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:15 Protection of Obligations.

I. The general court hereby specifically states that this chapter is in no way and to no extent intended to, nor shall it be construed in any manner to, impair the contractual or other obligations of any agency abolished by the general court or of the state of New Hampshire. It is hereby specifically provided that all obligations of any agency abolished, whose powers, duties, functions, and responsibilities are transferred in accordance with this chapter, hereafter shall be deemed to be the obligations of the department to which the powers, duties, functions, and responsibilities of the agency are transferred, and of its commissioner, to the same extent as if originally made by them. In like manner, and in order to prevent any violation of the provisions, terms, or conditions of any gift, donation, deed, will, trust, or other instrument or disposition by which property of any kind has been vested in an agency abolished by the general court, or diversion from the purposes for which such property was thus vested in any such agency, it is hereby specifically provided that each such instrument or disposition hereafter shall be deemed to have been vested in the department to which the powers, duties, functions, and responsibilities of the agency are transferred, and its commissioner, in the same manner and to the same extent as if originally so done.

II. The department to which the powers, duties, functions, and responsibilities of each such agency are transferred and its commissioner shall be the successor in every way to each such agency, including all of the obligations and debts of each such agency. All funds heretofore dedicated by or under authority of the constitution and laws of this state, or any of its subdivisions, to the payment of any bonds issued for construction or improvements for any institution or facility under the control of any such agency shall continue to be collected and dedicated to the payment of those bonds. In like manner, all other dedications and allocations of revenues and sources of revenues heretofore made shall continue in the same manner, to the same extent, and for the same purposes as were provided prior to the enactment of this chapter, and shall so continue, notwithstanding the passage of any laws by the general court relative to reorganization of the executive branch.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:16 Effect on Federal Law. This chapter and any laws enacted by the general court relative to executive branch reorganization shall not be construed or applied in any way which will prevent full compliance by the state, or any department, office, or agency thereof, with the requirements of any act of the Congress of the United States or any regulation made thereunder by which federal aid or other federal assistance has been or hereafter is made available to this state, or any department, office, agency, or subdivision thereof; and such compliance hereafter shall be accomplished by the commissioner insofar as such compliance affects any abolished agency whose powers, duties, functions, and responsibilities are transferred in accordance with the provisions of this chapter and any laws enacted by the general court relative to executive branch reorganization.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:17 Transfer of Property. All books, papers, records and unexpended appropriations or other funds, actions, and other property of every kind, movable and immovable, real and personal, heretofore possessed, controlled, or used by each agency abolished whose powers, duties, functions and responsibilities are transferred in accordance with this chapter and any laws enacted by the general court relative to executive branch reorganization are hereby transferred to the department to which such powers, duties, functions, and responsibilities are transferred.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:18 Transfer of Employees. All employees heretofore engaged in the performance of duties in each agency abolished whose powers, duties, functions, and responsibilities are transferred in accordance with this chapter and any laws enacted by the general court relative to executive branch reorganization are hereby transferred to the department to which such powers, duties, functions, and responsibilities are transferred to the extent the commissioner deems necessary to carry out the functions of the abolished agency and shall, insofar as practicable and necessary, continue to perform the duties heretofore performed, subject to applicable personnel statutes.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:19 Reference to Abolished Agency. Wherever any agency abolished, whose powers,

duties, functions, and responsibilities are transferred in accordance with this chapter and any laws enacted by the general court relative to executive branch reorganization, is referred to or designated by any law or contract or other document after the effective date of the abolition of such agency, such reference or designation shall be deemed to apply to the department to which the transfer is made or to its commissioner.

Source. 1983, 372:1, eff. July 1, 1983.

21–G:20 New Agencies and Programs.

I. After July 1, 1983, no agency, as defined in RSA 21–G:5, III, shall be established unless it shall be structured in accordance with this chapter.

II. After July 1, 1983, no new powers, duties, functions, responsibilities or programs shall be assigned to any agency, as defined in RSA 21–G:5, III, except an agency which exists on July 1, 1983, or an agency established by the general court in accordance with the provisions of this chapter and any laws enacted by the general court relative to executive branch reorganization.

Source. 1983, 372:1, eff. July 1, 1983.

Code of Ethics

21–G:21 Definitions. In this subdivision:

I. "Agency" means any executive branch agency, department, division, board, commission, or entity of the executive branch.

I–a. "Classified employee" means any person in the state classified service system as defined in RSA 21–I:49.

II. "Conflict of interest" means a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty.

II–a. "Executive branch official" means the governor, members of the executive council, every commissioned, unclassified, or nonclassified executive branch employee other than one elected by the legislature, every constitutional official as defined by RSA 15–B:2, II, and any person other than a classified employee who conducts business on behalf of the governor, an executive branch official, or executive branch agency, including a volunteer.

III. [Repealed.]

IV. [Repealed.]

V. [Repealed.]

Source. 2004, 214:1. 2006, 21:1, 10, III–V, eff. June 2, 2006. 2016, 57:1, eff. July 4, 2016.

21–G:22 Conflict of Interest. Executive branch officials and classified employees shall avoid conflicts of interest. Executive branch officials and classified employees shall not participate in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties.

Source. 2004, 214:1. 2006, 21:2, eff. June 2, 2006. 2016, 57:2, eff. July 4, 2016.

21–G:23 Misuse of Position. No executive branch official or classified employee shall:

I. Disclose or use confidential or privileged information acquired in the performance of his or her duties for the state for personal benefit or for financial gain.

II. Use his or her position with the state to secure privileges or advantages for himself or herself, which are not generally available to governmental employees, or to secure governmental privileges or advantages for others to which they are not otherwise entitled.

Source. 2004, 214:1. 2006, 21:2. 2009, 239:2, eff. July 16, 2009. 2016, 57:3, eff. July 4, 2016.

21–G:24 Acceptance of Campaign Contributions. An executive branch official or classified employee who is a candidate for an elective office that is not subject to the reporting requirements of RSA 664 and who accepts a political contribution from any person or entity which is or is likely to become subject to that executive branch official's or classified employee's duties shall make a disclosure of such contributions to the secretary of state within 5 days of receipt of such contributions. The disclosure shall be in writing and on such form as the secretary of state shall prescribe.

Source. 2004, 214:1. 2006, 21:2, eff. June 2, 2006. 2016, 57:4, eff. July 4, 2016.

21–G:25 Restrictions on Simultaneous Employment and Public Service. Volunteer service shall not be used, directly or indirectly, for personal financial gain, or to facilitate non-public communications with executive branch officials or classified employees for the purpose of promoting or advancing any matter on behalf of a third party, or to influence executive branch officials or classified employees in the performance of their duties. In furtherance of this prohibition:

I. No person shall serve as a public employee, as defined by RSA 15–B:2, VIII, or serve as an appointee or volunteer for any multi-branch commission, committee, board, or similar governmental entity, and simultaneously be a person who has a duty to regis-

ter as a lobbyist pursuant to RSA 15, or is employed by, or maintains an ownership interest in, any entity which employs a registered lobbyist.

II. No person shall serve as a public employee in a position that establishes policy or adjudicates matters before any agency while maintaining any ownership interest in, or being employed by, any entity, engaged in promoting or opposing, directly or indirectly, any legislation pending or proposed before the general court, or promoting or opposing any action or inaction on any matter, contract, license, permit, or administrative rule, proposed or pending, before the executive branch.

III. Unless otherwise prohibited by law, the prohibitions of RSA 21–G:25, I and II, shall not apply to:

(a) Appearances before the courts or any adjudicative proceedings, or non-adjudicative processes, as defined by RSA 541–A;

(b) Service in a position subject to appointment by the governor and council;

(c) Testimony or participation in any public meeting, or service on any commission, committee, board, panel, or other similar governmental entity that is subject to the public meeting and notice requirements of RSA 91–A, or the public right of access mandated by part 1, article 8 of the New Hampshire constitution.

(d) Volunteer public service related entirely to a ceremonial, celebratory, historical, or recreational program or event; public health or safety incident or drill, or consumer protection assistance;

(e) Ownership of publicly-traded stock; or

(f) A public employee, appointee, or volunteer's personal application for any license, permit, or ruling from a state agency.

Source. 2004, 214:1. 2006, 21:2, eff. June 2, 2006. 2016, 57:5, eff. July 4, 2016; 328:16, eff. Dec. 7, 2016.

21–G:26 Employment Restrictions. For 6 months after leaving office or employment with the state, no executive branch official or classified employee shall appear as a lobbyist:

I. To promote or oppose directly any specific legislation pending or proposed before the general court; or

II. To directly promote or oppose action or inaction on any matter, contract, license, permit, or administrative rule pending before the executive branch or with regard to any matter over which that executive branch official or classified employee had personal and direct responsibility while in state government.

Source. 2004, 214:1. 2006, 21:2, eff. June 2, 2006. 2016, 57:6, eff. July 4, 2016.

21–G:26–a Nepotism. No executive branch official or classified employee shall directly hire, evaluate, set the compensation or salary for, supervise, or terminate the employment of any full-time or part-time employee, temporary employee, or member of a state board or commission if such employee or member is related to such official in one of the following ways:

I. Spouse;

II. Parent by birth or adoption;

III. Son or daughter by birth or adoption;

IV. Stepson or stepdaughter;

V. Brother or sister by whole or half blood or by adoption; or

VI. Mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law.

Source. 2009, 239:1, eff. July 16, 2009. 2016, 57:7, eff. July 4, 2016.

21–G:27 Supplemental State Agency Ethical Codes. In addition to this code, each agency may promulgate a supplemental ethics code to address issues specific to that agency. In the event of a conflict with the provisions of this code, a stricter provision of an agency code shall govern. To the extent that this code or an ethics code adopted by an agency shall apply to classified employees, this code, or an agency code, shall be interpreted to be consistent with the provisions of the classified employees' collective bargaining agreement and the state personnel rules.

Source. 2004, 214:1. 2006, 21:2, eff. June 2, 2006.

21–G:28 Financial Disclosure.

[Repealed 2006, 21:10, VI, eff. June 2, 2006.]

History

Former RSA 21–G:28, which was derived from 2004, 214:1, related to filing of financial disclosure statement by agency heads and certain public officials.

21–G:28–a Filing Officer; Appointment; Duties and Responsibilities.

I. The secretary of state shall designate an individual to serve as the state filing officer, who shall be responsible for the administration of this subdivision.

II. The filing officer shall:

(a) Review the administrative requirements of this subdivision and the submission of forms pursuant to RSA 15–A and RSA 15–B.

(b) Respond to any inquiries from candidates for public office and executive branch officials on the administrative requirements of this subdivision and the submission of forms pursuant to RSA 15–A and RSA 15–B.

(c) As soon as practicable after the RSA 15–A filing deadline, forward a list of those individuals who have not filed a RSA 15–A form or whose forms are incomplete to the legislative ethics committee, or the executive branch ethics committee, or the attorney general, as may be appropriate.

(d) Not be authorized to render legal advice.

III. Each appointing authority under RSA 15–A:3 shall provide the secretary of state with the name and address and appointment date of any person appointed by him or her to any board, commission, committee, or board of directors after the effective date of this section.

IV. The secretary of state:

(a) Shall maintain a list, as reasonably as practicable, of public officials required to submit forms pursuant to RSA 15–A; and

(b) May enter into memoranda of understandings with other state agencies or branches of government to facilitate requirements of this subdivision.

V. Any state agency, commission, or committee authorized by statute to issue opinions interpreting a state ethics law shall submit a copy of any written decision or opinion to the state filing officer and to the secretary of state. Such written decisions or opinions may be redacted prior to submission in order to protect confidential or nonpublic information.

Source. 2009, 203:7, eff. Sept. 13, 2009.

21–G:29 Executive Branch Ethics Committee Established; Jurisdiction; Membership.

I. There is hereby established an executive branch ethics committee to issue guidelines, interpretive rulings, and advisory opinions relative to standards for ethical conduct in the executive branch and to resolve, through procedures established under RSA 21–G:32, issues, questions, or complaints involving executive branch officials.

II. The jurisdiction of the committee shall consist of matters arising under the executive branch code of ethics, RSA 21–G:21–27, RSA 15–A, RSA 15–B, and rules or guidelines adopted thereunder, as applied to current or former executive branch officials, provided that the committee may only consider a complaint against a former executive branch official if the complaint is filed no later than 180 days after the day the official resigned, retired, or otherwise left his or her position.

III. The committee shall consist of 7 members, nominated in the following manner:

(a) Three members, nominated by the governor, one of whom shall be a member of the democratic party, one of whom shall be a member of the republican party, and one of whom shall have no political party affiliation.

(b) Two members, nominated by the secretary of state, one of whom shall be a member of the democratic party and one of whom shall be a member of the republican party.

(c) Two members, nominated by the treasurer, one of whom shall be a member of the democratic party and one of whom shall be a member of the republican party.

IV. All nominations under paragraph III shall be confirmed by the governor and executive council.

V. Persons appointed to the committee shall be qualified by excellent personal reputation and by education or experience in public service, in resolving ethical issues facing persons in public service, or in the law. No executive branch official shall serve as a committee member, and no person who has registered as a lobbyist under RSA 15:1 shall serve as a committee member, or for 6 months following the expiration of such registration.

VI. Committee members shall serve terms of 3 years and until their successors are appointed and qualified. However, initially, the governor shall nominate one member for a one-year term, one member for a 2-year term and one member for a 3-year term; the secretary of state shall nominate one member for a 2-year term, and one member for a 3-year term; the treasurer shall nominate one member for a one-year term and one member for a 2-year term. Initial nominations to the committee shall be made no later than 90 days after the effective date of this section. The initial appointments shall begin on July 1, 2006 and end on June 30 of the appropriate year. Vacancies shall be filled for the remainder of any unexpired term. During their term of appointment, members may not hold or campaign for partisan elective office, serve as an officer of any political party or political committee, permit their names to be used in support of or in opposition to any local or state partisan candidate, participate in any way in any local or state partisan election campaign, make a contribution as defined in RSA 664:2 to any local or state candidate for office or state political committee, or act as or

assist a lobbyist required to be registered under RSA 15:1.

VII. The governor shall designate one of the governor's appointees as chair, who shall convene the first meeting, which shall take place no later than 30 days after a majority of the membership has been appointed. The members shall elect by majority vote a vice-chair and secretary from the remaining members.

VIII. Committee members shall receive no compensation, except that committee members shall receive mileage at the state employee rate.

Source. 2004, 214:1. 2006, 21:3, eff. June 2, 2006. 2015, 82:1, eff. Aug. 1, 2015. 2016, 57:8, 9, eff. July 4, 2016.

21–G:30 Duties.

I. The committee shall be authorized to:

(a) Issue guidelines consistent with the executive branch code of ethics, RSA 21–G:21–27, RSA 15–A, and RSA 15–B, relative to proper and appropriate conduct for individuals relating to the performance of their duties as executive branch officials. Such guidelines shall be consistent with statute.

(b) Issue interpretative rulings explaining and clarifying any law, guideline, or rule within the jurisdiction of the committee.

(c) Render advisory opinions in accordance with RSA 21–G:31–a.

(d) Receive sworn complaints, investigate allegations of violations of this subdivision by executive branch officials and make appropriate findings of fact and conclusions with respect to such conduct.

(e) Investigate any unauthorized disclosure of information by any committee member or assistant and report to the appropriate authority any allegation which it finds to be substantiated.

II. A quorum of 4 members shall be required for all actions of the committee. All actions of the committee shall require an affirmative vote of 4 or more members of the committee before becoming effective, except that a vote to summarily dismiss a complaint shall be by unanimous vote of all members present, and a vote pursuant to RSA 21–G:31, VII shall require only a majority of the members present and voting. The committee shall request to meet with the legislative ethics committee established under RSA 14–B at least twice yearly to facilitate uniformity in the interpretation of statutory provisions.

III. The committee shall provide the legislative ethics committee with copies of all publicly issued guidelines, procedures, decisions, or opinions.

Source. 2006, 21:3. 2007, 194:4, eff. Jan. 1, 2008. 2015, 82:2, eff. Aug. 1, 2015. 2016, 57:10, eff. July 4, 2016.

21–G:31 Complaints; Procedure.

I. Each complaint shall be submitted in writing and signed under oath by the complainant. The sworn complaint shall be filed confidentially with the committee and shall contain the name and address of the complainant. Before any other action is taken by the committee, the executive branch official complained against shall be furnished with a copy of the complaint and a copy shall be sent to each member of the committee for review. The committee may initiate a complaint on its own motion against any individual the committee has reason to believe has violated any law, guideline, rule, or regulation within the committee's jurisdiction. The committee shall promptly examine each sworn complaint and:

(a) Upon first examination, if by a unanimous vote of all members present it determines that a complaint is frivolous, scurrilous, retaliatory in nature, or plainly not within the committee's jurisdiction, the committee may summarily discharge the complaint without further meeting or proceeding. The committee shall notify the respondent and complainant in writing of its action.

(b) For any complaint not summarily discharged, the committee shall conduct an initial review to ascertain whether the committee has jurisdiction to consider the complaint or whether the complaint is without merit or is unfounded. If the committee concludes that the alleged conduct is not within the committee's jurisdiction, is without merit, or is unfounded, the committee shall dismiss the complaint and shall report such conclusion to the complainant and to the executive branch official, with an explanation of the basis of such determination.

II. If the committee, by recorded vote, concludes that the complaint is within its jurisdiction and may have merit, the committee may proceed to conduct a preliminary investigation. Upon completion of its preliminary investigation, the committee shall conclude by recorded vote that:

(a) No violation occurred and no further action is appropriate;

(b) The violation is inadvertent, technical, or of a *de minimis* nature and shall be addressed by informal methods; or

(c) There are reasonable grounds to believe a violation occurred and formal proceedings shall be instituted to inquire further into the complaint. In that event, the committee shall issue a formal

statement of charges and proceed to a hearing on the complaint.

III. Upon completion of the hearing, the committee shall conclude by recorded vote that:

(a) No violation occurred and no further action is appropriate;

(b) No action is appropriate because there is not clear and convincing evidence that a violation occurred;

(c) Based upon clear and convincing evidence, a violation occurred, but such violation does not justify formal disciplinary action and shall be resolved by informal methods; or

(d) Based upon clear and convincing evidence, a violation occurred, and the violation was of a serious nature so as to warrant formal action. In the case of a finding of violation by a former executive branch official, the committee may issue a censure. In the case of a finding of violation by a current executive branch official, the committee may issue a censure or recommend disciplinary action by the appropriate body, including but not limited to a recommendation for disciplinary action by the executive branch official's supervisor, removal from office under RSA 4:1, or, in the case of the governor, executive council member, or other officer of the state, impeachment or other appropriate action pursuant to part II, article 38 of the New Hampshire constitution. In addition to any action taken under this subparagraph, the committee may refer the case to the department of justice for criminal prosecution. In the event that conduct may constitute both a criminal act and misconduct subject to the jurisdiction of the committee, the committee may on its own motion or by motion of the attorney general suspend its investigation or a pending hearing for the time period reasonably necessary to avoid compromising a criminal prosecution.

IV. Any person who knowingly or willfully swears falsely to a sworn complaint does so under penalty of perjury, and the committee may refer any such case to the department of justice for prosecution.

V. Except as otherwise provided in this paragraph and notwithstanding any other provision of law, all proceedings, information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the committee in the course of its work, shall be confidential. The committee shall first examine any sworn complaint and shall conduct its initial review and preliminary investigation of complaints in a confidential manner, unless otherwise requested by the executive branch official complained against. The committee shall conduct formal proceedings, other than its deliberations, in public session. The committee's deliberations on complaints shall be conducted in nonpublic session. Upon completion of the preliminary investigation conducted under paragraph II or at the conclusion of formal proceedings under paragraph III, the committee shall make available for public inspection all records, other than its work product and internal memoranda relating to the complaint.

VI. In proceedings under this subdivision, the committee shall have the power to issue subpoenas and administer oaths. Such subpoena powers may be exercised for the committee by the chairperson or legal counsel to the committee. The fees for witnesses shall be consistent with RSA 516:16 and shall be borne by the committee or the party requesting the subpoena.

VII. Any member of the committee who is directly or indirectly involved in any complaint before the committee or who otherwise has personal knowledge of facts material to the determination of the complaint shall not participate in any proceedings regarding the complaint. In the event that recusals under this paragraph reduce the number of participating members to fewer than 4, the remaining participating members shall designate an alternate or alternates sufficient to increase the committee to 4 members, to serve on the committee for that case only.

Source. 2006, 21:3, eff. June 2, 2006. 2015, 82:3, 4, eff. Aug. 1, 2015. 2016, 57:11, eff. July 4, 2016.

21–G:31–a Advisory Opinions; Procedure.

I. Any executive branch official may request, in writing, an advisory opinion regarding the application of any law, guideline, or rule within the committee's jurisdiction to a specific factual situation pertinent to the requester's conduct or proposed conduct. Notwithstanding any other provision of law, all proceedings, information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the committee in the course of its work in response to a request for an advisory opinion, except for the opinion itself, shall be confidential. The advisory opinion shall be made public but the name of the person seeking the opinion and any information in the opinion that would identify such person shall be nonpublic.

II. Any advisory opinion concerning any person subject to the provisions of this subdivision who acted in reliance thereon, shall be binding upon the committee, and it shall be an absolute defense in any complaint brought under this subdivision or prosecution

under RSA 15–A or RSA 15–B that the person complained against acted in reliance upon such advisory opinion.

Source. 2016, 57:12, eff. July 4, 2016.

21–G:31–b Interpretive Rulings; Procedure. The committee may initiate or any person may request an interpretive ruling explaining or clarifying a law, guideline, or rule of general applicability within the committee's jurisdiction. If the committee determines that a requested interpretive ruling will be helpful to those individuals under the committee's jurisdiction, it shall take up the request in public, receive testimony and other information that it deems helpful on the issue, and render a public ruling.

Source. 2016, 57:12, eff. July 4, 2016.

21–G:32 Rules; Procedures and Standards. The committee shall adopt, publish, and make available to the public rules governing its procedures, including provisions for disqualification of members for conflict of interest and provisions for the committee to discipline its members for breach of committee procedures, consistent with the procedures set forth in RSA 541–A.

Source. 2006, 21:3, eff. June 2, 2006. 2016, 57:13, eff. July 4, 2016.

21–G:33 Committee Administration and Staff. The committee shall be administratively attached to the department of justice, which shall provide appropriate administrative and investigative staff and legal counsel in support of the committee's activities, at the committee's request. Files and records of the committee shall be protected against access other than by members of the committee and other persons specifically authorized by the committee.

Source. 2006, 21:3, eff. June 2, 2006.

21–G:34 Penalty.

I. Any person who knowingly or willfully violates RSA 21–G:21–27 or makes unauthorized disclosure of confidential matters or materials contrary to RSA 21–G:31, or interferes with or obstructs lawful activities of the committee, shall be guilty of a misdemeanor and may be subject to disciplinary action as provided in RSA 21–G:31, III(d) and other applicable law.

II. In the case of any person convicted under this section, the court may order restitution.

Source. 2006, 21:3, eff. June 2, 2006.

21–G:35 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Source. 2006, 21:3, eff. June 2, 2006.

Financial Information Regarding Requests for Bids and Proposals

21–G:36 Definitions. In this subdivision:

I. "Agency" means any executive branch department, commission, board, institution, bureau, office, or other executive branch entity established in the state constitution, statutes, session laws, or executive orders.

II. "Bidder" means a contractor, supplier, or vendor who responds to an RFB, RFP, RFA, or similar request for submission with an offer to sell goods or services.

III. "Request for application (RFA)" means an invitation to submit an offer to provide identified services to an agency where the amount of funding available and the particulars of how the services are to be provided are defined by the agency and where the selection of qualifying vendors will be according to identified criteria as provided in RSA 21–I:22–a and RSA 21–I:22–b.

IV. "Request for bid (RFB)" means an invitation to submit an offer to provide specified commodities or services to an agency at a price proposed by the bidder where selection is based on the lowest price meeting or exceeding specifications as stated in the bid.

V. "Request for proposal (RFP)" means an invitation to submit a proposal to provide specified goods or services, where the particulars of the goods or services and the price are proposed by the vendor and, for proposals meeting or exceeding specifications, selection is according to identified criteria as provided in RSA 21–I:22–a and RSA 21–I:22–b.

VI. "Selected vendor" means the qualified bidder which has been identified by the agency as having received the best score for its proposal according to the criteria set forth in an RFP, RFA, or similar request for submission, as provided in RSA 21–I:22–a and RSA 21–I:22–b, or which has been identified by the agency as providing the best price as set forth in an RFB.

VII. "Vendor" means a person or entity who offers products or services for sale.

Source. 2015, 185:1, eff. Jan. 1, 2016.

21–G:37 Financial Information Regarding Requests for Bids or Requests for Proposals.

I. In order to protect the integrity of the bidding process, notwithstanding RSA 91–A:4, no information shall be available to the public, or to the members of the general court or its staff concerning specific responses to requests for bids (RFBs), requests for proposals (RFPs), requests for applications (RFAs), or similar requests for submission for the purpose of procuring goods or services or awarding contracts from the time the request is made public until the closing date for responses.

II. On the closing date for responses, the agency shall:

(a) In the case of an RFB, hold a public bid opening at which it shall disclose the name of the bidders which submitted timely bids and the prices offered.

(b) In the case of an RFP, RFA, or similar request for submission, post the number of responses received on the agency website.

III. Notwithstanding RSA 91–A:4, no information other than that specified in paragraph II shall be available to the public or to the members of the general court or its staff concerning specific RFBs, RFPs, RFAs, or similar requests for submission made by any state agency from the closing date for responses until the contract is approved by the governor and executive council, or, if the contract does not require approval from the governor and executive council, until the contract has been actually awarded as determined by the issuing agency, except:

(a) In the case of an RFB that requires approval from the governor and executive council, the issuing agency shall, at least 5 business days prior to submitting the contract to the department of administrative services, post the vendors' names and respective prices for each responding vendor on its website.

(b) In the case of an RFB that does not require approval from the governor and executive council, the issuing agency shall, at minimum, post the vendors' names and respective prices for each responding vendor on its website at the time that the RFB is awarded.

(c) In the case of an RFP, RFA, or similar request for submission that requires approval from the governor and executive council, the issuing agency shall, at least 5 business days prior to submitting the proposed contract to the department of administrative services, post the rank or score for each responding vendor on its website.

(d) In the case of an RFP, RFA, or similar request for submission that does not require approval from the governor and executive council, the issuing agency shall, at least 5 business days before final approval of the proposed contract by the appropriate agency authority, post the rank or score for each responding vendor on its website.

IV. A bidder questioning an agency's identification of the selected vendor may request that the agency review its selection process. Such request shall be made in writing and be received by the agency within 5 business days after the rank or score is posted on the agency website. The request shall specify all points on which the bidder believes the agency erred in its process and shall contain such argument in support of its position as the bidder seeks to present. In response, the issuing agency shall review the process it followed for evaluating responses and, within 5 business days of receiving the request for review, issue a written response either affirming its initial selection of a vendor or canceling the bid. In its request for review, a bidder shall not submit, and an agency shall not accept nor consider, any substantive information that was not included by the bidder in its original bid response. No hearing shall be held in conjunction with a review. The outcome of the agency's review shall not be subject to appeal.

V. The head of the issuing agency may waive the requirements of paragraphs II through IV in the event of an emergency situation or to prevent the loss of federal or other funds subject to recapture. Each agency shall adopt rules, pursuant to RSA 541–A, relative to circumstances constituting an emergency or loss of funding under this paragraph. In the event that contract negotiations have not concluded in the 5 business days prior to submission of the proposed contract to the department of administrative services, the head of the issuing agency may waive the requirements of subparagraphs III(a) and (c), provided that the agency:

(a) Posts a notification at least 5 days prior to the applicable department of administrative services deadline for governor and executive council submissions notifying the public that negotiations are ongoing and the anticipated date of the governor and executive council meeting where the contract will be reviewed; and

(b) Posts on its website the information required pursuant to subparagraphs III(a) and (c) upon the conclusion of contract negotiations.

VI. (a) When an agency cancels an RFB, RFP, RFA, or similar request for submission, terminates

the selection process, or otherwise does not select a bidder, no information, other than a notification of the cancellation or termination, shall be available to the public or to the members of the general court or its staff concerning the RFB, RFP, RFA, or similar request for submission, notwithstanding the provisions of RSA 91–A:4, for a period of 2 years following the cancellation, termination, or other non-selection, subject to subparagraph (b).

(b) If, within 2 years following the cancellation, termination, or other non-selection, a new RFB, RFP, RFA, or similar request for submissions is issued, which the issuing agency determines is substantially related to the original RFB, RFP, RFA, or similar request for submission, information concerning the original bid or proposal shall, if requested and upon payment of any costs established pursuant to RSA 91–A:4, IV, be made available only after selection of a bidder on the new request for submission, but only to the extent that such information is not exempt from disclosure under RSA 91–A:5 or other law.

VII. Requests for grant applications or proposals shall not be subject to the requirements set forth in paragraphs I–V. Notwithstanding RSA 91–A:4, information relating to grant applications or proposals shall remain confidential until the grant contract is approved by the governor and executive council, or, if the grant contract does not require approval from the governor and executive council, until the effective date of the grant contract as determined by the issuing agency.

Source. 2015, 185:1, eff. Jan. 1, 2016. 2016, 55:1, eff. May 5, 2016. 2017, 50:1, eff. July 11, 2017.

21–G:38 Ethics.

I. From the time the bid is published until a contract is awarded, no bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15–B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will select, evaluate, or award an RFB, RFP, RFA, or similar request for submission. Any bidder that violates this section shall be subject to prosecution for an offense under RSA 640:2. Every RFB, RFP, RFA, or similar request for submissions issued by any state agency shall contain a provision stating that any bidder who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on the RFB, RFP, RFA, or similar request for submission and every such bidder shall be disqualified from bidding on any RFB, RFP, RFA, or similar request for submission issued by any state agency. An agency which becomes aware of any such charge or conviction shall notify the department of administrative services, which department shall maintain a list of vendors reported to it and make that list available for agency reference on the state's internal intranet system. A bidder that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the department of administrative services, which shall note that information on the list maintained on the state's internal intranet system, except that in the case of annulment, the information shall be deleted from the list.

II. No elected official, public official, public employee, constitutional official, or family member of any such official or employee who was, is, or will be involved in the selection, evaluation, or award of an RFB, RFP, RFA, or similar request for submission, shall accept any gift, expense reimbursement, or honorarium, as defined in RSA 15–B, from a bidder.

III. Each agency and executive branch official and employee shall avoid any situation that might constitute a conflict of interest, misuse of position, or otherwise violate the code of ethics under RSA 21–G:21–27.

Source. 2015, 185:1, eff. Jan. 1, 2016. 2016, 55:2, eff. May 5, 2016.

CHAPTER 21–I

DEPARTMENT OF ADMINISTRATIVE SERVICES

General Provisions

General Provisions

21–I:1 Establishment; General Functions.

I. There is hereby established the department of administrative services, an agency of the state, under the executive direction of a commissioner of administrative services. The commissioner of administrative services shall serve as the chief fiscal planning and control officer of the state of New Hampshire.

II. The department of administrative services, through its officials, shall be responsible for managing and coordinating the following administrative and financial functions, upon which the effective and efficient management of all state programs and operations relies:

(a) Budgeting.

(b) Automated accounting and financial and human resources management systems.

(c) Business process auditing.

(d) Accounting.

(e) Financial reporting.

(f) Data processing.

(g) Graphic services.

(h) Plant and property management.

(i) Procurement.

(j) Risk management.

(k) General support services.

(*l*) Personnel administration.

(m) Developing and maintaining state owned and supported land and buildings, including public works design and construction relating to projects as defined in RSA 21–I:78 through 21–I:86.

(n) Providing central management and administration of space rented by, or the processes relating to the rental of space by, state agencies, except as otherwise provided by law.

(*o*) Serving as the employer for the purpose of ensuring compliance with the requirements of RSA 281–A.

Source. 1983, 416:40. 1986, 12:5. 2005, 291:5. 2008, 177:6, eff. June 11, 2008. 2014, 327:1, eff. Aug. 2, 2014. 2017, 193:3, eff. Aug. 29, 2017.

21–I:1–a Definitions. In this chapter the following words shall have the following meanings:

I. "Commissioner" means the commissioner of administrative services.

I–a. "Budget director" means the assistant commissioner of administrative services.

II. "Physical facilities" means buildings of every kind and the fixtures attached thereto.

III. [Repealed.]

IV. [Repealed.]

V. [Repealed.]

Source. 1985, 399:5. 1988, 227:17. 1989, 396:14. 1990, 247:4. 2008, 359:9, III, eff. Sept. 9, 2008.

21–I:2 Commissioner; Directors.

I. The commissioner of the department shall be appointed by the governor, with the consent of the council, and shall serve for a term of 4 years.

II. The commissioner shall nominate for appointment by the governor, with the consent of the council, each unclassified division director, the assistant commissioner, the deputy commissioner, the internal auditor, the financial data manager, the manager of risks and benefits, and the senior operational analyst. The unclassified division directors, the assistant commissioner, the deputy commissioner, the internal auditor, the financial data manager, the manager of risks and benefits, and the senior operational analyst shall each serve for a term of 4 years.

Source. 1983, 416:40. 1985, 399:6. 1989, 396:15. 1996, 235:1. 2009, 144:67, eff. July 1, 2009. 2013, 144:26, eff. Mar. 5, 2014. 2014, 327:3, eff. Aug. 2, 2014.

21–I:3 Qualifications; Compensation.

I. The commissioner of the department shall be qualified to hold that position by reason of education and experience.

II. The directors of all divisions of the department shall be qualified to hold their respective positions by reason of education and relevant experience.

III. The salary of the commissioner and of all unclassified employees of the department shall be as specified in RSA 94:1–a.

Source. 1983, 416:40. 1985, 399:7, eff. July 1, 1985.

21–I:3–a Assistant Commissioner.

I. The commissioner of administrative services shall nominate an assistant commissioner as provided in RSA 21–I:2, II. The assistant commissioner shall be qualified to hold that position by reason of education and experience.

II. The assistant commissioner shall serve as budget director and shall perform such duties as are assigned by the commissioner. The assistant commissioner shall assume the duties of the commissioner in the event that the commissioner is unable for any reason to perform such duties.

III. The salary of the assistant commissioner shall be as specified in RSA 94:1–a, I.

Source. 1989, 396:18, eff. June 5, 1989.

21–I:3–b Deputy Commissioner.

I. The commissioner of administrative services shall nominate a deputy commissioner as provided in RSA 21–I:2, II. The deputy commissioner shall be qualified to hold that position by reason of education and experience. The deputy commissioner shall perform such duties as are assigned by the commissioner and such other duties as are provided by law.

II. The salary of the deputy commissioner shall be determined after assessment and review of the appropriate temporary letter grade allocation in RSA 94:1–a, I(b) for the position which shall be conducted pursuant to RSA 94:1–d and RSA 14:14–c.

Source. 2009, 144:68, eff. July 1, 2009. 2014, 327:5, eff. Aug. 2, 2014.

21–I:4 Office Established. There is hereby established an office of the commissioner consisting of the following 6 units:

I. Financial data management unit.

II. State budget.

III. Internal audit.

IV. Operational analysis.

V. Cost containment.

VI. Risk management.

Source. 1983, 416:40. 1985, 399:8. 1989, 345:1. 2006, 70:1, 2, eff. June 24, 2006.

21–I:5 Financial Data Management Unit. There is hereby established within the office of the commissioner a financial data management unit under the supervision of an unclassified financial data manager who shall be responsible for the following functions in accordance with applicable laws:

I. Providing coordination of all internal department financial information in order to assure the compatibility, continuity and integrity of such information.

II. Assisting the commissioner with the planning, management and operation of all internal department financial information systems.

III. Carrying on a continuing analytical research and planning program in the field of governmental financial management in order to provide for the

most effective and efficient information management systems possible.

IV. Accomplishing data entry and control of information for all internal department financial systems, and preparing and distributing reports generated from those systems.

V. Assisting department division directors by:

(a) Establishing and operating a financial information resource center for their use.

(b) Jointly monitoring state and federal fiscal legislation with the directors in order to assure timely awareness of and compliance with new legislation.

VI. Assisting users of information and financial systems which are the responsibility of the financial data management unit.

Source. 1983, 416:40. 1985, 399:9, eff. July 1, 1985.

21–I:6 Budget Unit. There is hereby established within the office of the commissioner of administrative services a state budget unit under the supervision of an unclassified budget director who shall:

I. Conduct a continuous study of the financial operation, needs and resources of the state and compile all information necessary for the preparation of the budget so that each successive budget cycle shall have ready access to all information contained in prior budgets.

II. Establish the procedures which all state agencies shall follow in submitting budget requests to the governor and assist the governor or his designee to compile a tentative budget and budget document, as provided in RSA 9. The procedures established under this paragraph shall not be considered rules subject to RSA 541–A.

III. [Repealed.]

IV. Cooperate with the department of transportation in long range capital planning to meet the needs of the state as may be requested by the governor and council, and subject to their approval.

V. Provide information and reports to the governor or his designee, as the governor shall request, in order to effectively administer the budget.

VI. Consult with the respective executive heads of state departments, agencies, boards and commissions, relative to the establishment, supervision and maintenance of uniform and effective business records, business practices, and business management, and provide the necessary direction to insure that all manual of procedure requirements are complied with.

VII. Serve as budget analyst for such state agencies as the commissioner may assign.

VIII. Cooperate with the department of information technology management in the preparation of the statewide information technology plan, and incorporation of information technology planning into the budget process.

Source. 1983, 416:40. 1989, 396:16. 1991, 346:5. 2008, 177:16, III, eff. June 11, 2008; 335:5, eff. Sept. 5, 2008.

21–I:7 Internal Audit. There is hereby established within the office of the commissioner of administrative services an internal audit unit under the supervision of an unclassified internal auditor. The internal audit unit shall:

I. Assist the commissioner by supplying analytical reports of examinations conducted of the department's various divisions, bureaus, units, programs and functions. Examinations will be conducted and reports prepared in accordance with standards of governmental auditing and program evaluation specified by authoritative national standard setting bodies. Reports shall contain analyses, appraisals, comments and recommendations relating to the accuracy and competence of accounting, financial, and management procedures in use. Organizational and operational practices may also be reviewed by the budget director.

II. The internal audit unit shall not assume any managerial, supervisory or operational function, nor shall it direct action initiated as a result of its recommendations.

Source. 1983, 416:40. 1989, 396:17, eff. June 5, 1989.

21–I:7–a Operational Analysis.

I. There is hereby established within the office of the commissioner of administrative services an operational analysis unit under the supervision of an unclassified senior operational analyst.

II. The operational analysis unit shall monitor state agency activities and evaluate agency operations based on priorities established by budget program and statute in the following areas: revenues, expenses, staffing, space utilization, fleet operations, and such other public service needs as the commissioner of administrative services shall direct.

Source. 1985, 399:10, eff. July 1, 1985.

21–I:7–b Unit of Cost Containment. There is established within the office of the commissioner of administrative services a unit of cost containment. The unit of cost containment shall be responsible for all functions and duties authorized under RSA 604–A, regarding payment, recoupment and monitoring of

indigent defense funds. It shall also be responsible for all functions authorized under RSA 461–A:18 relative to recouping guardian ad litem funds. The commissioner is authorized to employ personnel as necessary to accomplish the duties and functions of the unit of cost containment.

Source. 1989, 345:2. 1997, 173:1. 2005, 273:18, eff. Oct. 1, 2005.

21–I:7–c Risk Management. There is established within the office of the commissioner of administrative services a risk management unit, under the supervision of an unclassified manager of risks and benefits, who shall be qualified to hold that position by reason of education and experience, and who shall perform such duties as the commissioner from time to time may authorize. The functions of the risk management unit shall be divided across the following bureaus:

I. The bureau of health and benefits, under the supervision of a classified administrator, who shall be responsible for the following functions, in accordance with applicable law:

(a) Overseeing and administering the state employee and retiree group insurance programs authorized by RSA 21–I:26 through RSA 21–I:36, in accordance with administrative rules adopted pursuant to RSA 21–I:14, XIII.

(b) Coordinating the employee and retiree benefit programs administered through the risk management unit with the benefits and programs offered through the New Hampshire retirement system and the state's deferred compensation commission established in RSA 101–B.

(c) Overseeing and administering all additional employee or retiree benefit programs offered by the state, other than those related to the New Hampshire retirement system or the state's deferred compensation commission established in RSA 101–B.

(d) Conducting ongoing studies of alternative financing methods and benefit offerings.

(e) To the extent deemed necessary by the manager of risks and benefits, creating for potential incorporation into the department of administrative services manual of procedures described at RSA 21–I:14, I(b), a technical assistance manual that clearly explains procedures related to the bureau's functions, including but not limited to procedures relating to employee and retiree benefits.

(f) Developing and monitoring insurance and third party administrator contracts related to the state employee and retiree group insurance program in accordance with applicable law, by:

(1) Developing bid specifications for insurance and third party administrator contracts and ensuring bid specifications are in compliance with applicable collective bargaining agreements.

(2) Negotiating final contract terms with the vendors awarded contracts through the procurement process.

(3) Formalizing contract agreements.

(4) Monitoring contracts on an ongoing basis to ensure timely procurement, renewals, amendments, updates, statutory compliance, and extensions.

(5) Ensuring that vendors comply with the requirements of contract agreements by:

(A) Implementing, monitoring, and enforcing performance guarantees.

(B) Receiving and analyzing state employee and retiree group insurance utilization data and statistics.

(C) Monitoring Medicare issues to ensure compliance with federal law and programs.

(g) Reviewing and making recommendations to the manager of risks and benefits that are intended to ensure the proper operation and long term sustainability of the bureau's programs.

(h) Implementing, overseeing, and administering employee wellness initiatives.

(i) Advising the manager of risks and benefits and, upon request, the commissioner, the governor and executive council, the general court, the state retiree health plan commission established in RSA 100–A:56, the joint legislative fiscal committee established in RSA 14:30–a, and other entities regarding employee and retiree benefits program.

(j) Ensuring that the bureau's programs are compliant with applicable state and federal law.

(k) Monitoring agencies' activities for compliance with benefit program requirements.

II. The bureau of property, casualty, and workers' compensation, under the supervision of a classified administrator, who shall be responsible for the following functions, in accordance with applicable law:

(a) Overseeing and administering the state's workers' compensation program under RSA 21–I:24 and RSA 21–I:25–a or other applicable law.

(b) Identifying loss exposure for all state real and personal property and for personal injury, except as otherwise provided by law, on a continuing basis.

(c) Identifying cost-effective means for protecting against various types of losses, including self-

funding, commercial insurance purchases, and risk assumption, and recommending to the manager of risks and benefits actions to be taken through the budget process, or other processes, to implement such means.

(d) After consultation with, and approval by the manager of risks and benefits, purchasing liability insurance under a fleet policy covering the operation of state-owned vehicles and motorboats, and such other insurance and surety bonds as any state department, agency, or official may be legally authorized to secure, or required to furnish; provided that approval shall not be granted for any such insurance or surety bonds unless the same have been marketed and procured through a resident agent of an insurance company registered and licensed to do business in this state. With the exception of any risk located outside the state, no such insurance company or resident agent, personally or by another, shall allow, give, or pay, directly or indirectly, to any nonresident agent or nonresident broker any part of the commission on the sale of such insurance or surety bonds. The insurance commissioner may suspend or revoke the license of any resident agent or insurance company violating the provisions hereof.

(e) Conducting ongoing studies of alternative financing methods and benefit offerings.

(f) Overseeing the state employee workers' compensation and commercial insurance programs, by:

(1) Preparing bid specifications for commercial insurance and third party administrator contracts related to workers' compensation and commercial insurance in accordance with applicable law, and ensuring bid specifications are in compliance with collective bargaining agreements.

(2) Negotiating final contract terms with the vendors awarded contracts through the procurement process, formalizing contract agreements, and monitoring contracts on an ongoing basis to ensure timely procurement, renewals, amendments, updates, statutory compliance, and extensions.

(3) Managing claims payments and statistical data related to workers' compensation and commercial insurance and ensuring vendors comply with the requirements of contract agreements.

(4) Coordinating and developing processes and procedures related to the workers' compensation and commercial insurance programs.

(5) Monitoring agencies' workers' compensation and commercial insurance activities for compliance with requirements.

(g) To the extent deemed necessary by the manager of risks and benefits, creating for potential incorporation into the department of administrative services manual of procedures described at RSA 21–I:14, I(b), a technical assistance manual or manuals that clearly explains procedures related to the bureau's functions.

(h) Evaluating risks facing the state and developing and operating health, safety, loss control, and risk reduction programs, in accordance with loss prevention guidelines adopted pursuant to RSA 21–I:14, II.

(i) Reviewing and making recommendations to the manager of risks and benefits that are intended to ensure the proper operation and long term sustainability of the bureau's programs.

(j) Advising the manager of risks and benefits and, upon request, the commissioner, the governor and executive council, the general court, and other entities regarding the bureau's programs.

(k) Ensuring that the bureau's programs are compliant with applicable state and federal law.

III. The bureau of finance, under the supervision of a classified administrator, who shall be responsible for the following functions, in accordance with applicable law:

(a) Managing claims payments, vendor payments, statistical data, and financial reporting related to the risk management unit's responsibilities.

(b) Conducting ongoing studies of alternative financing methods and benefit offerings.

(c) To the extent deemed necessary by the manager of risks and benefits, creating for potential incorporation into the department of administrative services manual of procedures described at RSA 21–I:14, I(b), a technical assistance manual that clearly explains procedures related to the bureau's functions.

(d) Establishing working rate tables for application to self-insured health benefit programs, including by coordinating and reviewing actuarial projections, considering rate alternatives and modeling, and developing full working rate tables.

(e) Reviewing and making recommendations to the manager of risks and benefits that are intended to ensure the proper operation and long term sustainability of the bureau's programs.

(f) Advising the manager of risks and benefits and, upon request, the commissioner, the governor and executive council, the general court, and other entities regarding the bureau's programs.

(g) Ensuring that the bureau's programs are compliant with applicable state and federal law.

(h) Monitoring agencies' financial activities for compliance with financial requirements of the state's health benefit program.

Source. 2006, 70:3, eff. June 24, 2006. 2013, 144:25, eff. Mar. 5, 2014. 2017, 193:4, eff. Aug. 29, 2017.

21–I:8 Division of Accounting Services. There is hereby established within the department the division of accounting services under the supervision of an unclassified director of accounting services, who shall also be known as the comptroller. The comptroller shall direct the state's accounting functions, using generally accepted accounting principles and taking full advantage of all benefits of automated data processing applications, to the end that the fiscal affairs of all state agencies and departments will be adequately and uniformly serviced and that periodic financial and management reports will be available to serve the various needs of all state agencies and the executive and legislative branches in their decision making processes. The commissioner of administrative services may authorize deviations from generally accepted accounting principles if the commissioner deems it is in the best interest of the state, provided that the explanation for the deviation is provided in the annual report required by subparagraph II(a). The division shall include the following internal organizational units:

I. The bureau of accounting under the supervision of a classified administrator of accounting who shall be responsible for functions that include at least the following, in accordance with applicable laws:

(a) Reviewing all state contracts for budget control and for substantive protection of the public interest.

(b) Implementing a system established by the commissioner to specify how and when business process auditing of claims is to be performed.

(c) Business process auditing of claims in accordance with subparagraph (b) to be presented for the issuance of warrants and certifying to the governor and council that such claims are just and proper claims against the state and within appropriations provided by statute.

(d) Preparing appropriate warrants and schedules of manifests supporting the same, for consideration and execution by the governor, with the advice and consent of the council.

(e) Making appropriate departmental and agency budget adjustments for services performed by the department of transportation.

(f) When so authorized by the governor and council, making such transfers of appropriation items within any division or functional unit of state government as may be necessary or desirable to best carry out the purpose of such division or functional unit.

(g) Making use of the most advanced and economical techniques within the capabilities of the state's data processing system in carrying out his or her duties.

(h) Controlling all payment of moneys into the treasury.

II. The bureau of financial reporting, under the supervision of a classified administrator of financial reporting who shall be responsible for functions that include at least the following, in accordance with applicable laws:

(a) Not later than 90 days after the close of the fiscal year, unless the governor and council for good cause shall extend such period, completing a comprehensive annual report concerning the preceding fiscal year that details the financial condition and operation of the state during that period in a manner consistent with generally accepted accounting principles. Said report shall subsequently be audited by the legislative budget assistant who may designate a certified public accountant not employed in the state service to conduct the annual audit and may accept the findings and report of the certified public accountant as fulfilling the provisions of this section provided that in either case said audit shall be conducted in accordance with prevailing standards and practices of governmental auditing specified by authoritative national standard setting bodies. The audited report shall be completed and available to the public by December 31 of each year unless for good cause the joint legislative fiscal committee shall extend such period.

(b) [Repealed.]

(c) [Repealed.]

(d) Producing periodic reports and analysis of government revenues and expenditures.

Source. 1983, 416:40. 1985, 399:11. 1989, 396:9. 1994, 158:1. 1995, 297:2, I. 1998, 254:1. 2004, 257:34. 2006, 70:4, 10. 2008, 177:7, eff. June 11, 2008. 2014, 327:75, 76, eff. Aug. 2, 2014. 2017, 156:237, 238, eff. June 28, 2017.

21–I:9 Division of Information Services.

[Repealed 1991, 346:18, II, eff. July 1, 1991.]

History

Former RSA 21–I:9, which was derived from 1983, 416:40; 1985, 399:12–14; and 1989, 321:1, 3, 408:4, related to the establishment of the division of information services.

21–I:10 Internal Organization.

[Repealed 1991, 346:18, III, eff. July 1, 1991.]

History

Former RSA 21–I:10, which was derived from 1983, 416:40 and 1985, 399:15, 24, IV, related to the internal organization of the division of information services.

21–I:11 Division of Plant and Property Management.

I. The procurement and support services, public works design and construction, and plant and property functions of the department shall be divided across the following divisions:

(a) The division of procurement and support services, which shall be under the supervision of an unclassified director of procurement and support services who shall be responsible for the following functions, in accordance with applicable law:

(1) Purchasing all materials, equipment, supplies, and services for all departments and agencies of the state including contracting for the purchase or rental of data processing equipment and contracting for the purchase of electric power supply and services, except as otherwise provided by law. Insofar as practicable all such purchases shall be made in such quantities and manner as shall be most economical for the state.

(2) Requiring competitive bidding before making any purchase for the state pursuant to the laws of the state applicable to the division's procurement functions, except:

(A) When the best interests of the state would be served thereby and the purchase involves a total expenditure of not more than $10,000 or is a purchase in an approved class.

(B) When after reasonable investigation, it appears that any required unit or item of supply, or brand of such unit or item, is procurable by the state from only one source.

(C) When, after reasonable investigation, it appears that any required service, unit or item of supply, or brand of such unit or item, has a fixed market price at all sources available to the state.

(D) When, in the opinion of the governor, an emergency exists of a nature which requires the immediate procurement of supplies, he or she may authorize the director of procurement and support services to make a purchase without competitive bidding; and where the rates filed with and approved by the insurance commissioner are uniform, the purchase of state insurance and public state official and employee bonds are specifically excluded from competitive bidding as to price; provided, however, that nothing contained in this subparagraph shall preclude the director of procurement and support services from inviting plans of insurance coverage from any resident licensed insurance agent.

(3) Except where competitive bidding has been employed, no purchase involving an expenditure of more than $10,000 or purchase in an approved class may be made by the director of procurement and support services without the written approval of the commissioner. In requesting such approval, the director shall first state in writing his or her reasons for not employing competitive bidding.

(4) Promptly furnishing to any agency and to the comptroller, a copy of any purchase order executed by him or her for supplies for the said agency.

(5) Maintaining a central inventory record of all state owned real property, physical plant and equipment, which record shall be made available to the comptroller to assist him or her in complying with accounting principles. In order to compile this record the director shall:

(A) Advise each state agency how to establish and maintain a perpetual inventory record system for real property whether rented or owned, physical plant, and equipment; and

(B) Require each state agency to report annually, in such form as prescribed by the director, an inventory of the real property whether rented or owned, physical plant, and equipment under its jurisdiction. The form of such report shall not be considered a rule subject to the provisions of RSA 541–A.

(6) Recommending to the commissioner fair and equitable charges to be assessed according to rules adopted pursuant to RSA 21–I:14, XI, against any recipients receiving any donated surpluses from the bureau of purchase and property's surplus distribution section which shall:

(A) Be sufficiently high to defray all administrative, warehousing, processing, distribution, and transportation costs incurred by the surplus distribution section and to allow the accumulation of a working capital reserve equal to the cost of 6 months' operation of the

surplus distribution section so that the operation of said section shall result in no expense to the state; and

(B) Be maintained by the treasurer as a separate, restricted fund.

(7) Providing the text of any rule adopted pursuant to RSA 21–I:14, XI, to each recipient of donated commodities or surpluses distributed by the bureau of purchase and property's surplus distribution section.

(8) Requiring, prior to an agency's submission of a request for purchase of computer hardware, software, related licenses, media, documentation, support and maintenance services, and other related services that either require an expenditure of more than $5,000, or involve a purchase that is not on an approved standards list established by the department of information technology which requires an expenditure of more than $500, up to $5,000, that the agency obtain approval of the proposal by the chief information officer, or designee, to ensure that the procurement is consistent with the state information technology plan.

(9) [Repealed.]

(10) Supervising the activities and functions of the bureau of purchase and property under RSA 21–I:12, I(a).

(11) Supervising the department's activities and functions under RSA 21–I:12, I(b).

(12) Supervising the activities and functions of the bureau of graphic services under RSA 21–I:12, I (c), (d) and (e).

(b) The division of public works design and construction, which shall be under the supervision of a classified public works manager VII, who shall be responsible for the functions of the division under RSA 21–I:12, III.

(c) The division of plant and property, which shall be under the supervision of a classified administrator who shall be responsible for the following functions, in accordance with applicable law:

(1) Subject to the direction and supervision of the commissioner of administrative services, acting as custodian of the state house, legislative office building, state house annex, state library, and, with the exception of interior maintenance of the acute psychiatric services building and all transitional housing buildings including the Howard recreation building, all state-owned buildings located on the campus of the New Hampshire hospital as described in RSA 4:39–a, as well as the grounds connected with each of the foregoing properties, and have charge of all matters relating to the care, maintenance, and repair of said property.

(2) Providing the American Legion Department of New Hampshire, a private nonprofit organization, office space, free of charge, in the state-owned building located at 25 Capitol Street in Concord, New Hampshire or another state-owned building located in Concord.

(3) Having custody of all state-owned or rented real property not specifically charged to some other department and all personal property not specifically charged to some other department.

(4) Supervising the activities and functions of the bureau of planning and management under RSA 21–I:12, II(a).

(5) Supervising the activities and functions of the bureau of general services under RSA 21–I:12, II(b).

(6) Supervising the activities and functions of the bureau of court facilities under RSA 21–I:12, II(c).

(7) Supervising the department's activities and functions relating to energy management.

(8) Supervising the department's support of facilities of the department of health and human services.

II. With reference to the division of procurement and support services and the rulemaking authority of the commissioner in this area, the following definitions shall apply:

(a) "Supplies" shall mean all materials, equipment, printing, furniture, furnishings, and books, of every name and nature, including computer hardware, software, related licenses, media, and documentation, and support and maintenance services, excluding any systems that collect or store data offsite.

(b) "Agency" shall mean any board, department, commission, hospital, sanitarium, home, library, school, college, prison, or other institution conducted or operated by or for the state of New Hampshire.

(c) "Purchase" shall mean all contracts for the purchase of supplies or services, as well as the act of purchasing.

(d) "Emergency" shall mean any situation requiring the immediate purchase of supplies arising from any unavoidable casualty or disaster.

(e) "Governing board" shall mean the board, commission, board of trustees, department head or other administrative body responsible for the conduct of any agency.

(f) "Services" shall mean services provided for general agency use including, but not restricted to, the following: credit card agreements, elevator maintenance, hazardous waste testing and removal, janitorial services, laboratory services, rubbish removal, recycled materials pickup, security services, snow removal, soil testing, transportation, office machine maintenance, vehicle repair, vehicle rental and leasing, and warehousing. "Services" shall not mean services provided solely to one agency.

Source. 1983, 416:40; 469:130, 131. 1985, 4:4; 188:4; 399:16–18. 1986, 77:1–3. 1988, 227:18. 1990, 247:2. 1991, 346:6. 1995, 9:13. 1996, 57:3; 79:2. 2003, 223:19. 2005, 291:6. 2007, 263:1. 2008, 69:1, 2, eff. July 20, 2008; 85:1, eff. Jan. 1, 2009; 359:3, 9, II, eff. Sept. 9, 2008. 2012, 192:3–6, eff. July 1, 2012. 2013, 49:1, eff. Aug. 3, 2013; 227:1, eff. Sept. 13, 2013. 2014, 327:6, eff. Aug. 2, 2014. 2015, 276:32, eff. July 1, 2015.

21–I:11–a Fund Restrictions; Cash Reserves Prorated.

I. Expenditures from the fund established by RSA 21–I:11, I(a)(6)(B), shall be restricted to defraying the following costs incurred as a result of transferring donated commodities or surpluses from the consignee point of delivery or point of origin to the ultimate point of consumption:

(a) Compensation and travel expenses of individuals directly connected with the distribution of donated commodities.

(b) Supplies, equipment, warehousing and storage costs.

(c) Labor and transportation costs.

(d) Such other related costs as may be required to effect orderly distribution of commodities.

II. If the program of distribution of donated commodities and surpluses carried out by the surplus distribution section is discontinued due to failure to receive surpluses for distribution, the cash reserves shall be prorated back to the recipients who contributed to such reserves during the previous 3 years.

Source. 1985, 188:5, eff. May 28, 1985. 2014, 327:7, eff. Aug. 2, 2014.

21–I:11–b Identical Qualified Lowest Bids, Proposals, or Quotations.

I. The purpose of this section is to promote procurement practices and procedures which the general court believes will improve the state's procurement process while at the same time establishing a vendor selection procedure which, among other things, is specifically geared toward reducing unemployment and stimulating economic growth in this state.

II. To promote business in this state, when qualified lowest bids, proposals, or quotations are received by the division of procurement and support services at the same price, the division's selection or recommendation for selection shall, if the process is not cancelled by the state, be made by drawing lots, provided, however, that if only one of the vendors offering that price has a principal place of business in New Hampshire, that vendor shall, if the process is not cancelled by the state, be selected or recommended for selection. When qualified lowest bids, proposals, or quotations are received at the same price from more than one vendor which has a principal place of business in New Hampshire, selection or recommendation for selection shall, if the process is not cancelled by the state, be made by drawing lots from among the vendors with a principal place of business in New Hampshire.

Source. 2010, 355:1, eff. Sept. 18, 2010. 2014, 327:8, eff. Aug. 2, 2014.

21–I:11–c Debarment of Vendors.

I. (a) No individual or business entity shall make a bid, proposal, or quotation in response to a request for bid, proposal, or quotation issued by the division of procurement and support services if that individual or entity, or any of its subsidiaries, affiliates, or principal officers:

(1) Has, within the past 2 years, been convicted of, or pleaded guilty to, a violation of RSA 356:2, RSA 356:4, or any state or federal law or county or municipal ordinance prohibiting specified bidding practices, or involving antitrust violations, which has not been annulled;

(2) Has been prohibited, either permanently or temporarily, from participating in any public works project pursuant to RSA 638:20;

(3) Has previously provided false, deceptive, or fraudulent information on a vendor code number application form, or any other document submitted to the state of New Hampshire, which information was not corrected as of the time of the filing of a bid, proposal, or quotation;

(4) Is currently debarred from performing work on any project of the federal government or the government of any state;

(5) Has, within the past 2 years, failed to cure a default on any contract with the federal government or the government of any state;

(6) Is presently subject to any order of the department of labor, the department of employment security, or any other state department, agency, board, or commission, finding that the applicant is not in compliance with the requirements of the laws or rules that the department,

agency, board, or commission is charged with implementing;

(7) Is presently subject to any sanction or penalty finally issued by the department of labor, the department of employment security, or any other state department, agency, board, or commission, which sanction or penalty has not been fully discharged or fulfilled;

(8) Is currently serving a sentence or is subject to a continuing or unfulfilled penalty for any crime or violation noted in this section;

(9) Has failed or neglected to advise the division of any conviction, plea of guilty, or finding relative to any crime or violation noted in this section, or of any debarment, within 30 days of such conviction, plea, finding, or debarment;

(10) Has been placed on the debarred parties list specified in paragraph II within the past year.

(b) All individuals or business entities submitting a bid, proposal, or quotation in response to a request for a bid, proposal, or quotation issued by the division of procurement and support services shall, as part of their response, provide an affidavit signed under oath before a duly authorized notary public that all conditions listed in subparagraphs (a)(1)–(10) have been met. Failure to submit such an affidavit or, should the affidavit be false or signed by an unauthorized person, the bid, proposal, or quotation shall be automatically rejected and the resulting contract, if any, shall be deemed to be in breach. The commissioner of the department of administrative services shall adopt rules under RSA 541–A relative to the affidavit required under this subparagraph.

II. The division of procurement and support services shall maintain a list of individuals or entities which it believes to be precluded from submitting bids, proposals, or quotations, under paragraph I, which it shall post on its public website. Such individuals or entities shall be debarred from submitting bids, quotations, or proposals to the division. Prior to posting the name of an individual or entity on the public website, the division shall, by way of certified or registered mail to the last known address of the individual or entity, notify the vendor of its intention to post. This requirement of notification shall not apply in the case of potential vendors whose names are posted by the division because those vendors' names appear on a federal or state debarred parties list. The individual or entity to whom a notification has been forwarded may request a hearing by certified or registered mail received by the division within 30 days of the date of the letter of notification. The division may post the vendor's name on its website if no request for a hearing is received in that period.

III. The director of the division of procurement and support services may preclude an individual who has been forwarded a notification under paragraph II from bidding or submitting a response to a request for quotation or proposal to the division whenever he or she concludes that to do so is necessary to protect the public interest. If such immediate debarment is ordered, the director shall notify the individual or entity in the notification forwarded under paragraph II. Such debarment shall be effective regardless of whether or not a hearing is pending and regardless of whether or not a posting has been made under paragraph II.

IV. A notification forwarded by the division under paragraph II shall contain at least:

(a) The name of the individual or entity whose name is proposed for posting;

(b) The reason for the division's decision;

(c) A statement that after 30 days from the date of the notification, the person or entity's name will be posted on the division's website and that the individual may request a hearing in accordance with paragraph II;

(d) The actual calendar date by which any request for a hearing must be received by the division;

(e) Notification that individuals or entities appearing on the list specified in paragraph II shall be debarred from submitting bids, quotations, or proposals to the division;

(f) If the individual or entity is immediately debarred from making bids or other submissions to the division, a statement to that effect; and

(g) A general specification of the period of time that the individual or entity's name will appear on the debarred parties list.

V. Individuals or entities placed on the debarred parties list shall generally be debarred from making bids, quotations, or proposals to the division for as long as they are disqualified under paragraph I or for a period of one year after placement on the list by the division, whichever is longer. The director of the division of procurement and support services may earlier terminate the debarment if he or she determines that the reason for debarment no longer exists, or that the debarred vendor has successfully completed the terms of a sentence or penalty, including probation responsibilities, and that earlier termi-

nation will not, in the opinion of the director, adversely affect the public interest.

VI. Debarment shall in no way affect the obligation of a vendor to provide products or services already under contract. In its discretion, however, the state may deem the submission of a bid, proposal, or quotation contrary to paragraph I a breach of contract.

Source. 2010, 355:1, eff. Sept. 18, 2010. 2014, 327:9, eff. Aug. 2, 2014.

21–I:12 Internal Organization of the Divisions of Procurement and Support Services, Public Works Design and Construction, and Plant and Property.

I. The division of procurement and support services shall include the following internal organizational units and functions:

(a) A bureau of purchase and property under the supervision of a classified administrator of purchase and property who shall be responsible for the following functions, in accordance with applicable laws:

(1) Procurement of supplies, commodities, and services except as otherwise assigned to other bureaus or divisions of the department.

(2) Purchasing only heating oil that contains at least 5 percent biodiesel, as defined in RSA 362–A:1–a, I–b, except if such product is unavailable or is more costly than a 100 percent petroleum product, in which case such purchase shall be made at the discretion of the director of procurement and support services. The director, when using such discretion, shall consider at a minimum any savings related to equipment maintenance and longevity that may result from biodiesel use.

(3) Purchasing biodiesel fuel blends for the department of transportation in accordance with RSA 228:24–a, II.

(4) Maintaining and operating such central storage facilities as may be practical.

(5) Charging property and equipment to the using departments, as he or she shall deem advisable, and expressly specifying the responsibilities for maintenance of the same.

(6) Transferring unused supplies and equipment from one department or agency to another where needed and determining the value thereof; where such unused supplies and equipment cannot be so transferred, providing for disposal to the public by competitive bid whenever the estimated value of any unit or total of units is $100 or more, otherwise in such manner as appears to be in the best interest of the state.

(7) There shall be within the bureau of purchase and property a surplus distribution section, which shall continue to operate for such period of time as surpluses or donated commodities of any kind are made available for distribution to the state by any department, division, or agency of the United States government or by any other source. The surplus distribution section shall be under the supervision of a classified supervisor of surplus distribution, who shall be responsible for the following functions, in accordance with applicable laws:

(A) Requesting, transporting, receiving, warehousing, allocating, enforcing compliance, and delivering, where deemed expedient, any surpluses or commodities made available to the state by the federal government or by any other source.

(B) Assuring that all contracts, agreements, leases, or other documents entered into by the commissioner in order to operate the program of distribution of federal commodities and surpluses comply with the regulations and directives of the federal government.

(C) In his or her discretion, receiving, allocating, and distributing food supplies and other school food services supplies in cooperation with the New Hampshire School Food Service Association Co-operative, Inc., and such activities shall in no way constitute a restriction of trade.

(D) In his or her discretion, participating and cooperating in informational projects relating to distributions made by the agency.

(b) The department's functions relating to merchant payment cards, fleet management, reporting on state real property under RSA 4:39–e and RSA 21–I:11, I(a)(5), and facilitation of the disposition of state-owned real property, managed by such personnel, as may be assigned by the commissioner.

(c) A bureau of graphic services under the supervision of a classified administrator of graphic services who shall be responsible for the following functions:

(1) Supervising all state printing and its procurement.

(2) Ensuring that all legislative printing within the capability of the bureau of graphic services shall, at all times, have priority over other work of the bureau.

(3) Providing the capability to levy cost charges on the use of each state photocopier.

(4) Using the prison print shop to the extent it can efficiently do so to function as a vocational rehabilitation facility under the direct supervision of prison authority, provided the prison print shop shall be entitled to bid on any appropriate state printing job.

(5) Managing a service operation which shall provide graphic services to all state agencies.

(d) With reference to the bureau of graphic services and the rulemaking authority of the commissioner in this area, "graphic services" shall mean any method of producing written or pictorial representations and shall include, but not be limited to, all forms of photography, photocopy, duplicating, and printing.

(e) The following exceptions to the authority of the administrator of graphic services shall apply:

(1) He or she shall exercise no management or other authority over the forensic science laboratory established in RSA 106–B:2–a.

(2) He or she shall exercise no management or other authority over the printing, duplication, photocopying, photographic, or other graphic services equipment or personnel of the university system of New Hampshire, the department of transportation, the department of employment security, and the general court.

II. The division of plant and property shall include the following internal organizational units and functions:

(a) A bureau of planning and management under the supervision of a classified administrator of planning and management who shall be responsible for the following functions, in accordance with applicable laws:

(1) Recommending assignment of office and office-related space, including rented space, or space under consideration for rental, to the director, who shall report such recommendations to the commissioner.

(2) Preparing and maintaining an inventory of all physical space in real property rented or leased for use by the state. This inventory shall be made available to the comptroller in order to assist the comptroller to comply with accounting principles.

(3) Planning for any additional office space needs of the state in consultation with the division of public works design and construction.

(4) Planning for any major renovation to state office buildings in consultation with the division of public works design and construction.

(5) Centrally managing all space rented by, or all proposed rentals of space by, state agencies, and providing central administration and management of the processes by which space is rented by state agencies, except as is otherwise provided by law. Unless otherwise allowed by law, agencies seeking to rent space shall do so only in consultation with the bureau of planning and management. The central management and administration provided by the bureau shall include assisting agencies in their selection of property, in the formulation of rental documents, in the preparation of notices, in agencies' solicitation of bids or proposals and selection of lessors, in space planning, in office layout, and in such other matters as are necessary for effective central planning and management relative to rented space but shall not include the power to enter into rental agreements on behalf of an agency.

(b) A bureau of general services under the supervision of a classified administrator of general services who shall be responsible for the following functions, in accordance with applicable laws:

(1) Providing support services, including but not limited to, mailing and messenger services to state government.

(2) Providing for the general maintenance of state-owned buildings and grounds, except as otherwise provided by law.

(c) A bureau of court facilities under the supervision of a classified administrator who shall be responsible for the following functions, in accordance with applicable laws:

(1) Providing suitable court facilities for the conduct of all court sessions held within each judicial district and county, subject to the availability of appropriated funds, in accordance with RSA 490–B.

(2) Providing for the general maintenance of state-owned court buildings and grounds, except as otherwise provided by law.

(d) The department's functions relating to energy management, managed by such personnel as may be assigned by the commissioner.

(e) The department's support of facilities of the department of health and human services managed by such personnel as may be assigned by the commissioner.

III. The division of public works design and construction shall be responsible for the following functions in accordance with applicable law:

(a) Supervising and overseeing the department's public works design and construction functions.

(b) Public works engineering, including planning and design for all public works projects as described in RSA 21–I:78 through RSA 21–I:86.

(c) Field supervision of all public works construction as described in RSA 21–I:78 through RSA 21–I:86.

(d) Supervision and coordination of all state-owned land and buildings not otherwise assigned, including, but not limited to, performing those functions specified in RSA 21–I:84, I.

(e) Except as otherwise provided by law, developing state-owned and supported land and buildings, and preparing a long range capital improvements plan, which shall be communicated to the commissioner of administrative services, or designee.

(f) Communicating with the commissioner of administrative services, or designee, the activities of the division relative to the capitol budget overview process. The commissioner of administrative services, or designee, shall coordinate the department's activities relative to the capital budget overview process and shall communicate with the general court regarding that process as it relates to public works.

(g) Communicating with the commissioner of administrative services, or designee, long range capital planning relative to public works design and construction. The commissioner of administrative services, or his or her designee, shall coordinate the department's long range capital planning relative to public works design and construction to meet the needs of the state.

(h) The supervision and operation of all public works of the state not otherwise provided for or assigned by law.

Source. 1983, 416:40. 1985, 188:1; 399:19. 1991, 346:7. 2003, 319:83. 2004, 257:34. 2005, 291:7. 2011, 224:333, eff. July 1, 2011. 2014, 327:10, eff. Aug. 2, 2014.

21–I:13 Duties of Commissioner. In addition to the powers, duties and functions otherwise vested by law in the commissioner of the department of administrative services, he shall:

I. Represent the public interest in the administration of the functions of the department and be responsible to the governor, the general court and the public for such administration.

II. Develop and implement, subject to approval by the governor and the legislature, a long range 6-year financial plan for the state of New Hampshire.

III. Attend all meetings of the executive council and joint legislative fiscal committee, answer questions and give information called for by these bodies, and their members, relative to financial operations of the state and its several agencies.

IV. Furnish to any committee of either house of the legislature having jurisdiction over revenue or appropriations such aid and information regarding the financial affairs of the state as it may request.

V. Receive cooperation from all agencies in providing information which he shall request in order to carry out his statutory functions.

VI. Have authority to destroy at the end of 6 years from the time of filing any records, reports, or miscellaneous papers in the department which, in his opinion, are no longer of value to the state, provided that any such destruction shall have the prior approval of the legislative budget assistant.

VII. Assign physical facilities, including rented office space, for the use of state agencies, after consultation with the governor and the prior approval of the fiscal committee of the general court, except:

(a) In the legislative office building and the state house.

(b) In any facilities under the control of the judicial branch of government.

VIII. Have the authority to assign and reassign the personnel of the department among the divisions, bureaus, sections, units, or other organizational subdivisions or components of the department.

IX. Administer all state employee and retiree benefit programs, other than those administered by the retirement system or the deferred compensation commission established in RSA 101–B, as provided by RSA 21–I:28.

X. Supervise the operation of the program of distribution of surpluses and commodities made available to the state by the federal government or any other source, including entering into all necessary contracts and agreements.

XI. Administer the retirement benefits for certain legislative and constitutional officers as provided in RSA 14:27–c.

XII. [Repealed.]

XIII. Have the authority to contract with an outside consulting group knowledgeable in the area of

employee compensation of state officers, for the purpose of the commissioner's duty under RSA 94:3–b, in an amount not to exceed $20,000 annually. The cost of such contract shall be funded from the salary adjustment fund.

XIV. Establish a general liability insurance provision for standard state contracts that requires any contractor who qualifies for nonprofit status under section 501(c)(3) of the Internal Revenue Code and whose annual gross amount of contract work with the state does not exceed $500,000 to provide insurance in amounts of not less than $1,000,000 per claim or occurrence and $2,000,000 in the aggregate.

XV. Administer, and, as necessary, revise an integrated system of governmental budgeting, financial accounting, financial reporting, financial and human resources management systems, and related systems and subsystems which accurately and systematically account for all revenues, receipts, resources, and property of the state and each of its agencies; which record information about the financial activities of the state and its agencies necessary to compare and control expenditures and commitments, within budgets and appropriations; from which it shall be possible to obtain accurate annual and interim financial statements and other reports which present fairly and with full disclosure the financial position and results of operations of the state of New Hampshire in conformance with generally accepted accounting principles; and which makes it possible to determine and demonstrate compliance with finance-related legal and contractual provisions, including federal grants, to which the state or any of its agencies are subject. The commissioner of administrative services may delegate the performance of functions associated with the above systems, including accounting functions, to appropriate units, divisions, or bureaus within the department and may authorize deviations from generally accepted accounting principles when the commissioner deems it in the best interest of the state, provided that the explanation for so deviating is provided in the annual report required by RSA 21–I:8, II(a).

XVI. Implement and manage an integrated, multi-module, information technology system that facilitates collection and integration of information related to various areas of government such as finance, accounting, human resources, inventory, procurement, and customer service. The commissioner of administrative services may delegate the performance of functions associated with the above system to appropriate units, divisions, or bureaus within the department.

XVII. Maintain a list of persons who have been prohibited from participating in public works projects under RSA 638:20. Such list shall be a public record under RSA 91–A.

Source. 1983, 416:40. 1985, 188:6; 399:20, 21. 1986, 65:2. 1993, 231:1, 2. 2001, 158:103. 2006, 70:12. 2008, 177:8; 358:8, 16, I; 378:1. 2011, 131:3, eff. Aug. 6, 2011. 2012, 247:11, eff. Aug. 17, 2012. 2017, 193:5, eff. Aug. 29, 2017.

21–I:13–a Requests for Financial Information.

I. Members of the general court, in the performance of their duties as such, shall not be charged for financial information under the control of the commissioner of administrative services, but requests for such information shall be made to the commissioner on forms supplied by him; provided, however, that members shall not have access to information where availability is prohibited by statute such as, but not limited to, RSA 91–A:5. Members of the general court shall have access only to that information available to the legislative budget assistant under RSA 14:31, IV–a.

II. [Repealed.]

Source. 1985, 399:28, eff. July 1, 1985. 2015, 185:4, eff. Jan. 1, 2016.

21–I:14 Rulemaking Authority. The commissioner of administrative services shall adopt rules, pursuant to RSA 541–A, relative to the following matters, if such matters require statements of general applicability within the definition of "rule" set forth in RSA 541–A:1, XV:

I. A comprehensive and uniform system of state financial management described in RSA 21–I:13, XV and XVI in the form of a manual to be updated and revised as the commissioner of administrative services deems necessary, that clearly explains procedures applicable to all state agencies, officers and employees other than the legislative branch and the state judicial branch. Notwithstanding RSA 21–G:9 or any other law relative to the powers or duties of commissioners or other state officials, the state agencies, officers, employees, and others to whom the provisions of the manual are directed shall abide by the requirements of the manual. The manual shall:

(a) Be subject to the approval of governor and council but, pursuant to RSA 541–A:1, XV, the manual and its contents shall not be a rule subject to the rulemaking requirements of RSA 541–A.

(b) To the extent deemed necessary by the commissioner, set forth standards, practices, procedures, policies, protocols, guidelines, specifications, instructions, directives, requirements, or descrip-

tions of requirements related to the financial management of the state, including but not limited to:

(1) Budget preparation requirements.

(2) Fiscal year closing requirements.

(3) State fund structure.

(4) Governor and council actions.

(5) Fiscal committee actions.

(6) Transfer of appropriated funds.

(7) Reimbursement of travel, meals, and lodging.

(8) Staff development reimbursement.

(9) Asset and inventory requirements.

(10) State-owned motor vehicles.

(11) Implementation or alteration of practices, procedures, policies, protocols, guidelines, specifications, instructions, and directives related to the statewide budgeting and uniform financial accounting, financial reporting, financial and human resources management systems, and related systems and subsystems.

(12) Any other matter relating to budgeting, integrated financial accounting, financial reporting, financial and human resources management systems, and related systems and subsystems.

II. Loss prevention guidelines for the purpose of risk management.

III. [Repealed.]

IV. [Repealed.]

V. Standards for the provision of graphic services which will insure efficiency and high quality work.

VI. Standards governing the purchase and continuing ownership of graphic services equipment by agencies not exempted by RSA 21–I:12, I(e).

VII. Standards governing the allocation and use of state photocopiers by the agencies not exempted by RSA 21–I:12, I(e).

VIII. Standards necessary to assure the continuation or granting of federal funds or other assistance not otherwise provided for by law.

IX. Standards for the format, content and style of agency annual or biennial reports, after consultation with the administrator of the bureau of graphic services with regard to format. These standards shall require that agency reports provide statistical information on agency activities and operations in addition to narrative discussions; and that agency reports analyze the operational efficiency of state operations and program performance in terms of explicitly stating the statutory functions each agency is to perform and how these statutory functions are being accomplished, in terms of unit-cost measurement, workload efficiency data, and program output standards established by the commissioner. These standards shall be in the form of a manual to be updated and revised as the commissioner of administrative services deems necessary. Notwithstanding RSA 21–G:9 or any other law relative to the powers or duties of commissioners or other state officials, the state agencies, officers, employees, and others to whom the provisions of the manual are directed shall abide by the requirements of the manual. The manual shall be subject to the approval of governor and council but, pursuant to RSA 541–A:1, XV, the manual and its contents shall not be a rule subject to the rulemaking requirements of RSA 541–A.

X. Qualification, continuing eligibility and disqualification of recipients to receive commodities distributed by the surplus distribution section established by RSA 21–I:12, I, and procedures for determining the same. Such rules shall:

(a) Comply with requirements, if any, established by the department, division or agency of the United States which is the source of the commodities.

(b) Be binding on all recipient agencies and shall have the force of law. No recipient agency, nor any officer or employee thereof, shall be liable for damages for any claimed injury arising from a determination made in accordance with said rules.

XI. Fair and equitable charges to be assessed against recipients receiving any donated surpluses from the surplus distribution section based on recommendations provided according to RSA 21–I:11, I(a)(6).

XII. Standards and procedures governing the purchase of all materials, supplies and equipment by the division of procurement and support services.

XII–a. Procedures for the waiver of certain provisions of RSA 21–I relative to purchasing under RSA 21–I:18, II.

XIII. Management of the state employees and retiree group insurance program authorized by RSA 21–I:26 through 21–I:36 and the programs established in RSA 21–I:44–a and RSA 21–I:44–b.

XIII–a. Implementation of the programs established in RSA 21–I:44–a and RSA 21–I:44–b.

XIV, XV. [Repealed.]

XVI. Public works services, including bidding for major projects as described in RSA 21–I:78, as authorized by RSA 21–I:80; RSA 21–I:81 and RSA 21–I:82, bidder qualifications, agency requests for

public works services, charges and fees, selection of persons or entities to perform public works projects, public works construction and design, dispute resolution, and such other requirements or procedures relating to public works as are necessary for the division of public works design and construction to properly perform its duties and functions in accordance with applicable law.

XVII. The central management of space rented by state agencies, the rental of space by state agencies and the processes to be utilized by agencies in the rental of space, including those matters described in RSA 21–I:12, II(a)(5).

Source. 1983, 416:40. 1985, 188:7; 399:22. 1986, 65:3. 1991, 346:18, IV; 355:2. 1994, 183:1. 2005, 291:8. 2006, 70:11, 13. 2008, 177:9, 10, eff. June 11, 2008. 2014, 327:11–13, eff. Aug. 2, 2014. 2017, 193:6, eff. Aug. 29, 2017.

21–I:14–a Recycled Materials.

[Repealed 2008, 359:9, I, eff. Sept. 9, 2008.]

History

Former RSA 21–I:14–a, which was derived from 1988, 227:19; 1990, 247:1; 1993, 137:1, 2; 1996, 57:1, 2; and 2001, 3:1, related to recycled state agency materials.

21–I:14–b Prohibition on Future Employment.

[Repealed 2016, 148:1, II, eff. Jan. 1, 2017.]

History

Former RSA 21–I:14–b, which was derived from 1989, 321:2; 1991, 346:8; 2008, 335:6; and 2014, 327:14, related to a prohibition on future employment.

21–I:14–c Energy Consumption Reduction Goal; Reports.

I. Each state department shall identify cost-effective measures to reduce fossil fuel consumption by 25 percent by 2025 in state buildings, on a square foot basis, compared to a 2005 baseline. Implementation of any measures shall be subject to the appropriate budgetary process and approval. Cost effectiveness for the purposes of this section shall mean a return on investment based on energy savings and reduced operational costs within the expected lifetime of the measure.

II. Beginning in calendar year 2016, each state department shall submit an annual report to the commissioner of administrative services on or before October 15 which details any cost-effective measures it is utilizing and those potential measures, subject to budgetary approval, to comply with the energy consumption reduction goal established in paragraph I and its annual progress in complying with this goal.

III. Beginning in calendar year 2016, the commissioner shall submit an annual report to be made available to the public on or before January 15 compiling the annual reports submitted under paragraph II, with findings on the departments' annual progress in complying with the energy consumption reduction goal established in paragraph I and problems which may prevent the departments from achieving this goal, to the governor, the senate president, the speaker of the house of representatives, the chair of the senate energy and natural resources committee and the chair of the house science, technology and energy committee.

Source. 2010, 328:2, eff. July 20, 2010. 2012, 281:1, eff. Jan. 1, 2013. 2015, 259:4, eff. July 1, 2015.

21–I:14–d Advisory Committee on State Procurement.

I. There is established an advisory committee on state procurement. The members of the committee shall be as follows:

(a) Four members of the house of representatives, 3 of whom shall be members of the house executive departments and administration committee and one of whom shall be a member of the finance committee, appointed by the speaker of the house of representatives.

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

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

III. The committee shall work with the department of administrative services and department of justice to update state procurement procedures. The committee shall meet at least annually and on an as-needed basis to address procurement issues identified by the committee.

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

V. Beginning November 1, 2016, and each November 1 thereafter, the committee shall report its findings and any recommendations for proposed legislation to the commissioner of the department of administrative services, the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

Source. 2016, 55:4, eff. May 5, 2016. 2017, 50:2, eff. July 11, 2017.

Purchase of Supplies

21–I:15 Sundry Materials and Supplies.

I. The director of procurement and support services may purchase materials and supplies in advance of requisition by state departments and institutions, and such purchases shall be a charge against each departmental or institutional appropriation upon requisition and delivery.

II. The state treasurer upon presentation by the director of procurement and support services of manifests covering said supplies is authorized to pay the same from any money in the treasury not otherwise appropriated.

III. The director of procurement and support services is authorized to assess a fair and equitable charge with respect to such materials and supplies, such charge to be made against the departmental or institutional appropriation upon requisition and delivery. Such charges shall be sufficiently high to defray all administrative, warehousing, processing, distribution and transportation costs incurred by the division of procurement and support services plus the cost of supplies necessary to the operation of the division.

IV. The funds arising from such charges shall be separately accounted for, and are hereby appropriated to and made available for expenditure by the director of procurement and support services, subject to the approval of the commissioner of administrative services, for the purposes set forth in paragraph III.

Source. 1985, 399:1, eff. July 1, 1985. 2014, 327:15, eff. Aug. 2, 2014.

21–I:16 Furniture. All furniture bought shall be charged to the proper department, and shall not be a charge upon the appropriation for the care, maintenance, and repair of the state buildings.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:17 Additional Purchasing Authority.

I. The director of procurement and support services may purchase supplies or services for the legislative or judicial branches whenever the governing body thereof so desires and the director deems that such purchases can be made advantageously. In addition, the director may include terms in his or her contracts that require a vendor to make supplies and services available to the legislative or judicial branches, and any county, city, town, school district, special district or precinct, or any other governmental subdivision, or any nonprofit agency certified under the provisions of section 501(c) of the federal Internal Revenue Code, on terms that are the same as or similar to those offered to the executive branch of the state; however, any such procurement of supplies or services by the legislative or judicial branches, any county, city, town, school district, special district or precinct, or any other governmental subdivision, or any nonprofit agency certified under the provisions of section 501(c) of the federal Internal Revenue Code shall be made independently and distinctly from the director's purchases under this chapter, and the director shall not be required to enter into any contractual or other arrangements or assume any responsibility or liability with respect to any such procurement of supplies or services by the legislative or judicial branches, any county, city, town, school district, special district or precinct, or any other governmental subdivision, or any nonprofit agency certified under the provisions of section 501(c) of the federal Internal Revenue Code.

I–a. In the case of contracts entered into by the director of procurement and support services for credit card services intended to facilitate state procurement, the director may, if he or she believes that to do so would be advantageous to the state:

(a) Include terms in such contracts that require a card issuer to make such services available to the legislative or judicial branches, or to any city, town or other non-state entity which is an employer as defined by RSA 100–A:1, IV, on terms that are the same as or similar to those offered to the executive branch of the state; provided, however, that such use or continued use shall be subject to the approval of the division of procurement and support services. Any procurement of supplies or services by the legislative or judicial branches, or by any city, town, or other non-state entity using cards secured under this subparagraph shall be made independently and distinctly from the director's purchases under this chapter. Any charges, fees, or other costs associated with the use of such cards shall be the responsibility of the entity which incurred them and the state shall assume no responsibility for the use of cards by entities other than the state. The director shall not be required to enter into any contractual or other arrangement for the use of cards by the legislative or judicial branches, or any city, town, or other non-state entity which is an employer as defined by RSA 100–A:1, IV, or to assume any responsibility or liability with respect to the use of such cards or with respect to any procurements of supplies or services made by those entities using such cards.

(b) Enter into contracts which, in addition to allowing for use of credit card services by the executive branch, also allow for use by the legislative or judicial branches in order to pay for their purchases in a manner similar to executive branch agencies. If the legislative or judicial branches elect to make such direct use of contracts secured by the division of procurement and support services under this subparagraph, they shall do so according to procedures established by the department of administrative services, in RSA 21–I:17–d, II and III. The use or continued use of such contracts by the legislative or judicial branch shall be subject to the approval of the division of procurement and support services. The director shall not be required to enter into any contractual or other arrangements for the use of credit card services by the legislative or judicial branches, and may also, or in the alternative, include terms in his or her contracts which allow for participation by those branches on the terms set forth in subparagraph (a).

II. [Repealed.]

III. The state through the director of procurement and support services or any other appropriate purchasing authority may purchase pharmaceuticals and allied products and services for any receiving facility as defined in RSA 135–C or any nonprofit hospital, whenever the governing body thereof so desires and the director or other authority deems that he or she can make such purchases advantageously. Any savings realized from the state's purchase of pharmaceuticals and allied products and services for a receiving facility or nonprofit hospital shall be allocated to the receiving facility or nonprofit hospital. No liability shall accrue to the state or the state purchasing authority for any loss, damage, death, or injury resulting from the use of any pharmaceuticals or allied products or services purchased by the state for any nonprofit hospital.

Source. 1985, 399:1. 1988, 269:7. 2004, 260:1. 2010, 209:1, 4, eff. Aug. 27, 2010. 2014, 327:16, eff. Aug. 2, 2014. 2015, 253:2, eff. Sept. 11, 2015.

21–I:17–a Delegation of Purchasing Authority.

I. The director of procurement and support services may, upon written application of the governing board of any agency, authorize such governing board, or one or more individuals designated by such board, to purchase supplies for the agency directly from vendors by the use of field purchase orders, or by the use of procurement cards issued for that purpose; provided, however, that no such field purchase order or procurement card shall be used where a total expenditure of more than $1,000 is involved unless such use is otherwise allowed by law. The form and use of such field purchase orders or procurement cards shall be prescribed by rules adopted by the commissioner of administrative services pursuant to RSA 541–A in consultation with the state treasurer, or in the department's manual of procedures described in RSA 21–I:14, I. Rules or procedures adopted by the commissioner relative to procurement cards shall include processes for monitoring the use of such cards. Procurement cards shall be used only for state purposes. Unauthorized use of a procurement card may result in disciplinary action up to and including termination of employment. Any person who knowingly uses a procurement card in violation of this section shall be guilty of a misdemeanor. Agencies' use of procurement cards shall be subject to the limitations of the amounts appropriated by the legislature.

II. Upon the joint recommendation of the commissioner of administrative services and the governing board of any agency, the governor and council, in their discretion, may authorize such governing board, or one or more individuals designated by such governing board to purchase supplies for the agency directly from vendors in such quantities and for such sums as the governor and council shall prescribe; provided, however, that any such authority shall be subject to the limitations of the amounts appropriated and the purposes authorized by the legislature for the agency, and provided further that all such delegations of purchasing authority shall expire on December 31 of the even numbered years. Whenever such purchasing authority is so delegated to any agency, the requirements of RSA 21–I:11, I(a)(3) and (4) and rules adopted pursuant to RSA 21–I:14, XII, shall apply to the governing board or its authorized agent exercising such delegated authority.

Source. 1985, 399:31. 1994, 89:1. 2010, 209:2, eff. Aug. 27, 2010. 2014, 327:17, eff. Aug. 2, 2014. 2015, 253:1, eff. Sept. 11, 2015. 2016, 55:3, eff. May 5, 2016.

21–I:17–b Purchase of Electricity by Competitive Bidding.

I. When evaluating bids for electric power supply and services, the quality of service, the reliability of service, the coordination of services, and other reasonable factors shall be considered in addition to the price of electricity. The bidding process shall be open to bids which serve less than the entire needs of the state, or which provide electric power supply or services separately, in order to increase the number of potential suppliers.

II. When submitting electric power supply bids, vendors should include information, to the extent practicable, on the fuel sources and air pollutant emission profiles of significant sources of generation under the proposed bid.

Source. 1996, 79:3.

21–I:17–c Contracts for Use by More Than One Agency. Agencies shall make use of contracts which have been entered into by the department of administrative services, division of procurement and support services, for more than one agency when procuring commodities or services that are available to the agency under such contracts, unless granted a waiver from this requirement by the commissioner of administrative services. The commissioner shall grant a waiver when he or she concludes that to do would be in the best interests of the state.

Source. 2009, 162:4, eff. Sept. 6, 2009. 2014, 327:18, eff. Aug. 2, 2014.

21–I:17–d Use of Procurement Cards for Purchase of Commodities or Services.

I. The director of procurement and support services may, upon written application of an agency, authorize the agency, or one or more individuals designated by the agency, to purchase commodities or services secured by or through the division using procurement cards issued for that purpose; provided, however, that no such card shall be used for an expenditure which is greater than the amount allowed by the division for purchases under the applicable contract, or the price allowed by the division for the commodity or service, and provided further that use of such cards shall be in accordance with paragraphs II and III.

II. Use of a procurement card under paragraph I shall not alter any other purchasing requirements which may apply to the agency or to the type of purchase at issue, including but not limited to any restrictions or limitations contained in contracts entered into by the division of procurement and support services and any processes, rules, or manual of procedures provisions adopted by the department of administrative services which are applicable to the purchase. Agencies' use of procurement cards shall be subject to the limitations of the amounts appropriated by the legislature.

III. The form and use of credit cards to conduct or pay for purchases under paragraph I shall be prescribed by rules adopted by the commissioner of administrative services pursuant to RSA 541–A in consultation with the state treasurer, or in the department's manual of procedures described in RSA 21–1:14, I. Rules or procedures adopted by the commissioner shall include processes for monitoring the use of cards. Cards shall be used only for state purposes. Unauthorized use of a card may result in disciplinary action up to and including termination of employment. Any person who knowingly uses a card in violation of this section shall be guilty of a misdemeanor.

Source. 2015, 253:3, eff. Sept. 11, 2015.

21–I:18 Exemptions.

I. To the extent indicated in this section, the following agencies and purchases are exempted from the provisions of this chapter. All exempt purchases shall be made in accordance with the existing laws governing such purchases:

(a) The university system of New Hampshire shall not be required to make any purchases through the director of procurement and support services, unless it wishes to do so. If it does, the director shall be required to follow the provisions of this chapter. The university system shall make purchases under competitive bidding requirements except when waived by the chancellor of the university system or his authorized agent upon written justification.

(b) The liquor commission is exempted from the provisions of this chapter, provided that the liquor commission uses competitive bidding when acquiring supplies as defined in RSA 21–I:11, II(a), and other materials, goods, and services that are necessary for, incidental to, or related to the operation of liquor commission retail and wholesale operations.

(c) The legislature, secretary of state, and the state reporter are completely exempted from the provisions of this chapter.

(d) This chapter shall not apply to any contracts made or entered into by the director of procurement and support services or any agency under the terms of which contractors with the state purchase their own supplies directly.

(e) The purchase of materials, supplies and merchandise by the department of natural and cultural resources as provided by RSA 219:21 shall not be subject to the provisions of this chapter.

(f) All state agencies are exempted in the matter of the purchase of books and periodicals.

(g) The purchase of gaming tickets and their dispensing equipment by the lottery commission. The commission shall make such purchases under competitive bidding requirements, except when

waived by the commission or its authorized agent with written justification.

(h) The purchase of client rehabilitative equipment, supplies and services for disabled persons by the bureau of vocational rehabilitation, including adaptive equipment as provided by RSA 200–C:16, shall not be subject to the provisions of this chapter.

(i) Purchases of services from nonprofit organizations by the department of education, division of educational improvement and the department of health and human services for severely disabled or severely emotionally disturbed children as provided by RSA 186–C:22 shall not be subject to the provisions of this chapter.

(j) The court systems are completely exempted from the provisions of this chapter.

(k) The purchases of materials, supplies, and merchandise by the fish and game department as provided by RSA 206:22–b shall not be subject to the provisions of this chapter.

(*l*) Purchases of services from private contractors by the department of revenue administration with respect to the administration of low and moderate income homeowners property tax relief claims.

(m) Purchases of services from private contractors by the department of revenue administration with respect to the establishment of assessing enforcement procedures.

(n) The purchase of gaming tickets and their dispensing equipment by the lottery commission under RSA 287–E. The lottery commission shall make such purchases under competitive bidding requirements, except when waived by the lottery commission or its authorized agent with written justification.

(*o*) The New Hampshire retirement system shall not be required to make any purchases through the director of procurement and support services, unless it wishes to do so. If it does, the executive director shall be required to follow the provisions of this chapter. The retirement system shall make purchases under competitive bidding requirements except when waived by the executive director or his or her authorized agent upon written justification.

I–a. The community college system of New Hampshire shall not be required to make purchases through the director of procurement and support services or utilize the services of the bureau of graphic services unless it so chooses. The community college system of New Hampshire shall make purchases under competitive bidding requirements except when waived by the chancellor of the community college system of New Hampshire, or a designated agent, upon written justification.

II. Notwithstanding any other provision of law, the commissioner of the department of administrative services, or his designee, may waive the provisions of RSA 21–I, relative to the purchase of materials, supplies, and merchandise, when requested by the executive head of any department or agency or his designee to prevent the loss of any federal or other funds subject to recapture. Such waiver shall be acted upon in a timely manner, and approval shall not be unreasonably withheld.

Source. 1985, 399:1. 1986, 171:4. 1987, 284:3. 1988, 269:8. 1989, 35:2. 1990, 140:2, X; 255:4. 1991, 355:3. 1992, 198:2. 1993, 137:3–5; 322:3. 1994, 246:3; 379:20, 21. 1995, 310:181. 1998, 272:1. 1999, 338:19. 2001, 158:30, 83. 2003, 319:25. 2004, 97:8; 257:5. 2005, 53:1. 2007, 361:4. 2008, 25:1; 359:4. 2009, 144:120, eff. July 1, 2009. 2013, 157:1, eff. June 28, 2013. 2014, 327:19, eff. Aug. 2, 2014. 2015, 276:127, eff. July 1, 2015. 2017, 156:14, I, eff. July 1, 2017.

21–I:19 Products and Services of Persons With Disabilities. Notwithstanding any other provision of law to the contrary, whenever products or services of persons with disabilities are available, the director of procurement and support services may purchase the same at their fair market value in accordance with the following:

I. The director shall determine the fair market price on all suitable products manufactured by persons with disabilities and services rendered by persons with disabilities and offered for sale to the state or any of its agencies by any charitable nonprofit agency for the disabled, which is incorporated under the laws of this state, and which manufactures merchandise and provides services within the state and which is approved for such purpose by the director of the division of procurement and support services. The director shall revise such prices from time to time, in accordance with changing market conditions, and shall adopt such rules regarding specifications, time of delivery and other relevant matters as are necessary to carry out the provisions of this section. At the request of the director of procurement and support services, the commissioner of education shall assist the director in distributing requests for goods and services of persons with disabilities among approved agencies for the disabled.

II. If products or services are available for procurement from any department or agency of the state, and procurement therefrom is required by the provisions of any other section of this chapter or any

other law, procurement of such products shall be made in accordance with such other provisions of law.

Source. 1985, 399:1. 1990, 140:3, eff. June 18, 1990. 2014, 327:20, eff. Aug. 2, 2014.

State Facility Energy Cost Reduction

21–I:19–a Energy Efficient Measures; State Policy.

I. It shall be the policy of the state of New Hampshire to maximize the use of economical energy efficient measures in the construction, renovation, and maintenance of buildings owned or leased by the state. Further, it shall be the policy of the state to encourage municipalities to incorporate such measures into their buildings to the greatest extent possible.

II. The department of administrative services shall consider energy efficiency and the life cycle costing of energy cost saving measures a significant criterion in its purchasing and leasing decisions.

Source. 1993, 74:1, eff. April 23, 1993.

21–I:19–b Definitions. In this subdivision:

I. "Energy cost saving measure" means any construction, improvement, repair, alteration, or betterment of any building or facility or any equipment, fixture, or furnishing to be added to or used in any building or facility that will be a cost effective energy-related project. This shall include any project that will lower energy or utility costs in connection with the operation or maintenance of such building or facility and will achieve energy cost savings sufficient to recover any project costs or incurred debt service within 20 years from the date of project implementation.

II. "Energy performance contract" means an agreement for the provision of energy services or equipment or both. This shall include, but shall not be limited to, energy conservation-enhancing projects in buildings and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a state government agency or facility in exchange for a portion of the energy cost savings or specified revenues. The level of payments made would be contingent upon measured energy cost savings or energy production.

III. "Positive cash flow financing" means an agreement among an agency, a capital leasing firm, and a provider of design/build energy management services under which the leasing cost of the project, including all interest payments, is equal to or less than the energy cost the project avoids.

IV. "Shared-savings contract" means an agreement under which a private sector person or company undertakes to design, implement, install, operate, and maintain improvements to the agency's or municipality's procedures, equipment or facilities, and the agency or municipality agrees to pay a contractually specified amount of measured or estimated energy cost savings.

V. "Date of project implementation" means the expected date established in the energy performance contract that the construction, improvement, repair, alteration, or betterment is to be completed and become operational. If the energy performance contract includes more than one energy cost saving measure, the "date of project implementation" may be alternatively defined by the contracting state agency or municipality to be the date that the last of the energy cost saving measures is expected to become operational.

VI. "Demand response program" means a program under which the state receives payment for voluntarily reducing electricity demand in response to grid instability as dictated by the regional independent system operator or in response to high wholesale electricity prices.

VII. "Renewable energy," for the purposes of this section, means wind energy; biomass energy; geothermal energy, if the geothermal energy output is in the form of useful thermal energy; hydrogen derived from biomass fuels or methane gas; ocean thermal, wave, current, or tidal energy; methane gas; solar thermal or electric energy; or hydropower.

Source. 1993, 74:1. 1999, 225:6. 2000, 276:5. 2008, 166:2, eff. July 1, 2008. 2012, 149:3, eff. Aug. 6, 2012. 2015, 276:9, eff. July 1, 2015.

21–I:19–c Interagency Energy Efficiency Committee.

[Repealed 2010, 368:1(5), eff. Dec. 31, 2010.]

History

Former RSA 21–I:19–c, which was derived from 1993, 74:1, related to the interagency energy efficiency committee.

21–I:19–d Energy Performance Contracting.

I. Any state agency or municipality may enter into an energy performance contract for the purpose of undertaking or implementing energy conservation or alternate energy measures in a facility. An energy performance contract may include, but shall not be limited to, options such as joint ventures, shared-savings contracts, positive cash flow financing or en-

ergy service contracts, or any combination thereof, provided that at the conclusion of the contract the agency will receive title to the energy system being financed, if the agency so desires.

II. Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with usual contracting procedures and the following provisions:

(a) The agency shall issue a public request for proposals, advertised in the same manner as other programs, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment, or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate.

(b) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposals, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate.

(c) Upon the approval by the IEEC and governor and council, the agency may enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency.

(d) The term of any energy performance contract entered into pursuant to this section shall not exceed 20 years from the date of project implementation.

(e) Any contract entered into shall contain the following annual allocation dependency clause: "The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made."

(f) Any energy performance contract should require the contractor to include all energy efficiency improvement in selected buildings that are calculated to recover all costs within 20 years from the date of project implementation at existing energy prices. The contract shall require that the public utility or energy services provider be repaid only to the extent of energy cost savings guaranteed by the contractor to accrue over the term of the contract.

Source. 1993, 74:1. 1999, 225:7. 2000, 276:6, 7, eff. June 16, 2000. 2012, 149:1, 2, eff. Aug. 6, 2012. 2015, 276:10, 11, eff. July 1, 2015.

21–I:19–e Energy Cost Savings Revert to General Fund. The cost savings remaining after meeting the obligations under an energy performance contract, shared-savings contract, or lease of energy saving equipment or services or any similar program shall revert to the general fund.

Source. 1993, 74:1, eff. April 23, 1993.

21–I:19–f Energy Fund. There is hereby established an energy fund into which shall only be deposited moneys received by the state for participating in demand response or utility or public utility commission programs, or both. The state treasurer may invest moneys in the fund as provided by law, with interest received on such investment credited to the fund. Moneys in the fund shall be nonlapsing and continually appropriated to the division of plant and property to be used exclusively to fund energy efficiency or renewable energy projects and energy efficiency or renewable energy contracts; to reimburse the department of administrative services, division of public works design and construction, for costs of providing construction administration services including, but not limited to, design and oversight of design and construction of energy saving or renewable energy measures; and to reimburse state agencies for demand response program expenses or completing energy saving or renewable energy measures.

Source. 2008, 166:3, eff. July 1, 2008. 2014, 327:21, eff. Aug. 2, 2014. 2017, 135:1, eff. Aug. 15, 2017.

21–I:19–ff State Heating System Savings Account. There is hereby established the state heating system savings account for the transfer of unexpended state heating system appropriations due to reduced heating system costs resulting from the 26 state buildings served by the Concord Steam project authorized in 2017, 2. Notwithstanding RSA 21–I:19–e, at the end of each state fiscal year, the commissioner of administrative services shall identify the unexpended appropriations in the accounts and class lines for the 26 state buildings served by the replacement of the Concord Steam facility. The commissioner shall deposit such sums into the account established by this section. Funds in the state heating system savings account shall be nonlapsing and

appropriated to the department of administrative services for the biennium ending June 30, 2019 and the fiscal year ending 2020 and may be used to pay principal and interest on bonds and notes issued to fund the capital project for the heating of state facilities located at the Governor Hugh J. Gallen state office park and state-owned buildings in downtown Concord.

Source. 2017, 156:135, eff. July 1, 2017.

21–I:19–g Use of State-Owned Vehicles.

I. The department of administrative services shall determine for each 2-year budget cycle the minimum number of miles required to justify retaining a state-owned vehicle referred to as the break-even mileage. The break-even miles shall take into account operational costs, depreciation, and mileage reimbursement rates for use of personal vehicles as follows:

(a) Break-even mileage shall be calculated by summing average fixed and annual operating costs then dividing by the Internal Revenue Service reimbursement rate.

(b) Fixed costs shall include the average purchase price minus the average resale price divided by the average useful life of the vehicle. Average annual operating costs shall include: oil changes, repairs, tires, gasoline, insurance, and other miscellaneous costs, if any.

II. The department of administrative services shall make this determination by September 1 of the first year of each biennium. The break-even mileage shall only apply to vehicles in service by an agency for an entire fiscal year.

III. If state-owned passenger vehicles are assigned to a state agency and such vehicles are not used for travel at or above the break-even mileage requirement during such year, the director of procurement and support services shall declare them surplus and transfer or otherwise dispose of such vehicle or vehicles. An agency may within 90 days after the end of the fiscal year apply to the fiscal committee of the general court to retain such vehicle or vehicles. If such agency presents a clear and convincing case for the continued assignment of a vehicle or vehicles to the agency, the fiscal committee may permit the agency to retain a vehicle or vehicles. In granting an agency the authority to retain such vehicle or vehicles, favorable consideration shall be given to the most fuel efficient use of the existing fleet. The director of procurement and support services shall either sell the vehicle or vehicles declared to be surplus, transfer them to a centralized state vehicle pool, or transfer them to any state agency having employees who travel more than the break-even mileage requirement as set by the department of administrative services and who are being reimbursed for travel in privately-owned vehicles. The term "agency" as used in this section includes a department, institution, board, division, and commission. The director of procurement and support services may develop measures to determine or improve fleet efficiency in addition to those set forth in this section. Such measures may be shared with the fiscal committee for their information and consideration.

III–a. In this section:

(a) "Light duty truck" shall mean any of the following which have a gross vehicle weight rating of up to 10,000 pounds: a passenger van seating up to 8 people, a pick-up truck, a sport utility vehicle, or a cargo van.

(b) "Passenger vehicle" shall mean a passenger sedan or station wagon.

III–b. The department of administrative services shall annually report to the fiscal committee of the general court all light duty trucks whose mileage is at or below the break-even mileage requirement during such year.

IV. All permanently assigned passenger vehicles shall be approved by the governor and council by September 30, 2009 or such vehicles shall be declared surplus and the director of plant and property management shall transfer the vehicle or vehicles to a centralized state vehicle pool.

V. The provisions of paragraph IV shall not apply to law enforcement vehicles with the exception of those vehicles assigned to staff personnel or to any vehicles acquired with 100 percent federal funds.

V–a. State employees shall accurately report to their agency payroll personnel all personal use of any state-owned motor vehicle of any type, including but not limited to any commuting miles. The agency shall annually report all personal use of state-owned vehicles in that agency, as well as such other information regarding vehicles and vehicle usage, to the department of administrative services as directed by the department.

VI. The state website shall provide an Internet link allowing state employees and the general public to report abuse of a state vehicle.

Source. 2009, 134:1. 2010, 72:1–4, eff. July 18, 2010. 2014, 327:22, eff. Aug. 2, 2014.

Disposal of State-Owned Vehicles Based on Nonbusiness Use

21–I:19–h Disposal of State-Owned Vehicles Based on Nonbusiness Use.

I. Each agency, as defined in RSA 21–G:5, III, shall report quarterly to the department of administrative services the total miles and total nonbusiness miles traveled by each state-owned motor vehicle, including, but not limited to, use of vehicles for commuting between an employee's home and regular place of business. This section shall not apply to vehicles used for the purposes of law enforcement. This section shall be interpreted so as not to conflict with federal Internal Revenue statutes or regulations and shall not relieve an agency or its employees from non-wage fringe benefit reporting requirements for nonbusiness use of state-owned motor vehicles.

II. By August 1, 2011, each agency shall review the utilization of all vehicles which are assigned to the agency to determine if nonbusiness use for any vehicle exceeds 15 percent of the total miles traveled by that vehicle for the preceding fiscal year. By August 1 of each year after 2011, each agency shall conduct the same review using the percentage of nonbusiness use miles adjusted by the vehicle utilization committee.

III. Each agency shall, by August 15, 2011, report to the commissioner in writing all vehicles which are determined to have nonbusiness use exceeding 15 percent of the total miles traveled by that vehicle for the preceding fiscal year. Each agency shall, by August 15 of each year after 2011, report to the commissioner in writing all vehicles which are determined to have nonbusiness use miles exceeding the percentage adjusted by the vehicle utilization committee.

IV. The commissioner shall, by October 1, 2011 and each October 1 thereafter, submit a report to the governor and council and to the fiscal committee of the general court identifying all vehicles which he or she has been advised have nonbusiness use exceeding the applicable percentage of total miles traveled by that vehicle for the preceding fiscal year.

V. For each vehicle reported under paragraph III, the director of the division of procurement and support services of the department of administrative services either shall declare the vehicle surplus and transfer or otherwise dispose of the vehicle or shall reassign the vehicle within the agency, unless a waiver of the requirements of this paragraph is granted by the vehicle utilization committee.

VI. Requests for waivers from the vehicle utilization committee shall be submitted to the commissioner at the same time as the report required by paragraph III. The vehicle utilization committee shall grant a waiver if it concludes that to do so would be in the best interests of the state.

VII. There is hereby established a vehicle utilization committee consisting of the following officials or designees:

(a) The commissioner of the department of administrative services.

(b) The director of the division of procurement and support services of the department of administrative services.

(c) The commissioner of the department of transportation.

(d) The commissioner of the department of safety.

(e) The commissioner of the department of environmental services.

VIII. After October 1, 2011, the vehicle utilization committee may, at any time, with the prior approval of the fiscal committee of the general court, adjust the percentage of nonbusiness use miles traveled by a vehicle during the preceding fiscal year which may result in a vehicle being declared surplus and subject to transfer or other disposal by the director of the division of procurement and support services. In the absence of any adjustment, the percentage shall be 15 percent. Any adjustment of the percentage made by the vehicle utilization committee shall be communicated to agencies by the vehicle utilization committee and shall remain in effect until further adjustment, if any, is made.

Source. 2010, 241:1, eff. July 1, 2010. 2014, 327:23, eff. Aug. 2, 2014.

Fleet Efficiency and Redistribution

21–I:19–i Fleet Efficiency and Redistribution.

I. The department of administrative services shall monitor, analyze, and evaluate the utilization of the state's motor vehicles by agencies and employees; develop methods and procedures to improve the efficiency of the state's motor vehicle fleet; oversee the analysis of data provided to it by agencies; make recommendations for improvement of fleet efficiency; develop recommendations for managing fleet size and efficiency; and make recommendations for purchases of motor vehicles and redistribution of vehicles in the state's fleet as necessary to achieve fleet efficiencies, taking into account agencies' purposes, objectives, and functions.

II. In this section:

(a) "Agency" means "agency" as defined by RSA 21–G:5, III.

(b) "Motor vehicle" means:

(1) A passenger sedan or station wagon; or

(2) Any of the following which has a gross vehicle weight rating of up to 10,000 pounds: a passenger van seating up to 8 people, a pickup truck, a sport utility vehicle, or a cargo van.

III. An agency shall not purchase or lease a motor vehicle without first obtaining the recommendation of the department of administrative services as provided in this section.

IV. In regard to motor vehicle purchases or leases, the department of administrative services shall assess whether the purchase or lease is in conformity with:

(a) The efficient and cost-effective utilization of the state's motor vehicle fleet as a whole.

(b) Any applicable rules or procedures of the department of administrative services, including but not limited to those relating to the alteration of fleet size and the acquisition of like or similar vehicles.

(c) The agency's budgetary authority.

(d) The provisions of any applicable executive orders or instructions of the governor and executive council.

(e) The laws, rules, or procedures relating to the procurement or the transaction at issue.

(f) Any other matter relating to whether the purchase or lease is in the best interests of the state.

V. In the course of conducting the assessment described in paragraph IV, the department of administrative services shall consult with a representative of the agency concerning the effective and efficient achievement of the agency's purposes, objectives, and functions. The department of administrative services may also consult with the vehicle utilization committee established under RSA 21–I:19–h, VII.

VI. Following the department of administrative services' assessment of the purchase or lease, the commissioner of administrative services shall consider the factors set forth in paragraph IV and determine whether, in his or her opinion, the purchase or lease should be recommended. If the commissioner recommends against the purchase, he or she shall convey his or her recommendation to the fiscal committee of the general court. If the fiscal committee, taking into account the factors set forth in paragraph IV, concludes that the purchase or lease is appropriate, the agency may make the purchase or lease. If the committee does not so conclude, the agency may not make the purchase or lease.

VII. Based upon fleet utilization studies or other analyses of an agency's fleet, and applying the factors and processes set forth in paragraphs IV through VI, the commissioner of administrative services may, at any time, recommend to the fiscal committee of the general court that any one or more motor vehicles in an agency's fleet be declared surplus, or that it be reassigned within the agency. If the committee concurs with the commissioner's recommendation, the director of the division of procurement and support services of the department of administrative services either shall declare the vehicle or vehicles surplus and transfer or otherwise dispose of the vehicle or vehicles or shall reassign the vehicle or vehicles within the agency.

Source. 2010, 241:1, eff. July 1, 2010. 2014, 327:24, eff. Aug. 2, 2014.

21–I:19–j Agreements to Lease-Purchase Vehicles Authorized. Any agency, as defined in RSA 21–G:5, III, may, with the prior written approval of the department of administrative services, enter into an agreement to rent, lease, or lease-purchase vehicles from any outside vendor, or to rent or lease vehicles from any other state agency or department.

Source. 2017, 156:92, eff. July 1, 2017.

Certain State Contracts

21–I:20 State Contracts; Withholding Percentage of Money Due. Under any contract made or awarded by a state agency which exceeds a total of $500,000 and on which a state agency withholds a percentage of the money due the contractor until the state agency has accepted the contract, the contractor may withdraw the whole or a portion of the amount retained under the following conditions:

I. A negotiable certificate of deposit, United States treasury notes, United States treasury certificates of indebtedness, United States treasury bills, or bonds or notes of the state of New Hampshire or of any political subdivision of the state of New Hampshire in an amount equivalent to the amount to be withdrawn shall be first deposited with the treasurer of the state of New Hampshire. The initial amount deposited shall be at least $10,000. No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or the par value of such securities, whichever is lower. The minimum value of any individual security shall be $5,000.

II. With prior notification to the contracting agency of the state and the state treasurer, the contractor shall be allowed to substitute securities for those deposited under paragraph I; provided that the market value of the new securities at the time of substitution or the par value of such securities, whichever is lower, shall be equal to or exceed the amount withheld by the state agency.

III. The state treasurer shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the state treasurer shall deliver each coupon as it matures to the contractor. The state treasurer shall have the power to enter into a contract or agreement with any national bank, trust company or safe deposit company located in New England for custodial care and servicing of any securities deposited with him under this section. Such services shall consist of the safekeeping of the securities and of all services required to effect the purposes of this section.

IV. Any amount deducted by a state agency, pursuant to the terms of the contract, from the retained payments due the contractor shall be deducted, first from that portion of the retained payments for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons, or income only from those securities which remain after such amount has been deducted.

V. Any assignment of retained payments made by the contractor shall be honored by the state treasurer as part of the procedure to accomplish the substitution of securities under this section, provided that the assignment shall not be made without prior approval by the contracting state agency and the state treasurer. The assignment shall not impair the equitable rights of the contractor's surety in the retained payments, in the securities substituted for retained payments in the event of the contractor's default in the performance of the contract, or in the payment of labor and material bills or other obligations covered by the surety's bond.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:21 Rulemaking of State Treasurer. The state treasurer may adopt rules, pursuant to RSA 541–A, relative to the substitution of securities for the amount retained on state contracts.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:22 Selection of Engineers, Architects, and Surveyors.

I. As used in this section:

(a) "Agency" means any executive department, commission, board, institution, bureau, office, or other agency of state government, by whatever name called, that uses, disburses, expends, or receives any state funds, but excluding the university system of New Hampshire.

(b) "Engineering, architectural, and surveying services" includes those professional services of an engineering, architectural or surveying nature, as well as incidental services that members of these professions and those in their employ may logically and justifiably perform.

(c) "Members of these professions" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice in this state the professions of engineering, architecture, or surveying.

II. The general court hereby declares that it shall be the policy of the state and its agencies to negotiate contracts for engineering, architectural, and surveying services on the basis of demonstrated competence and qualifications for the type of professional services required, and at fair and reasonable prices.

III. All state agencies, when seeking professional services, shall publish a request for proposals or, when a definite scope of work is not yet defined, a request for qualifications for each project for which engineering, architectural, or surveying services are to be procured.

IV. Each agency engaging these professional services shall prepare a description of its procedures for procurement of architectural, engineering or surveying services. These descriptions shall be distributed to interested professionals subject to the provisions of this section. The agency, for each proposed project, shall publish a request for qualifications (RFQ) or request for proposals (RFP) and shall review and consider the qualifications after receiving qualifications or proposals. The agency shall then establish a short list of not less than 3 firms. The agency shall, for purposes of negotiation, arrange the firms deemed to be best qualified in order of preference as determined in accordance with the prescribed procedures of the agency. An interview may be held with the short list firms or, in the case of selection based on an RFQ and where the scope of work has been further defined, detailed technical proposals may be requested.

V. The agency shall negotiate a contract with the highest qualified firm for architectural, engineering, or surveying services at compensation which the agency determines is fair and reasonable to the state. In making such determination, the agency shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.

VI. Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable to the state, negotiations with that firm should be formally terminated. The agency should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency should terminate negotiations. The agency should then undertake negotiations with the third most qualified firm.

VII. Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

VIII. Once negotiations have been completed and the agency has had its contract approved by the governor and council, all proposals submitted for a project shall become available for public review.

Source. 1985, 399:1. 1992, 127:1, eff. June 30, 1992.

Purchases and Quotes

21–I:22–a Request for Purchases and Request for Quotes. Notwithstanding the provisions of RSA 21–I:18, every request for purchases (RFP), request for quotes (RFQ) or other procurement which is greater than $35,000 that is undertaken by the state or by a state agency as defined in RSA 21–I:11, II(b), including those agencies referenced in RSA 21–I:18, shall contain within the body of the document the objective criteria by which each submission will be reviewed, if there are particular requirements that will receive more weight in the review of the submission, and the standards upon which any award will be based.

Source. 1995, 266:1, eff. Aug. 18, 1995. 2014, 327:25, eff. Aug. 2, 2014.

21–I:22–b Awards. Notwithstanding the provisions of RSA 21–I:18, awards which are made by the state or by a state agency as defined in RSA 21–I:11, II(b), including those agencies referenced in RSA 21–I:18, under this subdivision shall not be made on criteria that are unknown to the parties submitting bids or proposals. Nothing in this subdivision shall prevent the state or a state agency as defined in RSA 21–I:11, II(b), including those agencies referenced in RSA 21–I:18, from making judgments on the capabilities of vendors to complete the work requested if this option is clearly stated in the body of the document and if used as the reason for the award, is so stated.

Source. 1995, 266:1, eff. Aug. 18, 1995. 2014, 327:26, eff. Aug. 2, 2014.

State Contracts for Consultants

21–I:22–c State Contracts for Consultants and Consulting Services. Notwithstanding the provisions of RSA 21–I:18, every request for consulting services by the state or by a state agency as defined in RSA 21–I:11, II(b), including those agencies referenced in RSA 21–I:18, which would cost more than $35,000 shall contain the particular requirements of the project contemplated in a statement of work to be accomplished. Each statement of work to be accomplished shall be written using objective project standards and shall not contain criteria that are consultant specific. Every request for consulting services which would cost more than $35,000 shall be written to encourage participation by various suppliers. If there are particular requirements that will receive more weight in the review of the submission, these must be so stated.

Source. 1996, 118:1, eff. July 14, 1996. 2014, 327:27, eff. Aug. 2, 2014.

21–I:22–d Awards. Notwithstanding the provisions of RSA 21–I:18, awards which are made by any branch of state government or by a state agency as defined in RSA 21–I:11, II(b), including those agencies referenced in RSA 21–I:18, under this subdivision shall be based on criteria that are published in the request for proposal and are known to all the parties responding. Nothing in this subdivision shall prevent the state or a state agency as defined in RSA 21–I:11, II(b), including those agencies referenced in RSA 21–I:18, from making judgments on the capabilities of consultants to complete the work requested if this option is clearly stated in the body of the document and, if used as the reason for the award, is so stated.

Source. 1996, 118:1, eff. July 14, 1996. 2014, 327:28, eff. Aug. 2, 2014.

Workers' Compensation Commission for State Employees

21–I:23 Workers' Compensation Commission for State Employees.

[Repealed 1995, 297:2, II, eff. Aug. 20, 1995.]

HISTORY

Former RSA 21–I:23, which was derived from 1985, 399:1 and 1994, 158:2, 3, 16, related to the establishment, composition, duties and responsibilities of the workers' compensation commission for state employees.

21–I:24 Authority for Payment.

I. The commissioner of administrative services, through the department's risk management unit, is hereby authorized to pay such sum or sums as may be awarded under the provisions of RSA 281–A, and the expense of insurance and third party administrator services providing managed care programs authorized by RSA 281–A:23–a and similar services directly related to the provision and monitoring of workers' compensation benefits payable to state employees.

II. If the injured claimant was employed in a department or agency which has received a legislative appropriation for this purpose, the commissioner of administrative services shall charge said sum or sums to the legislative appropriation. In the event there are not sufficient funds appropriated to the commissioner of administrative services to make payments hereunder, the governor upon request of the commissioner of administrative services is authorized to draw his warrant for such sums from any money in the treasury not otherwise appropriated; provided that payments made to employees paid from the highway fund shall be a charge upon said highway fund, that payments made to employees paid from the fish and game fund shall be a charge upon said fish and game fund, that payments made to employees paid from special funds shall be a charge upon said special funds, and that payments made to employees paid from other funds shall be a charge upon the general fund.

III. If federal regulations prohibit the direct assessment of payments made pursuant to RSA 21–I:24, I from otherwise applicable federal funds, said payments shall be a charge against the general fund in the first instance, but the commissioner of administrative services shall seek recovery of these payments in such amount and under such conditions as the federal regulations applicable to each affected agency may prescribe.

IV. If managed care program expenses, or other expenses directly related to the provision and monitoring of workers' compensation benefits payable to state employees, are procured by the payment of a group insurance premium or third party administrator services, the commissioner of administrative services shall charge state agencies the cost of such general expenses in proportion to the number of agency employees who receive the services in question in the manner provided by RSA 21–I:24, II.

Source. 1985, 399:1. 1994, 158:18, eff. May 23, 1994. 2017, 193:7, 8, eff. Aug. 29, 2017.

21–I:25 Exception.

[Repealed 1994, 158:24, I, eff. May 23, 1994.]

HISTORY

Former RSA 21–I:25, which was derived from 1985, 399:1, related to exceptions to payment recovery. See now RSA 21–I:24.

21–I:25–a Procurement of Managed Care and Other Risk-Shifting Services. By following the procedures of RSA 21–I:28, the commissioner of administrative services, through the department's risk management unit, and after consultation with the governor and council, may contract for or purchase insurance or third party administrator services providing managed care program services and similar services directly related to the provision and monitoring of workers' compensation benefits payable to state employees.

Source. 1994, 158:19. 1995, 297:1, eff. Aug. 20, 1995. 2017, 193:9, eff. Aug. 29, 2017.

State Employees Group Insurance

21–I:26 Purpose and Policy. This subdivision is to provide permanent group life insurance and group hospitalization, hospital medical care, surgical care and other medical and surgical benefits for New Hampshire state employees and their families, and retired state employees and their spouses. In view of the accepted value of group insurance to the well-being and efficiency of employees on the part of small and large private employers and the other 5 New England states in obtaining benefits of this type of insurance for their employees, the state of New Hampshire implements this subdivision in order that the state shall compare favorably to the standards now commonly accepted by private employers and the state employees in the other 5 New England states by making available to state employees and their families and retired state employees and their spouses permanent group life insurance and group hospitalization, hospital medical care, surgical care and other medical and surgical insurance benefits.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:26–a Excise Tax; Patient Protection and Affordable Care Act. The state shall not provide any health insurance plan to state employees subject to the excise tax on high cost employer-sponsored health coverage under the Patient Protection and Affordable Care Act of 2009, Public Law 111-148, as amended.

Source. 2015, 276:188, eff. Nov. 15, 2015.

21–I:27 Administration.

I. Administration of the state employees permanent group life and state employees and retirees group hospitalization, hospital medical care, surgical care and other medical and surgical insurance benefits shall be the responsibility of the commissioner of administrative services. If the commissioner of administrative services concludes that inclusion of the university system of New Hampshire in the health plan would best serve the interests of the state employees and the state of New Hampshire, then the commissioner shall, with the consent of the university system board of trustees, administer the health benefits of the university system of New Hampshire employees as set forth in this subdivision.

II. The commissioner may administer the health benefits of the employees of the State Employees' Association of New Hampshire, Inc., SEIU, Local 1984, and certain retirees of the Association who were in the plan as of July 1, 2013, as set forth in this subdivision until such time as the commissioner concludes that the inclusion of the State Employees' Association employees and certain retirees does not serve the interests of the state employees and the state of New Hampshire. The State Employees' Association shall timely pay to the department of administrative services the cost of the premium for its participating employees and retirees in the plan.

Source. 1985, 399:1. 2006, 207:1. 2007, 263:125, eff. July 1, 2007. 2014, 318:1, eff. Sept. 30, 2014.

21–I:28 Contract. The commissioner of administrative services shall be authorized to enter into permanent group life insurance contracts with an insurance company or companies, or other group licensed to do business in the state of New Hampshire. The commissioner of administrative services shall be authorized to enter into group hospitalization, hospital medical care, surgical care, and other medical and surgical benefits contracts with an insurance company or companies, third party administrators, or any organization necessary to administer and provide a health plan under the provisions of this subdivision. The commissioner of administrative services, shall administer contracts entered into to provide the health plan, and the coverage under the health plan, in order to determine which of various contracts would best serve the interests of the state employees and comply with the terms of the collective bargaining agreement.

Source. 1985, 399:1. 2001, 251:1. 2006, 207:2, eff. July 30, 2006.

21–I:28–a Legislative Advisory Committee.

[Repealed 2010, 368:1(6), eff. Dec. 31, 2010.]

History

Former RSA 21–I:28–a, which was derived from 2006, 207:3, related to the legislative advisory committee.

21–I:29 Permanent Group Life Insurance. The state shall provide a permanent life insurance, accidental death and dismemberment group plan for all permanent state employees. The permanent group life insurance program shall provide for a $1,000 face value death benefit with a paid up value upon retirement or leaving state service. The state shall pay the term portion of the life insurance premium and the state employees shall pay for the permanent portion of the life insurance premium on payroll deduction.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:29–a Death Benefit for Police Officer or Firefighter Killed in Line of Duty.

I. In this section:

(a) "Adult child" means a child, whether by blood or adoption, of the police officer or firefighter, age 18 or older at the time of death of such police officer or firefighter and who does not meet the definition of a dependent child.

(b) "Dependent child" means a child, whether by blood or adoption, of the police officer or firefighter who:

(1) Is under the age of 25 and was dependent on the earnings of the police officer or firefighter at the time of death. For the purposes of this subparagraph, a child is not considered dependent if the child provides more than half of his or her own support, is married, or is legally adopted by another; or

(2) Is any age and is physically or mentally incapacitated and was dependent on the earnings of the police officer or firefighter at the time of death.

(c) "Family" means the surviving spouse of the police officer or firefighter who was wholly or partially dependent, in fact, upon the earnings of the police officer or firefighter; or, if there is no surviving spouse, the surviving dependent child or dependent children, of such police officer or firefighter or, if there is no surviving dependent child, a surviving person qualifying as a common-law spouse pursuant to RSA 457:39, or if there is no surviving common-law spouse, the surviving adult child or adult children, or if there is no surviving

adult child or adult children, the surviving parent or parents of such police officer or firefighter.

(d) "Firefighter" means any firefighter, including auxiliary, intermittent, special, part-time, volunteer, call, or reserve firefighters who are employed by a city, town, village district, or precinct within the state of New Hampshire, any firefighter employed by the state of New Hampshire, or any firefighter who is a volunteer for or employed by a non-profit corporation which is the primary provider of fire protection for all or part of a New Hampshire municipality.

(e) "Killed in the line of duty" means a death of a police officer or firefighter while in the performance of his or her duties as a result of incident, accident, or violence causing death or injuries which are the direct or proximate cause of death. "Incident" shall include any death that is determined to be occupationally related by the worker's compensation insurance carrier, a self-insured worker's compensation plan, or by the labor commissioner for workers' compensation purposes pursuant to RSA 281–A.

(f) "Police officer" means any law enforcement officer with the power of arrest, including auxiliary, intermittent, special, part-time, or reserve police officers, or sheriffs and their deputies who are employed by a city, town, village district, county, or precinct within the state of New Hampshire, police officers employed by the university system of New Hampshire, and any state law enforcement officer employed by the state of New Hampshire who has power of arrest as determined by state law.

II. In addition to any other benefits provided under this chapter, the state treasurer shall pay a $100,000 death benefit to the family of a police officer or firefighter killed in the line of duty. Payment to a dependent child under the age of 18 shall be made to the child's trustee for the benefit of the child. The governor, with the consent of the executive council, is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. The commissioner of safety, upon notice from the family or chief of department of any firefighter or police officer who may be entitled to a line-of-duty death benefit or upon the commissioner's own initiative, shall obtain the available records related to the circumstances, cause, and manner of such death and the decedent's status as a firefighter or police officer, may cause further inquiry to be made, and shall make a determination of whether the death qualifies as a line-of-duty death and who is entitled to the death benefit. The determination shall be made within 180 days of the determination of the cause and manner of death by the office of the chief medical examiner, or within 180 days from the date the commissioner received notice from the family or chief of department of the firefighter or police officer, whichever is later. For deaths that are not reviewed by the office of the chief medical examiner, the determination shall be made within 180 days of a determination that the decedent qualifies for a workers' compensation death benefit by a worker's compensation carrier, self-insured worker's compensation plan, or the labor commissioner pursuant to RSA 281–A, or within 180 days from the date the commissioner received notice from the family or chief of department of the firefighter or police officer, whichever is later.

(a) Solely for the purposes of making this determination and notwithstanding any other law to the contrary, the commissioner of safety may obtain any records held by any state or municipal official regarding the circumstances, cause, or manner of the death and who is entitled to the death benefit.

(b) The commissioner of safety may consult with the office of the chief medical examiner and the labor commissioner, and may disclose to either any information or records obtained in the course of his or her inquiry.

(c) Any records held by the commissioner of safety pursuant to this section shall not be subject to the right-to-know law, RSA 91–A and shall not be subject to disclosure in any civil action. Upon request of the decedent's family any medical records or other records which otherwise are nonpublic may be destroyed following the vote by the governor and executive council to authorize payment of a line-of-duty death benefit or, in the case of a denial, following the expiration of the appeal period.

(d) If the commissioner of safety determines that the death is not a qualified line-of-duty death, he or she shall cause the decedent's family to be notified. The family may appeal the determination within 180 days of the date of the notification by notifying the commissioner of safety in writing. In the event of an appeal for a firefighter, the attorney general shall appoint an appeal hearing panel consisting of one medical doctor, one member appointed by the New Hampshire Association of Fire Chiefs, one member appointed by the professional association that the decedent belonged to, and 2 citizens who are not associated with the professions of police officer or firefighter, at least one of whom is a attorney admitted to practice in New Hampshire. In the event of an appeal for a law enforce-

ment officer, the attorney general shall appoint an appeal hearing panel consisting of one medical doctor, one member appointed by the appropriate professional association for management of the decedent's branch of law enforcement, one member appointed by the appropriate professional association for the decedent's branch of law enforcement, and 2 citizens who are not associated with the professions of law enforcement or firefighter, at least one of whom is an attorney admitted to practice in New Hampshire. Where no professional association exists for the branch for which the decedent worked, the attorney general shall select the panel member from among the management or members of the branch for which the decedent worked as is necessary to fill either the professional association management or member position on the panel. The commissioner of safety shall forward to the appeal panel all the information that he or she considered in reaching the determination. Upon request of the family, the appeal hearing shall be exempt from the right-to-know law, RSA 91–A. Hearings shall be conducted in conformance with RSA 541–A and the department of justice Jus 800 administrative procedural rules. The appeal hearing panel shall review the evidence de novo, may receive additional evidence from the family or others, and shall determine by a preponderance of the evidence whether the decedent's death was a qualified line-of-duty death.

(e) If the commissioner of safety or the appeal hearing panel determines by a preponderance of the evidence that the death is a qualified line-of-duty death, the commissioner shall submit an item to the governor seeking approval of payment of the benefit.

III–a. Neither the state nor its agencies or employees shall be civilly liable for any improper payment of the line-of-duty death benefit as provided in this section.

IV. This section shall be known as "Michael's Law" in honor of Manchester Police Officer Michael Briggs who was shot while on duty.

Source. 2007, 243:2; 291:1. 2008, 382:1, eff. July 11, 2008. 2012, 195:1–3, eff. June 11, 2012. 2016, 298:1, 2, eff. June 21, 2016.

21–I:30 Medical and Surgical Benefits.

I. The state shall pay a premium for each state employee and permanent temporary or permanent seasonal employee as defined in RSA 98–A:3 including spouse and minor, fully dependent children, if any, toward group hospitalization, hospital medical care, surgical care and other medical benefits plan or a self-funded alternative, within the limits of the funds appropriated at each legislative session.

I–a. Nothing in this section shall prohibit the state or state employees from making contributions to post-retirement medical savings plans for such employees, if authorized by a collective bargaining agreement, but only for the term of such agreement.

II. The state shall pay a premium or partial premium for each Medicare-eligible retired employee, as defined in paragraphs VI and VII of this section, and his or her spouse for their lifetimes, toward group hospitalization, hospital medical care, surgical care and other medical benefits plan or a self-funded alternative within the limits of the funds appropriated at each legislative session and providing any change in plan is approved by the fiscal committee of the general court, after a duly noticed public hearing on any proposed changes to the plan is held before the fiscal committee, prior to its adoption. Retired employees who are eligible for Medicare may voluntarily cease participation in plan benefits at any time and may reenroll without restriction.

II–a. Retired employees who are eligible for Medicare Part A without premium due to age or disability shall provide proof of enrollment in Medicare Parts A and B within 30 days of becoming eligible for Medicare or they shall no longer be eligible to participate in the state retiree benefit plan for as long as they are not participating in Medicare Parts A and B.

III. The state shall pay a partial premium for each retired employee, as defined in paragraphs VI and VII, who is not eligible for Medicare and for his or her spouse for their lifetimes, toward group health care coverage within the limits of the funds appropriated at each legislative session and providing any change in plan is approved by the fiscal committee of the general court prior to its adoption. Pursuant to paragraph XIII, a portion of the premium shall be paid by each retiree and his or her spouse. Retired employees who are not eligible for Medicare may voluntarily cease participation in plan benefits at any time and, not less than one year from the date of withdrawal, may reenroll without restriction.

IV. Fully dependent minor children, children between the ages of 19 through 25 if full-time students, and any certifiably dependent child with a disability who is institutionalized or living in the household and being cared for by the qualified retired member, the member's spouse, or the qualified surviving spouse, and whose certificate is on file, shall be eligible for this plan on payment of a premium as long as they

are eligible for the plan benefit per the foregoing requirements. The amount of the premium shall be the full cost of the plan benefits as determined by the department of administrative services. Participants may voluntarily cease participation in plan benefits at any time.

V. (a) Retirees shall be responsible for verification of eligibility by standard acceptable documentation determined by the department of administrative services. Verification documentation shall be produced during a period of 60 days prior to retirement to 60 days after retirement. Failure to file subsequent changes in eligibility within 60 days of occurrence may result in the permanent cessation of plan benefits.

(b) If an unmarried retiree marries after retirement, the benefit plan shall be extended to the new spouse. Notwithstanding paragraph II, if a married retiree divorces after retirement, the divorced spouse shall no longer be eligible to participate in the benefit plan but shall be offered a federal COBRA benefit option.

(c) No retired employee or active employee may be enrolled in the retiree benefit plan under this section if otherwise enrolled in an active state employee benefit plan sponsored by the state.

VI. For the purposes of this section, "retired employee" means each group I state employee who:

(a)(1) Has at least 10 years of creditable service for the state if the employee's service began prior to July 1, 2003 or 20 years of creditable service if the employee's service began on or after July 1, 2003 and prior to July 1, 2011, and who also is at least 60 years of age at the time of retirement; or

(2) Has at least 20 years of creditable service if the employee's service began on or after July 1, 2011, and who also is at least 60 years of age at the time of retirement, provided the employee shall not be eligible to receive benefits under this section until attaining 65 years of age; or

(b) Has at least 30 years of creditable service for the state at the time of retirement if the employee's service began prior to July 1, 2011, regardless of the employee's age; or

(c) Is but for the provisions of 1989, 376:10, otherwise eligible to receive medical and surgical benefits under this section notwithstanding subparagraphs (a) and (b), and paragraph IV, on June 30, 1989, and who retires between July 1, 1989, and June 30, 1994; or

(d) Dies or retires and is eligible for accidental death or accidental disability retirement benefits, regardless of the state employee's age or number of years of creditable service; or

(e) Retires and is eligible for ordinary disability retirement benefits, regardless of the state employee's age; or

(f) Dies and is eligible for ordinary death retirement benefits, if the state employee was eligible for service retirement at the time of his or her death, if the state employee had at least 10 years of creditable service for the state if the employee's service began prior to July 1, 2003 or 20 years of creditable service if the employee's service began on or after July 1, 2003.

VII. For the purposes of this section, "retired employee" also means each group II state employee who:

(a) Retires if the employee's state service began prior to July 1, 2010 or who retires with at least 20 years of creditable service for the state if the employee's state service began on or after July 1, 2010; or

(b) Dies or retires and is eligible for accidental death or accidental disability retirement benefits, regardless of the state employee's age or number of years of creditable service; or

(c) Retires and is eligible for ordinary disability retirement benefits, regardless of the state employee's age; or

(d) Dies and is eligible for ordinary death retirement benefits, if the state employee was eligible for service retirement at the time of his or her death, if the state employee had at least 20 years of creditable service for the state if the employee's state service began on or after July 1, 2010.

VIII. Any vested deferred state retiree may receive medical and surgical benefits under this section if the vested deferred state retiree is eligible. To be eligible, a group I vested deferred state retiree shall have at least 10 years of creditable service with the state if the employee's service began prior to July 1, 2003 or 20 years of creditable service with the state if the employee's service began on or after July 1, 2003 and a group II vested deferred state retiree shall have at least 20 years of creditable service with the state if the employee's service with the state began on or after July 1, 2010. In addition, if the vested deferred state retiree is a member of group I, such retiree shall be at least 60 years of age to be eligible. If the vested deferred state retiree is a member of group II who is in vested status before January 1, 2012, such retiree shall not be eligible until 20 years from the date of becoming a member of group II and

shall be at least 45 years of age, and any group II member who commenced service on or after July 1, 2011 shall not be eligible until 25 years from the date of becoming a member of group II and shall be at least 52.5 years of age, and group II members who have not attained vested status prior to January 1, 2012 shall be as provided in the transition provisions in RSA 100–A:5, II(d).

IX. Each state employee who has at least 10 years of creditable service for the state if the employee's service began prior to July 1, 2003 or 20 years of creditable service if the employee's service began on or after July 1, 2003 and prior to July 1, 2011, and who elects to take a reduced service retirement allowance shall be defined as a "retired employee" for the purposes of being eligible to receive medical and surgical benefits under this section when the state employee reaches age 60.

X. No state employee who terminates his or her state service before he or she becomes eligible for retirement benefits as a "retired employee" as defined under paragraphs VI–IX shall be eligible for medical and surgical benefits under this section.

XI. A state employee who commences service on or after July 1, 2011 and who is eligible for benefits under this section shall not receive such benefit until attaining age 52.5 if the state employee retired from group II service with the state or attaining age 65 if the state employee retired from group I service with the state.

XII. As of January 2, 2012, the commissioner of administrative services is authorized to utilize managed care and/or cost containment techniques for the state of New Hampshire retiree health care program through the underlying insurer and any additional specialized managed care or cost containment vendors as necessary. The commissioner may offer financial incentives to encourage the use of lower cost facilities, providers, and services, if the financial incentives are proportionately lower than the savings generated. In addition, the commissioner may offer financial incentives to encourage the use of alternative therapies, treatments, services, providers, and facilities that demonstrate better outcomes including, but not limited to lower complication rates, lower readmission rates, lower rejection rates, lower mortality and morbidity rates, or lower infection rates based on widely and generally accepted measures of such performance.

XIII. (a) The commissioner of administrative services shall invoice and collect from retired state employees and/or each applicable spouse who are not Medicare eligible and receiving medical and surgical benefits provided under this section, who do not receive a retirement allowance as defined in RSA 100–A:1, XXII, a premium contribution amount based on a percentage of the total monthly premium attributable to the applicable retiree and/or spouse, as determined by the commissioner of administrative services, with prior approval by the fiscal committee of the general court, provided the percentage is not lower than 20 percent.

(b) The commissioner of administrative services shall invoice and collect from retired state employees and/or spouses who are eligible for Medicare Parts A and B due to age or disability receiving medical and surgical benefits provided under this section, who do not receive a retirement allowance as defined in RSA 100–A:1, XXII, a premium contribution amount based on a percentage of the total monthly premium attributable to the applicable retiree and/or spouse, as determined by the commissioner of administrative services, with prior approval by the fiscal committee of the general court, provided the percentage is not lower than 10 percent. Such premium contribution shall only be collected from eligible state retirees and spouses with a date of birth on or after January 1, 1949.

(c) The commissioner of administrative services is also authorized to invoice and collect from such other participants contribution amounts as specified by law.

(d) Collected amounts shall be deposited in the employee and retiree benefit risk management fund. Failure to remit payment of the contribution amount in full within 30 days of billing shall be grounds for terminating benefits, effective from the beginning of the billing period. Reenrollment shall be dependent upon payment of any outstanding contribution or other amounts within 6 months of the termination date. If a participant fails to remit payment in full for participation within 30 days of billing, on the 30th day the participant shall be notified by certified mail, return receipt requested, that he or she shall remit payment to the department within 10 business days of receiving the letter or his or her benefits shall be terminated effective upon the 10th business day after receipt of the letter and that reenrollment shall be dependent upon payment of any outstanding contribution or other amount within 6 months of the termination date.

XIV. The department of administrative services shall provide a summary of the provisions of this

section for inclusion in any pre- or post-retirement counseling, whether verbal or written.

XV. Funds appropriated for the purposes of this section shall not be transferred or used for any other purpose.

XVI. The New Hampshire retiree health care program shall not pay for any medications that are available for purchase without a prescription.

Source. 1985, 399:1. 1990, 209:1. 1991, 355:4. 1993, 276:1, 2; 358:86. 2001, 251:2. 2003, 291:1. 2010, 104:1. 2011, 224:165, 345, eff. July 1, 2011; 242:1, eff. July 1, 2011 at 12:01 a.m. 2012, 175:1, eff. July 1, 2012; 215:2, eff. Aug. 12, 2012. 2015, 276:12–14, 181, eff. July 1, 2015. 2016, 123:1, eff. July 19, 2016. 2017, 77:1, eff. June 2, 2017; 156:6, 7, eff. Jan. 1, 2018; 156:11, eff. July 1, 2017.

21–I:30–a Additional Medical and Surgical Benefits.

I. The state shall pay a premium for permanent group hospitalization, hospital medical care, surgical care, and other medical and surgical benefits for the surviving spouse and dependent children of a deceased group I or group II state employee or retirement system member who dies as the natural and proximate result of injuries suffered while in the performance of duty, provided that:

(a) Any such child shall qualify as a dependent under the provisions of RSA 21–I:26–36 and be under 18 years of age, or if a full-time student, be under 26 years of age.

(b) Any such surviving spouse shall cease to be qualified for medical and surgical benefits under this section upon the remarriage of the surviving spouse.

(c) No surviving spouse or dependent children shall be qualified or continue to be qualified for medical and surgical benefits under this section while receiving medical insurance or health care benefits from any other employer-sponsored plan.

(d) The state shall pay the premium for supplemental medical and surgical benefits under this section for any such child who qualifies as a dependent under the provisions of RSA 21–I:26–36 and who is eligible for medicare benefits.

II. In the case of the surviving spouse and dependent children of a group I or group II state employee or retirement system member who are eligible for medical and surgical benefits under this section and also under the provisions of RSA 100–A:50–55, the state shall pay the difference between the amount paid under RSA 100–A:52 and the premium paid under paragraph I.

III. The additional benefits provided under this section shall be available to the surviving spouse and dependent children of a full-time employee of the state, an agency of the state, or any political subdivision of the state adopting the provisions of RSA 100–A, including full-time elected or appointed officers.

IV. The additional benefits provided under this section shall not be available to any employee, teacher, police officer, or firefighter of a political subdivision of the state if the political subdivision belongs to an organization or association that offers, through the organization or association or its affiliate, insurance coverage with the exception of insurance coverage required to be offered by the Consolidated Omnibus Budget Reconciliation Act (COBRA).

V. Funding to pay the premium for benefits under this section shall come from the benefit adjustment account.

Source. 1995, 279:2. 1998, 233:1, eff. Aug. 23, 1998. 2017, 77:2, eff. June 2, 2017.

21–I:30–b Restrictions on Self-Insured Plans. The following restrictions apply to self-insured group health plans administered under this subdivision:

I. To the extent that the state assumes the risk with respect to the medical and surgical benefits provided under RSA 21–I:30, the state shall maintain a reserve at least equal to the sum of:

(a) Three percent of estimated annual claims and administrative costs of the health plan; and

(b) The amount determined annually by a qualified actuary to be necessary to fund the unpaid portion of ultimate expected losses, including incurred but not reported claims, and related expenses incurred in the provision of benefits for eligible participants, less any credit, as determined by a qualified actuary, for excess or stop-loss insurance. The reserve amount shall be maintained in the fund established under RSA 21–I:30–c. If the state self-insures for more than one employee group plan, a reserve meeting the requirements of this paragraph must be maintained for each plan.

II. The state may purchase excess or stop-loss insurance for any plan, with attachment levels and limits as recommended by a qualified actuary.

III. For the purposes of this section, "qualified actuary" shall mean an actuary who is a member of the American Academy of Actuaries qualified as to health reserving methodologies.

IV. The total amount required to be maintained in reserve pursuant to this section may be met within a reasonable period of time after the establishment of a reserve fund under RSA 21–I:30–c. The commis-

sioner of administrative services shall ensure that during the time the state is working toward meeting the required reserves the state is able to pay the risk assumed in administering a self-insured group health plan.

Source. 2001, 251:3. 2003, 319:169. 2005, 177:62. 2009, 144:66, eff. July 1, 2009. 2015, 276:164, eff. July 1, 2015.

21–I:30–c Reserve Fund. In the event that the medical and surgical benefits under RSA 21–I:30 are provided using a self-funded alternative, a reserve fund shall be established to protect the state from unexpected losses and self-insured losses and related expenses incurred in the provision of such a plan. Such reserve fund shall be administered by the commissioner of administrative services and shall be nonlapsing.

Source. 2001, 251:3, eff. Sept. 11, 2001.

21–I:30–d State Employee Health Insurance; Self-Insured Plan Required.

[Repealed 2006, 207:4, eff. July 30, 2006.]

History

Former RSA 21–I:30–d, which was derived from 2003, 319:31, related to a self-insured health plan for current and retired state employees and their families.

21–I:30–e Employee and Retiree Benefit Risk Management Fund.

I. There is hereby established the employee and retiree benefit risk management fund, which shall be administered by the department of administrative services. The fund shall be nonlapsing and continually appropriated to the department of administrative services.

II. All funds accumulated from any source for active state employee health benefits shall be accounted for in the fund established in paragraph I. The fund shall be used to pay for active state employee health care expenses and any administrative costs related thereto pursuant to RSA 21–I:30, RSA 21–I:30–a, and RSA 21–I:30–b and shall not be used for any other purpose.

III. All funds accumulated from any source for state retiree health benefits also shall be accounted for in the fund established in paragraph I. The fund shall be used to pay for state retiree health care expenses and any administrative costs related thereto pursuant to RSA 21–I:30, RSA 21–I:30–a, and RSA 21–I:30–b, and for expenses related to the production of the biennial actuarial valuation report, and shall not be used for any other purpose.

IV. At the end of each fiscal year, the state treasurer shall credit the fund with interest and any other income earned.

Source. 2007, 263:39, eff. July 1, 2007.

21–I:30–f Administrative Cost of Certain Programs Administered by the Risk Management Unit; Obligation of Employee. The risk management unit may use moneys in the employee benefit adjustment account, established under RSA 9:17–c, for the purposes of paying the administrative fees for the dependent care assistance program established under RSA 21–I:44–a and the medical and related expenses program established under RSA 21–I:44–b. The risk management unit may also use such moneys in the event money must be paid to the contracting party in advance to cover the employee's medical expenses, when the employee has not contributed all of such costs from payroll deductions, provided that the employee benefit adjustment account shall be repaid when the employee fulfills his or her obligation.

Source. 2017, 193:10, eff. Aug. 29, 2017.

21–I:30–g Health Risk Appraisal. All information contained in a state employee's health risk appraisal as referenced in any collective bargaining agreement shall be considered protected health information and entitled to all of the nondisclosure and other restrictions set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and E of part 164 ("Privacy Rule").

Source. 2017, 156:2, eff. July 1, 2017.

21–I:31 Dividends. Any dividends which may be received from this life insurance program and the group hospitalization, hospital medical care, surgical care and other medical and surgical benefits shall be paid to the state to be used to extend greater coverage by increasing the face value of the life insurance program.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:32 Eligibility. Only full time state employees shall be authorized to participate, on a voluntary basis, in the permanent group life insurance program. All full time state employees and retired state employees shall be authorized to participate, on a voluntary basis, in the group hospitalization, hospital medical care, surgical care and other medical and surgical benefits program.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:33 Leave of Absence. Employees who are participating in the permanent group life insurance program, and who go on an approved leave of absence, may have their permanent group life insurance program continued by the payment to the state of the term portion of the life insurance premium during such leave of absence up to a maximum period of one year.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:34 Age Limit. There shall be no age limit to participate in either the permanent group life insurance or in the group hospitalization, hospital medical care, surgical care, and other medical and surgical benefits program.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:35 Examinations. There shall be no physical examination or health statement required for coverage under either the permanent group life insurance or group hospitalization, hospital medical care, surgical care and other medical and surgical benefit programs; provided, however, that, if a state employee otherwise eligible fails to apply for any such insurance coverage within the time required by the insurance contract, the insurer may require that the employee submit satisfactory evidence of insurability as a condition for becoming insured.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:36 Hearings. The commissioner of administrative services shall have the power to hold hearings and make inquiries as he deems necessary to carry out his functions and exercise his powers under the provisions of this chapter. For the purpose of such hearings and inquiries, the commissioner of administrative services shall have the power to administer oaths and affirmations, to examine witnesses and documents, to take testimony and receive evidence, and to compel the attendance of witnesses and the production of documents by the issuance of subpoenas.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:36–a Health Insurance Group Coverage Survey Required.

[Repealed 1996, 18:1, eff. June 14, 1996.]

History

Former RSA 21–I:36–a, which was derived from 1991, 355:5, related to the annual health insurance state group coverage survey.

21–I:36–b Commission Established; Cost Containment Options; Retiree Health Plan for New Employees.

[Repealed 2013, 144:34, eff. Nov. 15, 2013.]

History

Former RSA 21–I:36–b, which was derived from 2013, 144:33, related to the establishment of a commission to review retiree health care benefits for employees hired after July 1, 2013.

Data Processing

21–I:37 Federal Exceptions. If any department or agency of the state is advised by the federal government that its data processing equipment or its forms, methods or techniques in utilizing said equipment do not comply with any federal rule, regulation or law, then the governor and council may authorize the department or agency to alter its data processing equipment or its forms, methods or techniques to comply with any such rule, regulation or law. Automated data processing facilities and equipment of any department or agency of the state paid for completely by federal funds shall be utilized to the fullest extent permitted by federal rule, regulation or law for the general benefit of the state for applications not in conflict with other provisions of this chapter; and all data in said equipment which by federal rule, regulation or law must not be kept confidential shall be made available by any such department or agency to all state agencies including the department of administrative services to the maximum extent permitted by federal rule, regulation or law in a form approved by the department of administrative services; except that in the case of the department of employment security, such form shall be approved jointly by the department of administrative services and the department of employment security. Any dispute arising between any such department or agency and any other state agency as to the utilization requested by the department of administrative services of said facilities, equipment and data shall be resolved by the governor.

Source. 1985, 399:1, eff. July 1, 1985.

21–I:38 Work Order Required.

I. Notwithstanding any other provision of law to the contrary, any provider department, excluding the legislative branch, prior to performing systems development or computer operation services for any user agency, shall obtain a written work order which:

(a) Defines the services being requested by the user agency and the product to be delivered by the provider department.

(b) Describes the effort which the provider department must expend in order to accomplish the services requested and, if 5 man-days or more are required to complete the work, includes a cost estimate.

(c) Is agreed to by both the provider department and the user agency, as evidenced by the signatures of representatives of both parties on the work order.

II. Any change or modification to the services requested by the user agency shall likewise be agreed to in writing by a supplement to the pertinent work order approved by both parties.

III. The work order form shall be furnished to the user agency by the provider department.

IV. As used in this section, "user agency" means any department, board, commission, institution or other agency or office of the state utilizing data processing services provided by any other department, excluding the legislative branch.

Source. 1985, 399:1. 1991, 346:9, eff. July 1, 1991.

21–I:39 Municipal Data Processing Contracts.

[Repealed 1991, 346:18, V, eff. July 1, 1991.]

History

Former RSA 21–I:39, which was derived from 1985, 399:1, related to municipal data processing contracts for maintenance of records.

21–I:40 Payment to Department of Administrative Services.

[Repealed 1991, 346:18, VI, eff. July 1, 1991.]

History

Former RSA 21–I:40, which was derived from 1985, 399:1, related to payment for work performed by the department of administrative services.

Penalties

21–I:41 Penalty. If any person shall injure, deface, or misuse any of the property listed in RSA 21–I:11, I(c)(1) or shall violate any rules relating thereto, he or she shall be guilty of a violation.

Source. 1985, 399:1, eff. July 1, 1985. 2014, 327:29, eff. Aug. 2, 2014.

Personnel

21–I:42 Division of Personnel. There is hereby established within the department of administrative services the division of personnel, under the supervision of an unclassified director of personnel appointed under RSA 21–I:2, who shall report to the commissioner and be responsible for the following functions in accordance with applicable laws:

I. Managing a centralized personnel operation which shall provide for the recruitment, appointment, compensation, promotion, transfer, layoff, removal and discipline of state employees.

II. Preparing, maintaining and periodically revising a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same classification. Any new position classification plan shall be based upon the recommendations of the personnel system task force and shall not be considered a rule subject to RSA 541–A. The plan shall be prepared with due consideration for:

(a) The availability of personnel capable of filling the requirements of any position; and

(b) Any requirement for an employee to live on the premises of the place of employment as a condition of employment.

III. Allocating the position of every employee in the classified service to one of the classifications in the classification plan.

IV. Conducting periodic investigations of the administration of personnel in the state service. These reviews shall be conducted with the approval of the commissioner of administrative services and with the cooperation of the head of the department in question. These investigations shall include analysis of:

(a) Turnover rates within agencies and among specific groups or classes of employees.

(b) Supervisory ratios within agencies.

(c) The use of sick and annual leave by state employees.

(d) Agency implementation of the performance evaluation system required by paragraph XIII of this section.

(e) Agency practices regarding discipline of state employees.

(f) Other agency policies and procedures relative to the management of classified personnel.

V. Reviewing and making recommendations to the commissioner of administrative services regarding the operation of and proposed changes in the compensation plan provided for in RSA 99.

VI. Developing a program for the recruitment, selection, and placement of qualified applicants in the state service.

VII. Preparing an annual report detailing the work of the division. This report, which shall include a narrative summary of the findings of division investigations conducted under RSA 21–I:42, IV, shall be submitted to the governor and council by the director of personnel and the commissioner of administrative services.

VIII. [Repealed.]

IX. Providing all necessary and reasonable clerical support requested by the personnel appeals board established by RSA 21–I:45. At a minimum the director shall:

(a) Provide all necessary clerical and support personnel and services in order to:

(1) Prepare notices and other documents required under RSA 541–A as directed by the appeals board and distribute such notices and documents upon the approval of the appeals board;

(2) Schedule the conduct of all appeals board proceedings, with the approval of the appeals board, so as to insure timely and efficient conduct of such proceedings; and

(3) Prepare and maintain the record, required by RSA 541–A, of all adjudicative proceedings conducted by the appeals board.

(b) Provide comfortable and adequate space for the use of the appeals board in performing its official duties.

(c) Prepare, maintain as a public record, and continuously update a document which shall summarize the findings and decisions of the appeals board.

X. Advising the commissioner, and, upon request, the governor and the executive council regarding personnel administration.

XI. Administering those provisions of RSA Title VI affecting classified state employees which require administrative action by a central personnel organization.

XII. Providing technical assistance to the administrators of state departments on matters related to personnel administration and the adoption and use of modern and effective personnel management techniques throughout state government. This shall include training of and assistance to agency managers in:

(a) Recruitment and selection of personnel.

(b) The development and implementation of training programs.

(c) The development of nonmonetary incentive or award systems.

(d) Evaluation of employee performance.

(e) Supervision and discipline of employees.

XIII. Developing and implementing, in accordance with the recommendations of the personnel system task force, a performance evaluation system for all classified employees. The evaluation system shall include the following elements:

(a) All full-time classified employees shall be evaluated on a regular basis.

(b) Evaluations shall be in writing and shall be conducted at least annually.

(c) Evaluations shall be conducted by an employee's immediate supervisor.

(d) Evaluations shall be based upon specific written performance expectations or criteria developed for the position in question and employees shall be made aware of these performance expectations in advance of any evaluation.

(e) The evaluation format shall include a narrative summary on the employee's performance.

(f) Employees shall be permitted to participate in the evaluation process, shall be given a copy of their evaluation, and shall have an opportunity to comment, in writing, on their evaluation, and such comments will be included in the employee's permanent record.

(g) Employees shall have a right to nonconcur, in writing, with their evaluation.

(h) Employees shall certify, in writing, that they have reviewed their evaluation.

(i) Evaluation reports shall be reviewed by the supervisor of the official completing the evaluation who shall concur or nonconcur in writing with each evaluation report.

The division may authorize agencies to develop supplemental evaluation systems for specific groups of employees.

XIV. Providing training programs to state agencies under this paragraph and paragraph XVII and developing and implementing a training information management system to collect and record data on agency training efforts.

(a) All state agencies shall utilize training programs offered or sponsored by the division of personnel, if appropriate training programs are available. Fees for such training programs shall be paid out of the agency's budget for training.

(b) All state agencies shall notify the division of personnel of training needs and of planned training programs for classified employees. The division may develop training programs based on such notification of training needs and make this information available to all state agencies on a regular basis to encourage efficient use of training programs.

XV. Publishing and distributing to all state agencies a comprehensive technical assistance manual containing information describing the responsibilities of the division of personnel and state agencies in all personnel transactions. This document shall be revised, and updates sent to all state agencies, on a regular basis. This document shall not be considered a rule subject to the provisions of RSA 541–A.

XVI. Developing and implementing an equal employment opportunity program that will ensure the employment of all qualified people regardless of age, sex, race, color, sexual orientation, ethnic background, marital status, or physical or mental disability. This program shall include a review and revision of the job classification process and testing process to ensure that they are free from either conscious or inadvertent bias.

XVII. Provide training for and publish and distribute training and education materials to state and municipal employees.

(a) A nonlapsing revolving fund, which shall not exceed $20,000 on June 30 of each year, shall be established in the division of personnel, department of administrative services. Any amounts in excess of $20,000 on June 30 of each year shall be deposited in the general fund as unrestricted revenue. The moneys in this fund shall be used for the purpose of:

(1) Providing training to state and municipal employees. A reasonable charge shall be established for such training. This charge shall be fixed to reflect the cost of payments to experts to provide the training, the cost of written training materials, rental facilities, advertising, and other associated costs. Such training shall be conducted in geographically dispersed locations.

(2) Printing training materials for distribution. A reasonable charge shall be established for each copy of a training document. This charge shall be only in the amount necessary to pay the cost of producing such document. The division of personnel shall first make a request to state-owned printing facilities to perform the printing functions required under this subdivision. If state-owned printing facilities are unable to perform this request, the division of personnel may then seek privately owned printing facilities to fulfill this request.

(3) Implementing a certified public manager program. The department of administrative services, division of personnel, shall implement a certified public manager program that adopts the "use of modern and effective personnel management techniques throughout state government" as required by RSA 21–I:42, XII. The registration fee for such course shall be fixed to reflect the cost of payments to experts to provide the training, the cost of written training materials, rental facilities, training for state instructors, advertising, and other associated costs.

(b) No appropriation or other capitalization of the revolving fund shall be required. The division of personnel, department of administrative services, is authorized to expend budgeted funds for the purpose of initial printing of publications or the provision of training programs, with the moneys assessed for such publications or the provision of training to be deposited in the revolving fund.

Source. 1986, 12:1. 1990, 140:2, XI. 1993, 227:2. 1997, 108:3. 2007, 263:75, eff. July 1, 2007. 2017, 193:11, 12, 17, I, eff. Aug. 29, 2017.

21–I:43 Rulemaking.

I. The provisions of RSA 21–G:9, II(b) shall not apply to the rules adopted pursuant to this section. It is the intent of the general court that the director of personnel shall have the sole authority to adopt and interpret, subject to the appeals process established under this chapter, the rules provided for in this section. The commissioner shall review all proposed rules of the director and may comment on them in writing. In the case of a vacancy in the office of the director of personnel, the commissioner of administrative services may exercise the rulemaking authority granted to the director of personnel.

II. The director of personnel shall adopt rules, pursuant to RSA 541–A, which shall apply to employees in the classified service of the state, relative to:

(a) Classification, except for the classification plan.

(b) Compensation and rates for employee maintenance reimbursement.

(c) Recruitment.

(d) Examination.

(e) Selection.

(f) Appointment.

(g) Promotion.

(h) Demotion.

(i) Transfer.

(j) Discipline.

(k) Removal.

(*l*) Layoff.

(m) Attendance and leave.

(n) Holidays.

(*o*) Training.

(p) Merit rating.

(q) The information which shall be required to be listed on the employee roster.

(r) Availability of division records for public inspection, including identification of those records or portions of records for which exemption under RSA 91–A:5 is claimed.

(s) Evaluation.

(t) Designation of the employee's work place.

(u) What constitutes a completed request for reclassification.

III. The director shall consult with a designee of each labor organization certified to represent classified state employees regarding all proposals to adopt, amend, or repeal rules prior to filing a notice of proposed rule under RSA 541–A:6.

Source. 1986, 12:1. 1994, 412:5, eff. Aug. 9, 1994. 2017, 193:13, eff. Aug. 29, 2017.

21–I:43–a Compensation for State Employees Injured in Line of Duty. Any injury received by any state employee who is injured in the line of duty by a hostile act, or by an act caused by another during the performance of duties which are considered dangerous in nature, that requires the employee to be hospitalized or renders the employee temporarily unable to perform the duties of his or her position shall not be charged against annual leave or sick leave for the time lost due to the injury. During such time, the employee shall remain on the active payroll. In this event, no employee shall be terminated from state service until he or she has applied for disability retirement and a final decision on the application is made by the board of trustees of the New Hampshire retirement system and appeals of such decision, if any, are finalized; provided, that the employee shall make such application within 18 months of the injury contemplated by this section. The executive head of the employee's agency shall make the determination as to whether an injury is in the line of duty and due to a hostile or overt act, or an act caused by another during the performance of duties which are considered dangerous in nature, and, after approval by the governor and council, the determination shall be final. During the time in which the injured employee remains on active payroll at full base salary pursuant to this section, his or her state compensation shall not be offset by state workers' compensation payments and he or she shall not receive state workers' compensation payments to supplement his or her full base salary. Nothing in this section shall prohibit medical payments or final settlements.

Source. 2001, 291:1. 2008, 343:1, eff. Jan. 1, 2009.

21–I:44 Internal Organization.

I. Except as set forth in paragraph II, the commissioner of administrative services, after consultation with the director of the division of personnel, shall be responsible for establishing the internal organizational units of the division. The commissioner and the director shall adhere to the provisions of RSA 21–G:6 in structuring the internal units of the division.

II. There is established within the division a bureau of employee relations, under the direction of an unclassified manager of employee relations, who shall serve a 4-year term. The bureau of employee relations shall be responsible for the following functions, in accordance with applicable laws:

(a) Administering all collective bargaining agreements with classified employees.

(b) Representing the state in collective bargaining negotiations.

(c) Providing professional support and assistance to the governor in the conduct of negotiations with representatives of classified employees.

(d) Representing the state, in cooperation with the attorney general, in all grievance actions related to collective bargaining agreements before the public employee labor relations board.

(e) Coordinating the compilation of data necessary to the collective bargaining process and the implementation of agreements.

(f) Providing technical advice and interpretations to all state agencies for implementation and administration of collective bargaining agreements to ensure consistent policies, practices, and contract compliance.

(g) Investigating, preparing for, and representing the state in grievance mediation and settlement negotiations.

(h) Performing such other duties as may be assigned by the commissioner.

III. In order to provide for the development and implementation of programs for the training and education of state employees, there shall be an unclassified education and training officer within the division of personnel. The education and training officer shall develop and coordinate the implementation of a training program plan for executive departments. Any training program conducted under this

plan in any department shall not be limited to employees of that department. In addition, the education and training officer shall perform such duties as are assigned by the director.

IV. The commissioner, after consultation with the director of personnel, shall nominate the manager of employee relations and the education and training officer who shall be appointed by the governor, with the consent of the council. The manager of employee relations and the education and training officer shall be qualified by reason of education and experience and shall each serve a 4-year term. The salary of the manager of employee relations and the education and training officer shall be as specified in RSA 94:1–a.

Source. 1986, 12:1, eff. Mar. 27, 1986. 2017, 193:14, eff. Aug. 29, 2017.

Flexible Spending Programs

21–I:44–a Dependent Care Assistance Program Established. There is established a dependent care assistance program to be administered by the risk management unit of the department of administrative services with the assistance of the division of accounting services of the department of administrative services and the treasury department. Under this program, an employee may have a certain amount of his or her salary withheld, before taxes, for the purpose of day care expenses.

Source. 1990, 3:32, eff. Feb. 20, 1990. 2017, 193:15, eff. Aug. 29, 2017.

21–I:44–b Medical and Related Expenses Program Established. There is established a medical related expenses program to be administered by the risk management unit of the department of administrative services with the assistance of the division of accounting services of the department of administrative services and the treasury department. Under this program, an employee may have a certain amount of his or her salary withheld, before taxes, for the purpose of medical expenses.

Source. 1990, 3:32, eff. Feb. 20, 1990. 2017, 193:15, eff. Aug. 29, 2017.

21–I:44–c Rulemaking.

[Repealed 2017, 193:17, II, eff. Aug. 29, 2017.]

History

Former RSA 21–I:44–c, which was derived from 1990, 3:32, related to rules for the implementation of the dependent care assistance program and the medical and related expenses program.

21–I:44–d Administrative Costs of Programs; Obligation of Employee.

[Repealed 2017, 193:17, III, eff. Aug. 29, 2017.]

History

Former RSA 21–I:44–d, which was derived from 1991, 326:1, related to administrative costs of the dependent care assistance and the medical and related expenses programs and obligation of employee.

Equipment Depository

21–I:44–e Equipment Depository.

[Repealed 2001, 212:3, I, eff. June 30, 2006.]

History

Former RSA 21–I:44–e, which was derived from 2001, 212:1, related to an equipment depository within division of personnel.

21–I:44–f Disabled Persons' Employment Fund.

[Repealed 2001, 212:3, II, eff. June 30, 2006.]

History

Former RSA 21–I:44–f, which was derived from 2001, 212:1, related to the disabled persons' employment fund.

Personnel Appeals Board

21–I:45 Composition of Board; Compensation; Removal. There is hereby established a personnel appeals board as follows:

I. The board shall consist of 3 members, not more than 2 of whom shall be from the same political party. There shall also be 2 alternate members of the board, not more than one of whom shall be a member of the same political party. At least 2 members of the board shall have been gainfully employed as a labor relations or personnel professional for a minimum of 5 years. One member shall have been employed within the public personnel field of employment for a minimum of 3 years. Each member and alternate shall be appointed by the governor with the consent of the council for a term of 3 years, and a person appointed to fill a vacancy shall be appointed for the unexpired term. Each member of the board and alternate shall hold office until his successor is appointed and qualified. The governor shall designate one member as chairman of the board. The board shall elect one member to serve as vice chairman. Either the chairman or vice chairman shall be a member of the New Hampshire bar. No member of the board shall be a member of any state or national committee of a political party, nor an officer or member of a committee in any partisan political club or organization, nor shall hold, or be a candidate for, any remunerative elective public office during his term of office and shall not be otherwise employed in any of the agencies of the state government.

II. Members of the board shall each be paid $100 for each day devoted to the work of the board, but not more than $5,000 each in any one year. They

shall be reimbursed for necessary expenses in connection with their official duties.

III. Members of the board shall be removed only as provided in RSA 4:1.

Source. 1986, 12:1. 1988, 269:1, eff. June 29, 1988.

21–I:46 Powers and Duties of Board.

I. The personnel appeals board shall hear and decide appeals as provided by RSA 21–I:57 and 21–I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel except those related to:

(a) Performance evaluations of classified employees; provided, however, that an employee who is disciplined or has other adverse action taken against him as the result of an evaluation may appeal that action.

(b) The refusal of an appointing authority to grant a leave of absence without pay.

(c) Classification decisions of the director of personnel when the reasons for appeal are based on any of the following:

(1) The personal qualifications of an employee exceed the minimum requirements for the position in question.

(2) The employee has held the position for a long period of time.

(3) Any positions previously held by the employee or any examinations passed by the employee which are not required for the position in question.

(4) The employee has reached the maximum of the assigned salary grade.

(5) The cost of living or related economic factors.

II. The board shall meet as often as necessary to conduct its business, provided that no more than 30 days shall elapse between meetings whenever there is any appeal pending before the board. Two members of the board shall constitute a quorum.

III. In the event that a member of the board is unable, for any reason, to attend a meeting of the board, the chairman shall designate an alternate member to serve in his place. In the absence of the chairman, the vice chairman shall designate the alternate member to serve.

IV. The board shall have the power to subpoena witnesses, and administer oaths in any proceeding before it, and to compel the production of any books, papers or other memoranda or documents by subpoena duces tecum.

V. The board may advise the director with regard to all existing rules of the division. The director shall submit all proposals to adopt rules to the board for their advice prior to filing a notice of proposed rule under RSA 541–A:6.

VI. The board shall by September 1 of each year submit an annual report to the governor, commissioner of administrative services, and director of personnel. This report shall include a narrative summary of the work of the board during the previous fiscal year. The report shall also include a description of problems related to the personnel system and the board's recommendations for dealing with those problems.

VII. The board shall adopt rules under RSA 541–A regarding procedures for the conduct of its business.

VIII. The board may, with the approval of the governor and council, contract for legal services in any action in which the attorney general determines that he cannot provide such services to the board. The governor shall draw his warrant on funds not otherwise appropriated to cover the costs of such legal services.

VIII–a. The board shall be limited to existing job titles within the classification plan when rendering decisions regarding appeals of denial of reclassification. The board is explicitly prohibited from creating new job classifications or job titles.

IX. The board shall issue final decisions on all appeals within 45 days of the date of hearing or upon the receipt of relevant evidence requested by the board as a result of such hearing, whichever is later. If the board determines that it requires additional time for the proper investigation or determination of the facts or issues involved, it shall notify the employee or employees making the appeal in writing of the reasons for the delay and provide an estimate to such employee or employees of the additional time required.

Source. 1986, 12:1. 1988, 269:2. 1994, 412:6, eff. Aug. 9, 1994.

21–I:47 Executive Secretary to Board.

I. The director of personnel shall assign, with the approval of the board, an employee of the division of personnel to serve as executive secretary to the board. Neither the director of personnel nor any bureau administrator within the division of personnel shall be appointed to this position.

II. The executive secretary shall perform such duties for the board as the board may assign.

Source. 1986, 12:1, eff. Mar. 27, 1986.

Classified Employees

21–I:48 Approval of Governor or Council Not Required. Neither the governor nor council shall be required to approve the employment, or salary, of any employee within the state classified service except as such approval may be specifically required by law.

Source. 1986, 12:1, eff. Mar. 27, 1986.

21–I:49 Classified Service and Exemptions. The classified service to which the personnel provisions of this chapter shall apply shall comprise all positions in the state service now existing or hereafter established, except:

I. Those elected by popular vote or by the legislature.

II. Those appointed and commissioned by the governor or the governor and council.

III. The chief executive officer of each department and institution and independent agency.

IV. The deputy of any department head provided for by special statute.

V. Those officers whose salary is specified or provided by special statute.

VI. Personnel of the university system of New Hampshire.

VII. Personnel of the Pease development authority.

VIII. Personnel of the New Hampshire retirement system.

IX. Personnel of the New Hampshire rail transit authority.

X. Personnel of the community college system of New Hampshire.

Source. 1986, 12:1. 1990, 161:8. 2003, 132:2. 2009, 150:11. 2010, 199:8, eff. Aug. 20, 2010.

21–I:50 Exception; Department of Employment Security. In the case of any employee of the department of employment security where the federal government has determined that the state classification system does not meet federal standards, as required by RSA 282–A:115, the provisions of the federal standards applicable to a merit system of personnel administration in state employment security agencies shall be controlling and the state classification system shall not be applicable in any such case insofar as inconsistent with the federal standards.

Source. 1986, 12:1, eff. Mar. 27, 1986.

21–I:51 Applicant's Criminal Record. No applicant for state employment shall be required by the state to answer any question concerning whether the applicant has ever been arrested or indicted for a crime. This section shall not prohibit asking an applicant whether he has ever been convicted of a crime.

Source. 1986, 12:1, eff. Mar. 27, 1986.

21–I:52 Prohibitions; Penalty.

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of the person's political opinions, religion, religious beliefs or affiliations, age, sex, sexual orientation, national origin, or race. Additionally, except as provided in paragraph I–a, there shall be no preferential treatment or discrimination in recruiting, hiring, or promotion based on race, sex, sexual orientation, national origin, religion, or religious beliefs. Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21–I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise

end the conflict before the appointing authority initiates that action.

I–a. Notwithstanding the prohibition on preferential treatment or discrimination in paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

II. If any person in state service shall willfully violate this section, his position of service with the state shall be declared vacant by the governor and council.

Source. 1986, 12:1. 1990, 261:3. 1997, 108:4. 2011, 227:1, eff. Jan. 1, 2012.

21–I:52–a Employee Assistance Program; Confidential Communications. The confidential relations and confidential communications between an employee of the state of New Hampshire and a representative or representatives of an employee assistance program shall be placed on the same basis as those provided by law between attorney and client. Except as otherwise provided by law, no representative of an employee assistance program shall be required to disclose either the nature of the program's relationship with the state employee or any privileged and confidential communications, either oral or written, made between the state employee and the representative or representatives of the program in the context of that relationship.

Source. 1995, 310:61, eff. Nov. 1, 1995.

21–I:53 Cooperation of State Officers and Employees. All officers and employees of the state shall comply with and aid in carrying out the provisions of this chapter relative to the classified personnel system. Any employee in any department may be excused, with the approval of the department head, from his regular duties for the time required to assist in the preparation and rating of tests when designated by the director of personnel.

Source. 1986, 12:1, eff. Mar. 27, 1986.

21–I:54 New Positions and Reclassification of Positions.

I. Notwithstanding any provision of law to the contrary, no new position in the classified service for employment of over one calendar year shall be established except upon approval of the governor and council. A request from a department head for additional personnel beyond those considered as line items in the budget as enacted as a budgetary amount, if said employment is for a period in excess of one calendar year, shall be considered a new position requiring the approval as specified in this section. In addition, a request made either to the division of personnel or the governor and council for the reclassification or reallocation of positions to a different class series shall be considered as a request for a new position and shall require the approval of the governor and council, except as provided in RSA 21–I:56, IV.

II. The division of personnel shall submit to the general court on or before January 15 of each legislative year a report containing a list of all new positions created subsequent to the report made to the preceding session of the general court giving the reason for the action taken in each case and stating clearly the effect of such action upon the amounts for personnel services appropriated by the preceding general court. The report shall also include a list of all reclassifications or reallocations of positions allowed during the previous year by either the director or the personnel appeals board. The report shall state how many employees were affected by each reclassification or reallocation and the cost of each reclassification or reallocation.

III. The director shall make a decision on any request for reclassification or reallocation from department heads or position incumbents within 45 days of receipt of a completed request for reclassification or reallocation as defined by rules adopted under RSA 21–I:43, II(u). Except as otherwise provided by law, rule, or bargaining agreement negotiated under the provisions of RSA 273–A, no increases in salary shall be allowed for any request until a final decision is made by the director, or if the director's decision is appealed, by the personnel appeals board. Increases in salary due to reclassification or reallocation shall become effective at the beginning of the next pay period following the final decision of the director or the board.

Source. 1986, 12:1. 1989, 408:106. 1995, 310:58. 2007, 263:161, eff. July 1, 2007.

21–I:55 Exception; Department of Transportation. Temporary employees of the department of transportation whose positions have been approved for continuance for a period of more than one year as provided in this chapter shall be classified as permanent employees if and after they shall have continuously occupied and carried out the duties of their respective positions for a period of 2 years.

Source. 1986, 12:1, eff. Mar. 27, 1986.

21–I:56 Reclassification of Positions or Increases.

I. Any request for reclassification of a position to a different class series as provided in RSA 21–I:54 shall require the approval of governor and council.

II. Any request to increase the salary of a classified position beyond grade 34 as provided in RSA 99:8 shall require the approval of the fiscal committee of the general court before it is submitted to the governor and council for its approval.

III. Notwithstanding the provisions of RSA 9:17 and 9:17–a, whenever the director of personnel in consultation with the affected department shall determine that the personal services-permanent line item in any accounting unit and the salary adjustment fund cannot cover the cost of funding a reclassification and a transfer of funds from other line items is required, the director of personnel shall notify the governor and council and the fiscal committee as soon as possible. No such transfer shall be permitted without approval first of the fiscal committee and then of governor and council.

IV. Notwithstanding any other provision of law, the commissioner of the department of health and human services shall have the authority to reallocate or reclassify any position within the department of health and human services, in consultation with the director of personnel, to implement the 1995 Department of Health and Human Services Reorganization Act. This authority shall terminate on December 31, 1998.

V. Notwithstanding any other provision of law, any commissioner of a state agency may appeal a reclassification decision to the joint committee on employee classification, established in RSA 14:14–c, which shall have final authority over such decision.

Source. 1986, 12:1. 1987, 416:5. 1992, 289:3. 1995, 310:59. 2006, 290:16. 2008, 177:14, eff. June 11, 2008. 2012, 247:3, eff. Aug. 17, 2012.

21–I:57 Allocation Review. The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541–A, provided such request is made within 15 days of the allocation. If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541–A. If the board determines that an individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction.

Source. 1986, 12:1. 1988, 269:3, eff. June 29, 1988.

21–I:58 Appeals.

I. Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21–I:46, I and the application of rules in classification decisions appealable under RSA 21–I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. The appeal shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541–A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, or on account of the person's sexual orientation, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. "Any other source" shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period. In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.

II. Any action or decision taken or made under this section shall be subject to rehearing and appeal as provided in RSA 541.

III. In the event of an appeal from a decision of the personnel appeals board in accordance with the provisions of RSA 541, the fee for the copy of the record and such testimony and exhibits as shall be transferred, and the fee for manifold copies shall be established by the governor and council and collected by the director of personnel from the party making the appeal. Any fees collected by the director of

personnel under the provisions of this section shall be credited to the appropriation for the division of personnel. The appeals board shall not be required to certify the record upon any such appeal, nor shall the appeal be considered until the fees for the copies have been paid.

Source. 1986, 12:1. 1988, 269:4. 1990, 140:2, XII. 1997, 108:5, eff. Jan. 1, 1998.

Waste Reduction and Recycling Program

21–I:59 to 21–I:65 Repealed.

[Repealed 2008, 359:9, IV, eff. Sept. 9, 2008.]

History

Former RSA 21–I:59, which was derived from 1990, 261:12 and 1993, 107:1, related to the definition of agency.

Former RSA 21–I:60, which was derived from 1990, 261:12, related to statewide recycling program for state agencies.

Former RSA 21–I:61, which was derived from 1990, 261:12, related to individual agency plans.

Former RSA 21–I:62, which was derived from 1990, 261:12, related to the duty of the commissioner to provide technical assistance to each agency.

Former RSA 21–I:63, which was derived from 1990, 261:12, related to implementation of agency plans.

Former RSA 21–I:64, which was derived from 1990, 261:12, related to rulemaking by the commissioner.

Former RSA 21–I:65, which was derived from 1990, 261:12, related to a recycled materials purchase plan.

Division of Information Technology Management

21–I:66 to 21–I:68 Repealed.

[Repealed 2003, 223:17, I, eff. Oct. 14, 2005.]

History

Former RSA 21–I:66, which was derived from 1991, 346:2, related to definitions for the subdivision entitled division of information technology management.

Former RSA 21–I:67, which was derived from 1991, 346:2; 1997, 351:14, 15, 16; and 2000, 320:2, related to the establishment of the division of information technology management.

Former RSA 21–I:68, which was derived from 1991, 346:2 and 1997, 351:17, related to the nomination, qualifications and compensation of the director of information technology management.

21–I:69 to 21–I:72 Repealed.

[Repealed 2003, 223:17, II, eff. July 1, 2003.]

History

Former RSA 21–I:69, which was derived from 1991, 346:2; 1997, 351:18; and 2002, 166:3, related to special duties of the director of information technology management.

Former RSA 21–I:70, which was derived from 1991, 346:2, related to rulemaking by the director of information technology management.

Former RSA 21–I:71, which was derived from 1991, 346:2; 1997, 351:18; 2001, 248:3; and 2002, 166:1, 2, related to the information technology management advisory board.

Former RSA 21–I:72, which was derived from 1991, 346:2 and 1997, 81:1, related to technical committees established to advise the director of information technology management.

Indirect Cost Recovery Program

21–I:73 Definitions. In this subdivision:

I. "Agency" means any agency under RSA 21–G:5, III that receives or provides central support services.

II. "Agency indirect costs" mean all support costs within any agency that cannot be directly charged to any agency program.

III. "Statewide indirect costs" mean all allocated general fund central services costs incurred by any state agency for central support services to any other state agency.

Source. 2005, 177:63, eff. July 1, 2005.

21–I:74 Allocation of Statewide Central Services Costs; Allocation of Statewide Indirect Costs. The commissioner shall allocate statewide indirect costs in a manner consistent with the federally-approved statewide central services cost allocation plan and shall recover such costs from those agencies that benefit from central service support. Agencies shall allocate general fund central services costs incurred by the agency to the appropriate agency funding source for reimbursement to the general fund. Agencies for which internal support costs are appropriated from the general fund shall recover such costs.

Source. 2005, 177:63, eff. July 1, 2005.

21–I:75 Agency Indirect Cost Recovery Plan.

I. An agency that receives outside funding from any source shall prepare and submit to the commissioner for review and approval an indirect cost recovery plan. The plan shall include proposals to recover agency indirect costs, the portion of statewide central service costs (statewide indirect costs) allocated to the agency under the statewide central services cost allocation plan, and any computation of indirect costs under RSA 124:11. By October 1 of each year, and prior to submission to the approving federal agency, if any, the agency shall submit the completed indirect cost rate proposal and supporting documentation to the commissioner for review and approval.

II. Notwithstanding paragraph I, the commissioner may waive the requirement that the agency file an indirect cost recovery plan if the commissioner determines that the cost of preparing and submitting the plan exceeds the benefit to the state of receiving such a plan.

Source. 2005, 177:63, eff. July 1, 2005.

21–I:76 General Fund Reimbursement. Agencies shall reimburse the general fund no later than 30

days after each quarter for all statewide central services costs and that portion of agency indirect costs attributable to recoveries of general fund expenditures. Agencies shall provide such indirect cost information and documentation as may be required by the commissioner to implement this section.

Source. 2005, 177:63, eff. July 1, 2005.

21–I:77 Exemption. The commissioner may waive any requirement under this subdivision if the commissioner determines that it is in conflict with, or contrary to, state objectives.

Source. 2005, 177:63, eff. July 1, 2005.

Public Works Design and Construction

21–I:78 Definitions. In this subdivision:

I. "Commissioner" means the commissioner of administrative services.

II. "Construction management" means a method of contracting where the state engages the services of a contractor to work with an architect or engineer. The contractor assumes risk for construction and is required to provide design phase consultation, including the evaluation of costs, schedules, implication of alternative designs, systems, and materials.

III. "Contract construction" means all construction performed in whole or in part by an independent contractor.

IV. "Cost-plus contract" means a contract under which the payment for the work is the actual cost, plus either a fixed fee or a percentage of the cost as profit.

V. "Department" means the department of administrative services.

VI. "Design build" means a method of contracting where the state engages the professional services of a single entity designer/builder who is responsible for the provision of the design and construction of a project. The designer/builder can be either a single firm or a team of architect, engineer, and builder. The designer/builder contracts directly with all subcontractors and is responsible for the delivery of the completed project.

VII. "Force account basis" means use of a work force directly on the state payroll, rather than an independent contractor.

VIII. "Registered architect or professional engineer" means a person licensed in the state as an architect or engineer.

IX. "Project" means any construction, reconstruction, alteration, or maintenance in any building, plant, fixture, or facility. The term shall include those projects relating to buildings, plants, fixture, or facilities formerly administered through the department of transportation, division of public works. The term shall not include construction, reconstruction, alteration, or maintenance of highways, bridges, or other items directly related to transportation, which matters shall be managed by the department of transportation.

X. "Using agency or institution" means any executive department, commission, independent establishment, public corporation which is an instrumentality of a state board, bureau, division, institution, service, office, officer, authority, administration, or other establishment in the executive branch of the government, which will have the control of the property after the work is completed.

Source. 2005, 291:9, eff. July 25, 2005.

21–I:79 Projects Under $25,000. State projects, as defined in RSA 21–I:78, IX, for which the estimated cost is equal to or does not exceed $25,000 may be done on a force account basis as defined in RSA 21–I:78, V, or by contracts awarded through competitive bidding administered by the using agency with the approval of governor and council.

Source. 2005, 291:9, eff. July 25, 2005.

21–I:80 Major Projects.

I. Each state project whose estimated cost is more than $25,000 shall be built under contracts awarded to the lowest qualified bidder who meets all project specifications through competitive bidding. The following are excluded from this competitive bidding requirement:

(a) Projects executed under RSA 481 with approval of the governor and council.

(b) Projects for the department of fish and game, the adjutant general's department, and the department of natural and cultural resources whose estimated total cost is not more than $250,000. Such projects may be done on a force account basis, by contracts awarded through competitive bidding, by short term rental of construction equipment, or by any combination of these methods. These departments are authorized to rent construction equipment for periods not exceeding 6 months at rates the departments deem competitive through the use of quotes or bids.

(c) In an emergency, projects may be done on a force account basis upon the recommendation of the commissioner, with the approval of the governor and council.

(d) Notwithstanding any other provision of law, the commissioner is authorized to use the design build and construction management methods of contracting for any project. The capital budget overview committee shall approve preliminary plans prior to construction, reconstruction, alteration, or maintenance if the project is part of a capital project and:

(1) The construction management method of contracting is used; or

(2) The design build method of contracting is used and the estimated cost is more than $500,000. If the design-build method of contracting is used and the estimated cost is $500,000 or less, preapproval of the capital budget overview committee shall not be required, but the department shall notify the committee of all such projects and shall provide quarterly reports on project status.

II. Any state project whose estimated cost is more than $500,000 shall be designed by a registered architect or professional engineer unless, upon recommendation of the commissioner, the governor and council shall find that it is in the best interests of the state to provide for in-house design. He or she shall prepare plans and specifications which meet the requirements of all applicable codes and shall provide on-site observation and inspection services. Each registered architect or professional engineer shall carry professional liability insurance in an amount satisfactory to the commissioner consistent with industry standards.

III. After written application to the capital budget overview committee, the requirements of paragraph II may be waived upon approval of the capital budget overview committee and the governor and council.

IV. State capital budget projects shall not be awarded through cost-plus contracts.

V. Any repair project authorized in the capital budget which requires consultant services shall be put into effect within 90 days after the adoption of the capital budget.

VI. (a) Prior to any work being done by an individual contractor on any major project under this section, such contractor, including all subcontractors and independent contractors, excluding deliveries to and removals from a project administered by the department, shall provide to the commissioner of administrative services:

(1) A certificate of insurance of his or her current workers' compensation coverage in New Hampshire for the classification of work to be completed on the project;

(2) A sworn statement that this coverage shall remain in effect for the duration of his or her anticipated work on the project;

(3) A completed work certificate, provided pursuant to RSA 281–A:4–b, that shall include the total number of employees anticipated to be employed by such contractor, subcontractor, or independent contractor on the project during the contract period, delineated by the National Council on Compensation Insurance (NCCI) classification code applicable to the scope of work to be performed;

(4) A copy of the contractor's compliance with a current written safety program, if applicable, as filed with the commissioner of labor under RSA 281–A:64, II and proof of an existing joint loss management committee as required under RSA 281–A:64, III, if applicable; and

(5) The department may develop procedures to obtain the requirements in this section on an annual basis or by a prequalification procedure rather than on a project-by-project basis.

(b) If any construction contractor, subcontractor, or independent contractor who might otherwise claim an exclusion under RSA 281–A:18–a is directly performing the work on a project covered under this section, such contractor, subcontractor, or independent contractor shall comply with the provisions of this section.

(c) The commissioner of labor may assess any contractor, subcontractor, or independent contractor who falsifies information or fails to comply with this section a civil penalty of up to $2,500 and in addition, such an employer shall be assessed a civil penalty of up to $100 per employee per day of noncompliance. Notwithstanding any other provision of law to the contrary, any person with control or responsibility over the decisions to disburse funds and salaries and who knowingly falsified information or knowingly failed to comply with this section shall be held personally liable for the payment of penalties under this section and such contractor, subcontractor, or independent contractor shall not be allowed to bid or work on state projects for up to 5 years. The state shall be entitled to recover from the violator all costs and fees directly associated with uncovering falsified information supplied under this section.

(d) All funds collected under this paragraph shall be deposited into the general fund.

(e) The commissioner of labor shall appoint as many individuals as necessary to carry out the department's responsibilities under this paragraph.

(f) On a quarterly basis, the commissioners of administrative services and labor shall post electronically for public access and shall also circulate to all other public works construction or renovation awarding authorities of state government, including the college and university systems and the department of education office of building aid, a list of any construction contractors, subcontractors, or independent contractors found to be in violation of this section, including the amount fined and the period of time such persons or entities shall not be allowed to bid or work on state projects.

Source. 2005, 291:9. 2007, 323:3, 8. 2008, 270:2, 3, 5. 2010, 209:3, eff. Aug. 27, 2010. 2012, 247:12, eff. Aug. 17, 2012. 2013, 86:1, eff. Aug. 18, 2013. 2017, 156:14, I, eff. July 1, 2017.

21–I:81 Competitive Bidding. No project subject to the competitive bidding requirements of RSA 21–I:80 shall be awarded to any independent contractor except:

I. If the commissioner decides that the bid of the lowest bidder should be accepted, he or she shall prepare a contract of acceptance of the lowest bid within 60 days from the opening of bids. He or she shall execute the contract in the name of the state. After the contract is executed by the lowest bidder, the form of it approved by the attorney general, and the availability of funds approved by the commissioner of administrative services, he or she shall transmit the contract to the governor and council. Upon approval by the governor and council, it shall become a valid contract of the state.

II. The state reserves the right to reject any and all bids or to negotiate with the lowest qualified bidder who meets all project specifications.

III. If the commissioner decides that for just cause shown the lowest bid submitted should be rejected, he or she shall promptly transmit to the governor and council the recommendation for rejection including reasons. The governor and council shall review the recommendation and any other facts available to them, and make such determination as in their judgment shall be for the best interest of the state. They shall require a public hearing upon request of any bidder or on their own motion to fully establish such facts. Their determination shall be entered upon the records of the secretary of state.

IV. If not more than one bid is received on any state project advertised for contract construction, the commissioner may negotiate a contract for such construction upon terms which he or she may deem most advantageous to the state, subject to the approval of the governor and council. For projects built with federal aid, if any provision of this section is inconsistent with the requirements of applicable federal law and regulations, the latter shall control.

Source. 2005, 291:9, eff. July 25, 2005.

21–I:81–a Requirement for Listing Subcontractor Bids for State Construction Contracts. The following requirements apply to the construction, reconstruction, installation, demolition, maintenance, or repair of any building by a state agency, including the community college system and university system of New Hampshire, that is required to be awarded through competitive bidding.

I. A general contractor shall provide to the awarding state agency, community college, or university system a list of the names, addresses, CEO, CFO, other LLC principals, and each subcontractor to be used in the performance of the contract as soon as is practicable after the contract award, but in any event prior to the date on which the subcontractor begins work on the project. This provision applies to all subcontractors engaged to work on the project, regardless of the date of their engagement.

II. This section provides minimum disclosure standards regarding subcontractors and shall not preclude an awarding state agency or the community college or university system from setting more rigorous standards for construction work under their jurisdiction.

Source. 2009, 246:1, eff. Sept. 14, 2009.

21–I:81–b Worksite Accountability. At the onset of work on any state construction project, including any construction project undertaken by the community college system and the university system of New Hampshire, the general contractor or designated project construction manager, if any, shall provide to the awarding state agency a current list of all subcontractors and independent contractors that the general contractor has agreed to use on the job site, with a record of the entity to whom that subcontractor or independent contractor is directly contracted and by whom that contractor or subcontractor is insured for worker's compensation purposes. This list shall be posted on the jobsite and updated as needed to reflect any new subcontractors or independent contractors and also posted on the state agency website, to be updated every 30 days. If it is determined that a subcontractor or independent contractor is present on a state construction site without the contractor's name and direct contracting relationship

being posted in a visible location at the worksite, the general contractor or designated project manager shall require the subcontractor or independent contractor to provide the information within 36 hours and to post the information in a visible location at the worksite. If the information is not provided within 36 hours of its request, the general contractor shall suspend the contractor until the information is provided and posted.

Source. 2009, 246:1, eff. Sept. 14, 2009.

21–I:82 Client Relationship. Without limiting the provisions of RSA 21–I:80 and RSA 21–I:81, and to enable the department to maintain a client relationship with the using agencies or institutions in the construction of capital budget items, the department is authorized to:

I. Determine requirements, prepare estimates, advertise, receive bids and award contracts subject to the approval of the governor and council. The department is also authorized to execute all contracts for projects in the name of the state and for the using agency or institution, with the advice and assistance of the attorney general; and after the concurrence of the governor and council, the commissioner of administrative services and the using agency or institution, subject to other statutory limitations.

II. Cause to be undertaken and completed, all construction exceeding $25,000 for any individual project, except as otherwise authorized by the governor and council.

III. Exercise general supervision, control and direction over all matters pertaining to design, construction, maintenance standards, and preservation of all state buildings, and related facilities.

IV. Except as otherwise authorized by the governor and council, cooperate with the department of environmental services by letting for contract, and supervising, all projects on state-owned dams and reservoirs, and performing inspections requested by the department of environmental services. However, operation of facilities under the control of the department of environmental services shall not be delegated to the department of administrative services.

Source. 2005, 291:9, eff. July 25, 2005.

21–I:83 Compliance With Contracts.

I. (a) The performance of contracts for all state projects costing over $25,000 shall be inspected to assure compliance with the plans and specifications. The department shall require inspection service by one of the following methods:

(1) By a registered architect or professional engineer or representative;

(2) By qualified personnel of the state agency, institution or department concerned; or

(3) By personnel of the division of public works design and construction, or the division's designated agent or agents.

(b) Prior to the execution of a contract for a state project, the department shall notify the state agency, institution, or department concerned which method of inspection shall be followed.

II. The department or its agent shall periodically give to the using agency or institution signed statements that the contract is being executed according to specifications, including a final statement that the project has been completed in accordance with the specifications.

III. Manifests for such payments shall be made and signed by the using agency, department, or institution. Manifests for final payment shall certify that inspections have been carried out, that the project has been completed in accordance with the specifications and the contract, and that it has been accepted. Such manifest shall be certified by the department that the progress reports furnished by the department are correct and that inspections have been made and the provisions of the plans and specifications have been carried out.

Source. 2005, 291:9, eff. July 25, 2005. 2014, 327:30, eff. Aug. 2, 2014.

21–I:84 General Powers and Duties. The department of administrative services is further authorized to:

I. Exercise such general supervision over standards of operation and maintenance of state-owned buildings, except state armories and military reservations, and fixed plant equipment as was formerly the function of the executive officers of the using agencies or institutions or the department of transportation, division of public works, and except as otherwise provided by law.

II. Coordinate long range capital planning to meet the needs of the state, as may be requested by the governor and council and subject to their approval.

III. Operate all public works, not otherwise assigned.

IV. Assist any using agency or institution of the state in the acquisition of lands for a public use, when requested.

V. Employ such technical consultants and other assistants as may be necessary, wherever required in the best interests of the state and consistent with the policy declared in section RSA 21–I:80.

VI. Engage in projects as defined in RSA 21–I:78, IX.

Source. 2005, 291:9, eff. July 25, 2005.

21–I:85 Planning and Design Costs. The division of public works design and construction shall not perform any design and planning work for any non-general fund state agency unless the division is reimbursed for such work by the agency.

Source. 2005, 291:9, eff. July 25, 2005. 2014, 327:31, eff. Aug. 2, 2014.

21–I:86 Public Works Appeals.

I. Any person aggrieved by a decision of the manager of the division of public works design and construction relative to public works design and construction shall petition for informal review by the deputy commissioner of administrative services, or the deputy's designee, within 15 days of the decision. Such petition for informal review shall be a prerequisite to an appeal to the commissioner under paragraph II.

II. Any person aggrieved by the determination of the deputy commissioner of administrative services, or the deputy's designee, under paragraph I shall appeal to the commissioner, or the commissioner's designee, within 30 days of the deputy's determination.

Source. 2005, 291:9, eff. July 25, 2005. 2013, 227:2, eff. Sept. 13, 2013. 2014, 327:32, eff. Aug. 2, 2014.

Commission Exploring Monetizing Certain State Assets, Enterprises, and Resources

21–I:87 to 21–I:91 Repealed.

[Repealed 2010, Sp. Sess., 1:97, eff. July 1, 2011.]

History

Former RSA 21–I:87 to 21–I:91, which were derived from 2010, Sp. Sess., 1:95, related to the commission exploring monetizing certain state assets, enterprises, and resources.

Citizens Task Force to Study State Revenues and Expenditures

21–I:92 Citizens Task Force Established; Membership.

I. There is hereby established a citizens task force to study state revenues and expenditures.

II. The citizens task force shall be composed of the following 13 members:

(a) Four members of the house of representatives, appointed by the speaker of the house of representatives, one of whom shall be a member of the ways and means committee, one of whom shall be a member of the finance committee, and one of whom shall be a member of the public works and highways committee.

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

(c) Seven public members with an expertise in finance and state government, appointed by the governor.

III. Members of the task force shall serve without compensation, except that legislative members of the task force shall receive mileage at the legislative rate when attending to the duties of the task force.

IV. The chair of the task force shall be appointed by the governor and shall serve a 4-year term. Legislative members of the task force shall serve a term coterminous with their term in office. Nonlegislative members of the commission shall serve 4-year terms, except that the initial appointments shall be for staggered terms of 2, 3, and 4 years. Subsequent appointments shall be made in the same manner as the initial appointment.

V. The first meeting of the task force shall be called by the first-named house member and shall be held within 45 days of the effective date of this section. Thereafter, the task force shall meet at the call of the chair. Seven members of the task force shall constitute a quorum.

VI. The citizens task force may adopt rules of procedure for its meetings and hearings as it deems necessary and proper.

Source. 2010, Sp. Sess., 1:100, eff. June 10, 2010.

21–I:93 Duties. The citizens task force shall:

I. Analyze current state revenues and expenditures, consider the projected growth of state revenues and expenditures, and recommend future spending practices to maintain a balanced budget.

II. Study the range of needs for government services in the state and determine what changes have occurred or may occur in the need for such services.

III. Recommend changes in state expenditures and revenues in order to meet the existing and projected need for government services.

IV. Solicit information and testimony from those individuals, agencies, and entities that may be of assistance to the task force in the performance of its duties.

V. Be authorized to solicit, accept, and expend grants, gifts, and donations from any public or private source on behalf of the citizens task force.

Source. 2010, Sp. Sess., 1:100, eff. June 10, 2010.

21–I:94 Reports. On or before March 31, 2011, and every year thereafter, the citizens task force shall make a report of its findings and recommendations, including any recommendations for future legislation, to the governor, the speaker of the house of representatives, the president of the senate, and the state library. The task force also may submit recommendations for future legislation during any designated filing period of the general court or as otherwise permitted by legislative rule.

Source. 2010, Sp. Sess., 1:100, eff. June 10, 2010.

State Credit Card Affinity Program

21–I:95 State Credit Card Affinity Program; Administration.

I. Upon a determination by the commissioner of administrative services of the feasibility of a state credit card affinity program which meets the requirements of this subdivision and the minimum enrollment required of financial services companies administering a credit card affinity program, the commissioner shall have the authority to enter into an agreement with a credit card issuer for the issuance of a co-branded or affinity credit card. The credit card issuer and terms of the co-branded card most favorable to the purpose described in paragraph II shall be selected following a request for proposals and awarded through competitive bidding.

II. All fees and other revenue attributable to payments made to the state by the credit card issuer through a co-branding or affinity agreement shall not be general funds of the state but, after deducting the necessary costs of administration by the department of administrative services, shall be paid to the board of trustees of the New Hampshire retirement system and dedicated to an annual reduction in the retirement system's unfunded liability determined under RSA 100–A:16, II.

Source. 2014, 142:2, eff. June 16, 2014.

CHAPTER 21–N

DEPARTMENT OF EDUCATION

21–N:1 Findings; Policy Statement.

I. The general court finds that the students, parents, general citizenry, local school teachers and administrators, local governments, local school boards, school administrative units, and state government have a joint and shared responsibility for the quality of education delivered through the public education system in the state of New Hampshire.

II. In order to provide general guidance to the state department of education established by this chapter, the general court declares the following to be the policy of the state of New Hampshire:

(a) The department shall have the dual role of providing regulatory direction and instructional assistance to public elementary and secondary schools.

(b) The department shall be mindful of the need to balance these dual roles so that they are given equal consideration in planning department activities and expenditures and so that the consequences and implications of regulatory decisions are fully considered in light of the need to provide services to assist the local schools in complying with such regulatory direction.

(c) The paramount goal of the state shall be to provide an adequate education for all school-age children in the state, consistent with RSA 193–E.

(d) The department shall continually strive to develop creative and innovative methods to assist local schools to achieve the highest possible degree of effective educational programming and teaching techniques.

(e) In accordance with RSA 193–E, the department shall work to establish credible processes for measuring and rating schools.

Source. 1986, 41:1. 1996, 271:1. 1998, 389:5, 6. 2005, 257:15. 2007, 270:3, eff. June 29, 2007.

21–N:2 Establishment; General Functions.

I. There is hereby established the department of education, an agency of the state under the executive direction of a commissioner of education.

II. The department of education, through its officials, shall be responsible for the following general functions:

(a) Providing general supervision for elementary and secondary schools, teachers and administrators.

(b) Providing a variety of educational services to schools and particular groups.

(c) Providing vocational rehabilitation and social security disability determination services for persons with disabilities.

Source. 1986, 41:1. 1990, 140:2, IV. 1994, 379:1, eff. June 9, 1994.

21–N:3 Commissioner; Deputy Commissioner; Directors; Compensation.

I. The governor, after consultation with the board of education, shall appoint the commissioner and the deputy commissioner of the department of education with the consent of council. Each shall serve for a term of 4 years. The commissioner and the deputy commissioner may succeed himself or herself, if reappointed. The commissioner and deputy commissioner shall be qualified to hold their positions by reason of education and experience.

II. The commissioner, after consultation with the board of education, shall nominate each division director for appointment by the governor and council. The division directors shall serve for a term of 4 years. They may succeed themselves, if reappointed. The directors shall be qualified to hold their respective positions by reason of education and experience.

III. The deputy commissioner and the directors shall serve staggered terms.

IV. The salaries of the commissioner, the deputy commissioner and each division director shall be as specified in RSA 94:1–a.

Source. 1986, 41:1. 1994, 379:1. 2004, 257:41, eff. July 1, 2004.

21–N:4 Duties of Commissioner. In addition to the powers, duties and functions otherwise vested by law in the commissioner of the department of education, the office of the commissioner shall:

I. Establish the organizational goals of the department and represent the public interest in the administration of the functions of the department of education and be responsible to the governor, the general court, and the public for such administration.

II. Have the authority, subject to the approval of the governor and council, to accept gifts, contributions, and bequests of unrestricted funds from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the policy objectives of the department of education as set forth in RSA 21–N:1 and except as prohibited by any other provision of law.

III. Provide for a fair hearings unit within the commissioner's office which shall, when not inconsistent with federal law, conduct all hearings required under the provisions of RSA 186–C or any state or federal law or regulation. Such hearings shall be conducted as adjudicative proceedings as provided in RSA 541–A. The hearing officer, when appropriate and when not inconsistent with state or federal law, shall present proposed findings and recommendations to the commissioner who shall, upon review of the record, issue a final decision in the matter.

IV. Represent the department on boards, commissions, committees, and professional associations, or shall designate a designee.

V. Establish procedures to provide school administrative units with professional staff services, including direct services to school administrative units in improving the effectiveness and efficiency of administrative and instructional services. Such services shall include, but not be limited to, assistance in addressing problems, resolving disputes, and planning for internal reorganization; development of clearer role definitions for superintendents, assistant and associate superintendents, and school boards; and provision of resources and programs for board training and community education regarding school administrative unit functions and board and staff roles and responsibilities.

VI. Plan and apply for federal and other grants on a department-wide basis.

VII. Promote the application of educational research.

VIII. Administer the provisions of RSA 193–C relative to the statewide educational improvement and assessment program and RSA 193–E.

IX. Oversee audit and financial monitoring functions which shall:

(a) Provide analytical reports of examinations conducted of the department's various divisions, bureaus, sections, programs and functions. Examinations shall be conducted and reports prepared in accordance with standards of governmental auditing and program evaluation specified by authoritative national standard setting bodies. Reports shall contain analyses, appraisals, comments, and recommendations relating to the accuracy and com-

petence of accounting, financial, and management procedures in use.

(b) Insure compliance with federal grant requirements and review grantee and subgrantee compliance with all department grant requirements.

(c) Not assume any managerial, supervisory, or operational function, or direct action initiated as a result of the unit's recommendations.

X. Review, on an ongoing basis, the development and administration of standards.

XI. Provide to the secretary of state in August of each year a list or lists of all colleges, universities, and career schools approved or licensed to operate in New Hampshire, all public high schools, and all nonpublic high schools in New Hampshire accredited by a private school accrediting agency recognized by the department of education.

XII. No later than October 1, 2017, establish a chartered public school program officer position which shall be a classified position. The commissioner shall include a new classified chartered public school program officer classified position in its efficiency expenditure request pursuant to RSA 9:4 for the biennium ending June 30, 2019 and every biennium thereafter. The chartered public school program officer shall:

(a) Answer inquiries regarding charter public schools.

(b) Act as a liaison between chartered public schools and the department of education.

(c) Ensure that a chartered public school is implementing its charter mission.

(d) Provide training for interested parties on the governance of chartered public schools and the development of chartered public school policy.

(e) Assist the chartered public school in identifying and securing alternative funding sources.

(f) Receive and evaluate progress reports from chartered public schools, identify best practices for instruction and management in chartered public schools, and develop a process to share such best practices with other public schools.

(g) Act as the liaison between chartered public schools and the United States Department of Education.

(h) Act as the liaison between chartered public school advocacy groups and interested parties.

(i) Act as the liaison between chartered public schools and other public schools in the chartered public school's geographic region.

(j) Work closely with the resident school districts and chartered public schools to assure appropriate support for students with disabilities.

XIII. With the advice of the state board of education, and in consultation with the deputy commissioner and the directors of the affected divisions, have the authority to transfer or assign functions, programs, or services within or between any division.

Source. 1986, 41:1. 1989, 49:1, 2. 1994, 379:1. 1998, 389:7, eff. Oct. 1, 1998. 2013, 278:1, eff. July 24, 2013. 2016, 272:2, eff. July 1, 2017. 2017, 190:3, eff. June 30, 2017.

21–N:5 Duties of Deputy Commissioner. The deputy commissioner shall, in accordance with applicable laws:

I. Provide for the following functions:

(a) Implementing the organizational goals, managing the work of the department, and directing the division directors in carrying out state and federal obligations.

(b) Assuring that the division directors comply with the procedures established by the commissioner relative to support for local schools under RSA 21–N:4, V.

(c) Personnel management.

(d) Developing and maintaining a system of accounting records and budget control procedures which meet all state and applicable federal accounting, purchasing, and reporting requirements.

(e) Property and contracts.

(f) Requiring and approving the development of short- and long-range division level plans and their implementation.

(g) Rate setting, as specified under RSA 186–C:7, III. Such rate setting shall be accomplished in consultation with the department of health and human services and the department of administrative services.

(h) Administering finance and operations.

(i) Fiscal management of all federal and other grants.

II. Exercise, subject to the supervision of the commissioner, superior authority over the directors of the divisions of the department relative to areas of responsibility specified in this section.

Source. 1986, 41:1. 1987, 345:2. 1988, 214:2. 1989, 49:3. 1994, 379:1, eff. June 9, 1994.

21–N:6 Division of Educational Improvement. There is hereby established within the department the division of educational improvement, under the supervision of an unclassified director of educational

improvement who shall be responsible for the following functions, in accordance with applicable laws:

I. Providing technical and consulting services in both academic and support areas to public elementary and secondary schools.

II. Administering the provisions of RSA 186–C relative to special education.

III. Administering federal and state programs designed to assist the education of students and teachers.

IV. Developing and administering standards governing the professional development of educators from pre-service preparation through ongoing professional growth.

V. Administering standards for approving elementary and secondary schools in accordance with rules adopted by the board under RSA 21–N:9, I.

VI. [Repealed.]

Source. 1986, 41:1. 1987, 345:3. 1989, 49:4; 127:1. 1990, 140:2, X. 1994, 379:1. 2011, 224:7, eff. July 1, 2011.

21–N:7 Division of Program Support. There is hereby established within the department the division of program support, under the supervision of an unclassified director of program support who shall be responsible for the following functions, in accordance with applicable laws:

I. Administering standards for certifying and recertifying educational personnel, including monitoring local staff development efforts.

II. Assuring compliance with all federal equal opportunity and access requirements, including, but not limited to, those requirements concerning awareness and elimination of discrimination on the basis of sex, race, language, national origin, or disability.

III. Providing school building construction services and administering the school building aid program.

IV. Administering department responsibilities for nutrition programs and services.

V. Administering department responsibilities for information services.

VI. Collecting, compiling, analyzing, and reporting on education data.

Source. 1986, 41:1. 1987, 168:4. 1988, 179:3. 1989, 49:6. 1990, 140:2, XI. 1994, 379:1, eff. June 9, 1994.

21–N:8 Division of Career Technology and Adult Learning. There is hereby established within the department the division of career technology and adult learning, under the supervision of an unclassified director of career technology and adult learning who shall be responsible for the following functions, in accordance with applicable laws:

I. Administering career technology and adult learning programs.

II. Overseeing the administration of the provisions of RSA 200–C.

III. Overseeing the administration of federal social security disability determinations as authorized by the Social Security Administration.

IV. Overseeing the administration of the provisions of RSA 186–B relative to services to the blind.

V. Establishing regional vocational rehabilitation offices necessary for the administration of this section.

VI. Providing technical and consulting services to assist secondary vocational education efforts.

VII. Administering the provisions of RSA 186:61 and RSA 186:62, relative to adult basic education, except functions assigned exclusively to the deputy commissioner, as provided by RSA 21–N:5.

Source. 1986, 41:1. 1992, 60:1. 1994, 379:1, eff. June 9, 1994.

21–N:8–a Division of Higher Education.

I. There is hereby established within the department the division of higher education, under the supervision of an unclassified director of higher education who shall be responsible for providing support to the higher education commission established in paragraph II.

II. (a) There is hereby established a higher education commission which shall consist of the following members:

(1) The president of the university of New Hampshire, the president of Keene state college, the president of Plymouth state university, and the president of Granite State college.

(2) Two presidents from institutions within the community college system of New Hampshire, to be chosen by the board of trustees of the community college system.

(3) The chancellor of the university system of New Hampshire.

(4) The chancellor of the community college system of New Hampshire.

(5) The commissioner of the department of education.

(6) Six representatives of the private 4-year colleges in New Hampshire appointed by the governor and council on recommendation by the

New Hampshire College and University Council, with no more than one representative from any one college.

(7) One member to be appointed by the governor and council as a representative from a for-profit college or university not a member of the New Hampshire College and University Council.

(8) Four members to be appointed by the governor and council who shall be residents of the state and of the lay public, having no official connection with any college, university, or private postsecondary career school as an employee, trustee, or member on a board of directors.

(9) Two members to be appointed by the governor and council, on recommendation by the American Council for Professional Education and Training, who shall be residents of the state and shall represent private postsecondary career schools.

(b) The terms of appointed members, except as otherwise indicated above, shall be for 5 years and until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term.

(c) Commission appointments shall be made in such a way as to preserve broad and equitable representation on the basis of gender, ethnicity, and socioeconomic groups in the state.

(d) The members of the commission shall serve without compensation, but may be reimbursed for actual travel and other expenses incurred in the performance of their duties on the commission from funds appropriated to the department of education specifically for this purpose.

(e) The commission shall:

(1) Regulate institutions of higher education pursuant to RSA 292:8–b through RSA 292:8–kk. The commission may accept accreditation by a recognized accrediting association in place of its own independent evaluation.

(2) Regulate private postsecondary career schools pursuant to RSA 188–G.

(3) Administer financial aid programs as provided in state and federal law for students attending higher education institutions, except as otherwise provided by law.

(4) Apply for, accept, and expend state, federal, or other grants.

(5) Oversee the functions of the Veterans Education Services as authorized by Congress.

(6) Establish and collect reasonable annual fees related to the performance of statutory duties.

(7) Enter into cooperative interstate or international agreements to further operating efficiencies, student access, and educational opportunities.

(8) Be the designee for the integrated postsecondary education data system as developed by the United States Department of Education.

(9) Adopt rules, pursuant to RSA 541–A relative to:

(A) Organization and operation of the higher education commission established in this section.

(B) Approval and regulation of institutions of higher education pursuant to RSA 292:8–b through RSA 292:8–kk.

(C) Approval and regulation of private postsecondary career schools pursuant to RSA 188–G.

(D) Administration of financial aid programs for institutions of higher education, except as otherwise provided by law.

(E) Establishment and collection of reasonable fees for functions performed by the division of higher education and the higher education commission as required in this section.

(10) Assume other responsibilities as may be provided in state or federal law.

III. There is hereby established in the office of the treasury the higher education fund to be administered by the higher education commission. The fund shall be nonlapsing and continually appropriated to the higher education commission for the purposes established in this chapter. All fees collected by the commission relative to the performance of its duties shall be deposited into the fund.

Source. 2011, 224:126, eff. July 1, 2011. 2013, 164:1, eff. June 28, 2013. 2014, 132:1, eff. June 16, 2014. 2016, 43:1, eff. July 2, 2016.

21–N:8–b Higher Education; Military Academic Credit.

I. The division of higher education shall develop and adopt a written policy requiring each public institution of higher education to develop a set of written policies and procedures governing the evaluation of a student's military occupation, military training, coursework, and experience, to determine whether academic credit shall be awarded by the institution for the evaluated occupation, experience, training, and coursework. The division's policy may require that the occupation, training, experience, or courses meet the standards of the American Council on Education or equivalent standards for awarding academic credit. The division may also develop and adopt a

written policy requiring each public institution of higher education to develop a set of written policies and procedures to standardize credit-by-exam equivalencies for exams funded through the Department of Defense. The educational credit shall be awarded based upon each institution's admissions standards and shall be consistent with the mission of the state's system of public higher education. Each public institution of higher education shall designate a single point of contact for a student who is enrolled in such an institution and who is also a veteran, as defined in RSA 21:50, I, to conduct such an evaluation and determination.

II. The division shall consult with the chief executive officers of each public institution of higher education in implementing the policy set forth in paragraph I and the policy adopted by the division shall, to the greatest extent possible, provide for consistent application by all of the state's public institutions of higher education and promote accurate and complete academic counseling.

Source. 2013, 53:1, eff. Aug. 3, 2013.

21–N:9 Rulemaking.

I. The board of education shall adopt rules, pursuant to RSA 541–A, relative to minimum standards for:

(a) High schools, as authorized by RSA 186:8.

(b) Junior high schools, as authorized by RSA 186:8.

(c) Elementary schools, as authorized by RSA 186:8 and 189:25.

II. The board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The organization of school administrative units.

(b) The duties of school boards.

(c) Standards for school building construction.

(d) School health policies.

(e) Child benefit services grants.

(f) Nonpublic school advisory councils.

(g) Home study.

(h) Dual enrollment, as authorized by RSA 193:1–b.

(i) High school equivalency programs, as authorized by RSA 186:61.

(j) Adult basic education programs, as authorized by RSA 186:61 and 186:62.

(k) Vocational rehabilitation services, as authorized by RSA 186:6 and 200–C.

(*l*) Special education programs affecting all children with disabilities, as authorized by RSA 186–C:5, 186–C:16 and 186–C:18, V.

(m) Standards for approval of regional career and technical education centers, as authorized by RSA 188–E:3.

(n) Vocational technical education, as authorized by RSA 186:6.

(*o*) Standards for approval of nonpublic schools, as authorized by RSA 186:11, XXIX.

(p) Qualifications and duties of school superintendents and principals, as authorized by RSA 186:8.

(q) Qualifications and duties of school administrative unit professional employees, as authorized by RSA 186:8.

(r) Professional preparation standards and approval of professional preparation programs for educating teachers in post-secondary institutions, as authorized by RSA 186:11, X.

(s) Certification standards for educational personnel, and educator certification fees for granting credentials to educational personnel, including teachers, paraprofessionals, superintendents, assistant superintendents, special education administrators, business administrators, principals, vocational directors, coordinators of comprehensive health education and services, directors of pupil personnel services, guidance directors, guidance counselors, school psychologists, associate school psychologists, speech-language specialists, social workers, health educators, physical education teachers, consumer and family science teachers, elementary teachers, specialists in assessment of intellectual functioning, media supervisors, media generalists, and master teachers as authorized by RSA 186:8 and RSA 186:11, X, professional credentials including beginning educator credentials, experienced educator credentials, and intern licenses, and other classifications of educators, administrators, specialists, and paraprofessionals necessary to address educational needs as determined by the state board upon the recommendation of the professional standards board pursuant to RSA 186:60.

(t) Administering the provisions of RSA 193:27 through 193:30 regarding placement of children, as authorized by RSA 193:30.

(u) Guidelines for uniform evaluation programs among local school districts.

(v) Administering the literacy education and dropout prevention program established in RSA 189:52–58.

(w) The exemption of certain students from participation in the statewide education assessment.

(x) Safe school zones, as provided in RSA 193–D:2.

(y) School bus safety, as provided in RSA 189:6–a.

(z) Local master plan for staff development and recertification.

(aa) Establishing requirements for teachers and teacher preparation programs to ensure that all teachers are prepared to teach to a broad range of students' needs, including, but not limited to, the needs of exceptional learners, using a variety of methods, materials, and instructional techniques.

(bb) Establishing the educational credential of master teacher as provided in RSA 189:14–f.

(cc)(1) The establishment and enforcement of a code of ethics for certified educational personnel, which shall be adopted no later than July 1, 2018. This professional code shall include a statement of purpose and standards defining each of the 4 primary principles which are:

(A) Responsibility to the education profession and educational professionals.

(B) Responsibility to students.

(C) Responsibility to the school community.

(D) Responsible and ethical use of technology as it relates to students, schools, and other educational professionals.

(2) The professional code of ethics shall apply to all teachers, supervisors, administrators, and other personnel licensed or seeking licensure in the education profession in the state of New Hampshire. In this subparagraph, "teacher" means a person who has applied for or holds a valid teaching license, credential, or other equivalent certificate issued by the state board of education.

III. [Repealed.]

Source. 1986, 41:1. 1987, 168:3. 1988, 274:2. 1989, 49:5. 1990, 140:2, X. 1992, 48:5. 1993, 290:1. 1994, 355:1. 1996, 19:3; 271:2. 1998, 174:1, 2; 314:1. 1999, 82:1. 2008, 274:31. 2011, 224:127, eff. July 1, 2011. 2013, 164:7, I, eff. June 28, 2013. 2015, 252:11, eff. July 1, 2015. 2017, 22:1, eff. June 24, 2017.

21–N:10 State Board of Education.

I. There is hereby established the state board of education consisting of 7 members who shall serve without pay and shall not be technical educators or professionally engaged in school work. The members shall be paid for actual expenses incurred in the performance of their duties out of moneys appropriated for the department of education.

II. The education committee of the house of representatives or the education committee of the senate may, by majority vote of its members, propose areas of study to the board, which shall be put on the agenda of the next meeting of the board for its consideration and response.

III. The governor and council shall appoint the members of the board. Five of the members shall be selected one each from the 5 executive councilor districts and 2 members shall be selected from the public at large. Terms of office of members shall be for 4 years from the January 31 on which the terms of their predecessors expired. Annually, on or before January 31, the governor shall name a member of the board who shall serve as chairperson for one year and until a successor is appointed. No member of the board shall serve more than 3 consecutive full terms.

IV. The governor and council may, after notice and hearing, remove a member of the board for incompetency, failure to discharge the member's duties, malfeasance, immorality, or other cause inimical to the welfare of the public schools, and in case of such removal, or of a vacancy arising from any other cause, they shall make another appointment for the unexpired term.

V. The state shall provide an office for the board. The board shall hold at least 6 regular meetings each year, and such special meetings as may be required. The time and places for regular meetings shall be fixed by the board, and the chairperson shall call a special meeting upon the written request of any 2 members, or on the chairperson's own motion.

Source. 1986, 41:1. 1989, 94:1; 301:5. 1996, 271:3. 1999, 45:1, eff. July 20, 1999.

21–N:11 Duties of Board. The state board of education established by RSA 21–N:10 shall:

I. Regularly review all programs and activities of the department of education and make recommendations to the commissioner of education with regard to such programs and activities.

II. Advise the commissioner of education with regard to department goals, information gathering and any other aspect of elementary and secondary education within the state of New Hampshire.

III. Hear appeals and issue decisions, which shall be considered final decisions of the department of education for purposes of RSA 541, of any dispute between individuals and school systems or the department of education, except those disputes governed by the provisions of RSA 21–N:4, III.

IV. Appoint members of the professional standards board and other advisory bodies as provided by law.

V. Adopt rules as provided in 21–N:9.

Source. 1986, 41:1, eff. July 1, 1986.

CHAPTER 21–P

DEPARTMENT OF SAFETY

General Provisions

General Provisions

21–P:14 Rulemaking Authority; Commissioner of Safety.

I. The commissioner of safety shall develop and adopt rules, under RSA 541–A, relating to driver education courses to be given in the secondary schools of the state and motor vehicle drivers' schools licensed under the provisions of RSA 263:44, and relating to the licensing of the schools and of their teachers and instructors, which rules shall cover the subjects of:

(a) Facilities and equipment.

(b) The educational background and other qualifications of teachers and instructors.

(c) Curriculum and hours during which instruction may be given.

(d) Amounts of insurance with respect to training vehicles and other facilities of the school, which may be in addition to any other insurance coverage required by law.

(e) Admission and advertising practices, together with terms of enrollment, of schools licensed under the provisions of RSA 263:44.

(f) Uniform classifications for certification of driver education instructors, including the same types of certification levels and the same qualifications required for each level for both private and public school instructors, and a system of fees for certification.

(g) Any other subject which in the judgment of the commissioner requires rulemaking to promote the effectiveness of driver education courses.

II. The commissioner of safety shall adopt rules, under RSA 541–A, relative to:

(a) Regulation of hazardous materials and wastes and low-level radioactive waste, as authorized by RSA 21–P:17, I.

(b) The administration of the division of state police and fees for criminal record and fingerprint checks, as authorized by RSA 106–B:7.

(c) Gathering information and maintaining records on criminals, as authorized by RSA 106–B:14, I.

(d) Licensing private investigative agencies, security guard services, and bail recovery agents, as authorized by RSA 106–F:3.

(e) The sale, storage, handling and transportation of explosives, as authorized by RSA 158:9–f.

(f) Nonresident pistol permits, as authorized by RSA 159:6.

(g) [Repealed.]

(h) [Repealed.]

(i) Regulation of boats and boaters, as authorized by RSA 270:11.

(j) [Repealed.]

(k) Noise level testing and certification, as authorized by RSA 270:39.

(*l*) Regulation of rafting of boats, as authorized by RSA 270:43.

(m) Regulation of carnival and amusement rides, as authorized by RSA 321–A:2.

(n) Registration fees for carnival or amusement operators, as authorized by RSA 321–A:5, I.

(*o*) Self-dialing alarm systems, as authorized by RSA 370–A:2.

(p) Railroad police, as authorized by RSA 381:11.

(q) [Repealed.]

(r) Qualifications of persons to receive the authority of peace officers under RSA 21–P:4, V.

(s) Qualification for a person to receive the authority granted pursuant to RSA 21–P:4, VII.

(t) [Repealed.]

(u) Application for and issuance of household goods carrier certificates, including all necessary forms, as authorized by RSA 375–A:3 and 375–A:5, IV–V.

(v) Annual reporting requirements, as authorized by RSA 375–A:13.

(w) Regulating household goods carriers, as authorized by RSA 375–A:14.

(x) [Repealed.]

(y) Regulation of common and contract carriers of passengers by motor vehicle, as authorized by RSA 376:21.

(z) The establishment of training criteria for hazardous materials incident responders and for

the implementation of a statewide hazardous material command system. Such rules shall be in addition to rules adopted under RSA 21–P:14, II(a) and shall be adopted after consultation with the fire standards and training commission. No rule shall infringe on the authority of the governor or the office of emergency management under this chapter or RSA 4.

(aa) Vessel registration and numbering under RSA 270–E.

(bb) Administrative fines for inspection stations in violation of any inspection law or rule, as authorized under RSA 266:1, XI.

(cc) Licensing of emergency medical care providers and administration and enforcement of emergency medical and trauma care services under RSA 153–A.

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

(ee) [Repealed.]

III. The commissioner of safety shall adopt rules, under RSA 541–A and RSA 260:5, relative to motor vehicle registration as follows:

(a) Application for and issuance of motor vehicle certificates of title, including all necessary forms, as authorized by RSA 261:1, 261:4, and 261:31, I.

(b) Exemption from the motor vehicle certificate of title requirement, as authorized by RSA 261:3.

(c) Maintaining records of motor vehicle certificates of title, as authorized by RSA 261:7.

(d) Requirements for posting bond when motor vehicle ownership is in doubt, as authorized by RSA 261:10, II.

(e) Certificates of title held by motor vehicle dealers, as authorized by RSA 261:15.

(f) Voluntary and involuntary transfers of interests in a motor vehicle, as authorized by RSA 261:14, 261:16, and 261:17.

(g) Certificates of title for salvage vehicles, as authorized by RSA 261:22.

(h) Issuance of duplicate certificates of title, as authorized by RSA 261:12.

(i) Perfection, assignment, and release of security interests in motor vehicles, as authorized by RSA 261:24–29.

(j) Investigations to procure information relative to motor vehicle certificates of title, as authorized by RSA 261:31, II.

(k) Identification numbers for vehicles, as authorized by RSA 261:31, IV.

(*l*) Fees for issuing certificates of title, as authorized by RSA 261:20.

(m) Application for and issuance of certificates of registration for motor vehicles, including all necessary forms, as authorized by RSA 261:40 and 261:52.

(n) Registration of motor vehicles owned by nonresidents, as authorized by RSA 261:42–48.

(*o*) Maintaining records of certificates of registration, as authorized by RSA 261:58.

(p) Preparation and distribution of registration listings, as authorized by RSA 261:60.

(q) Extension of registration expiration, as authorized by RSA 261:63.

(r) Exemption from the registration requirement for certain construction equipment, as authorized by RSA 261:64.

(s) [Repealed.]

(t) Issuing certificates of registration upon transfer of ownership, as authorized by RSA 261:66.

(u) Procedures for registration by municipal agents, as authorized by RSA 261:74–a-261:74–g.

(v) Issuance of number plates for motor vehicles, as authorized by RSA 261:75–97.

(w) Registration by motor vehicle manufacturers or dealers, including the posting of bond by a dealer, as authorized by RSA 261:97 through RSA 261:111–a.

(x) Registration by motorcycle and moped manufacturers or dealers, as authorized by RSA 261:112–113.

(y) Registration by transporters, as authorized by RSA 261:114–118.

(z) Registration by utility dealers, as authorized by RSA 261:119–122.

(aa) Registration by automotive recycling dealers, as authorized by RSA 261:123–134.

(bb) Registration by motor vehicle repairers, as authorized by RSA 261:136–139.

(cc) Classification of motor vehicles for registration fee purposes, as authorized by RSA 261:143.

(dd) Exemption from registration fees for publicly owned vehicles, as authorized by RSA 261:145, and for emergency vehicles, as authorized by RSA 261:146.

(ee) Refund of registration fees for members of the armed forces, as authorized by RSA 261:68.

(ff) Municipal permits for registration, as authorized by RSA 261:148.

(gg) Exemption from municipal permit fees for certain disabled veterans, as authorized by RSA 261:157 and 261:159; and for nonprofit organizations, as authorized by RSA 261:158.

(hh) Suspension of registrations, licenses, and privileges, as authorized by RSA 261:177 and 261:178.

(ii) Permits for the use of antique motor car registration plates, as authorized by RSA 261:89–a.

IV. The commissioner of safety shall adopt rules, under RSA 541–A and RSA 260:5, relative to licensing drivers as follows:

(a) Procedures for and information required on driver's license applications, including all necessary forms, as authorized by RSA 263:5.

(b) Driver's license examination and reexamination requirements, as authorized by RSA 263:6 and 263:7.

(c) Restricted licenses, as authorized by RSA 263:13.

(d) Conditions and requirements for a driver's license, as authorized by RSA 263:14-263:33–b.

(e) Intrastate licenses for nonresidents, as authorized by RSA 263:39–a.

(f) Access to information regarding anatomical gifts, as authorized by RSA 263:41.

(g) Collection of drivers' license fees, as authorized by RSA 263:42.

(h) Petitions for refund of fees, as authorized by RSA 263:43.

(i) Application and requirements for issuance of motor vehicle drivers' school licenses, as authorized by RSA 263:44–47 and 263:49–51.

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

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

(*l*) Application for and issuance of a vanpooler's permit, as authorized by RSA 376:2, XII.

(m) Commercial driver license requirements, as authorized by RSA 263:98.

(n) Temporary driver's licenses, including procedures for the issuance, revocation, form, and other related matters, as authorized by RSA 263:5–a.

(*o*) Format, content and procedures for the display of the notice required under RSA 260:10–a, II.

(p) Criteria for waiver of the default fee required under RSA 263:56–a, I–a.

(q) Approval of driver attitude programs and fee as provided in RSA 263:56–e.

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

(s) Establishment of administrative procedures to aid in the collection of protested checks relating to drivers' licenses, vehicle registrations, titles, permits or fees, including provisions for suspension of license, registration, title, or permit.

(t) Procedures for conducting the problem driver pointer system search, including forms and procedures to be used in conducting a problem driver pointer search as initiated by an employer.

V. The commissioner of safety shall adopt rules, under RSA 541–A and RSA 260:5, relative to motor vehicle regulation as follows:

(a) Motor vehicle inspection, as authorized by RSA 266:1, I.

(b) School bus inspection, as authorized by RSA 266:7.

(c) School bus design, as authorized by RSA 266:62.

(d) School bus driver certification, as authorized by RSA 263:29.

(e) Proof of financial responsibility, as authorized by RSA 264:1 and 264:2, II.

(f) Forms of security, as authorized by RSA 264:4.

(g) Reports of motor vehicle accidents, as authorized by RSA 264:25.

(h) Licensing of distributors of motor fuels, as authorized by RSA 260:36.

(i) Licensing of transporters of motor fuels and petroleum products, as authorized by RSA 260:42, I.

(j) Reporting requirements for motor fuel distributors and transporters, as authorized by RSA 260:43.

(k) Refunds of road tolls on motor fuels, as authorized by RSA 260:47, 260:48 and 260:49.

(*l*) Licensing of users of special fuels, as authorized by RSA 260:52, V.

(m) Special fuel user bonds.

(n) [Repealed.]

(*o*) Notification of statutory liens, as authorized by RSA 260:63.

(p) Procedures for motor vehicle hearings, including habitual offender hearings.

(q) Procedures for the inspection and verification of oil import records pursuant to RSA 146–A:11–b after consultation with the department of environmental services and the oil fund disbursement board, and pursuant to RSA 147–B:12 after consultation with the department of environmental services.

(r) Procedures and criteria for authorizing the disposal of abandoned vehicles pursuant to RSA 262:36–a.

(s) Issuance of permits for emergency lights for hospital emergency personnel pursuant to RSA 266:78–c, V.

(t) [Repealed.]

(u) School bus driver qualification files, school bus operation and school bus accident reports, as provided in RSA 263:29–a.

VI. The commissioner of safety shall adopt by rule, under RSA 541–A, the fuel tax agreement and any proposed changes to the fuel tax agreement that have been adopted by the legally joined jurisdictions to the agreement.

VII. The commissioner of safety, in consultation with the fire standards and training commission and the emergency medical and trauma services coordinating board, shall adopt rules under RSA 541–A, relative to:

(a) Fees for tuition, services, and licenses under RSA 21–P:12–a and 21–P:12–b.

(b) Tuition reimbursement under RSA 21–P:12–a and 21–P:12–b.

(c) The circumstances in which a waiver may be granted under RSA 21–P:12–a, II(b) and RSA 21–P:12–b, II(m).

VIII. The commissioner of safety, in consultation with the enhanced 911 commission, shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The conduct of the enhanced 911 commission meetings.

(b) The development of minimum selection, educational, and training standards for emergency public safety answering point personnel.

(c) Procedures for the conduct of investigations authorized under RSA 106–H.

(d) Procedures for the collection and updating of the necessary database.

(e) Procedures for the necessary cooperation and coordination with telephone utilities, municipalities, and the public for the effective implementation of the enhanced 911 system.

(f) Procedures necessary for adequate funding of the enhanced 911 system, including coordination with the public utilities commission for appropriate tariff and billing mechanisms.

(g) Procedures necessary to provide for the proper administration of RSA 106–H.

IX. The commissioner of safety shall adopt rules, under RSA 541–A, for the licensing of persons responsible for the use of flame, pyrotechnics, or other means of special effects for entertainment, exhibition, demonstration, or simulation before a proximate audience as regulated by the state fire code adopted under RSA 153:5 and for establishing fees for such licenses.

X. The commissioner of safety shall have authority to approve rules prior to adoption by the mechanical licensing board, as provided in RSA 153:16–b and 153:27–38.

Source. 1987, 124:1; 296:4; 356:4. 1988, 64:21; 151:15, II; 271:6; 288:15. 1989, 230:11; 253:7; 309:4; 319:18; 384:2. 1990, 62:1; 107:1; 190:2; 229:18. 1991, 73:2; 108:1; 347:8. 1992, 163:2; 258:2. 1993, 171:4; 294:2; 337:4, 7. 1994, 184:1; 350:9; 364:8. 1995, 41:3; 85:1; 282:6. 1996, 19:4; 228:10, 11; 292:1, 2, 41, I. 1997, 252:5, I. 1999, 164:2; 345:4. 2001, 91:5; 293:12–14. 2002, 257:6. 2003, 298:1; 319:87, 103. 2004, 247:3; 257:15, II. 2006, 206:2; 216:1; 260:4–6; 317:1. 2007, 230:2. 2008, 249:6; 358:13. 2010, 94:2, 3. 2011, 8:3, eff. June 24, 2011; 224:6, eff. June 29, 2011. 2013, 100:6, II, eff. Aug. 23, 2013; 275:2, 15, III, eff. July 1, 2013. 2015, 142:12, eff. July 1, 2015. 2016, 145:2, I, eff. July 26, 2016; 196:13, eff. Jan. 1, 2017.

TITLE II

COUNTIES

CHAPTER 28

COUNTY COMMISSIONERS

28:7–d Education Money; Unincorporated Towns and Unorganized Places.

I. It shall be the duty of the county commissioners of the counties in which there are located unincorporated towns or unorganized places to provide for the education of all the children residing in those unincorporated towns or unorganized places by establishing standard elementary schools in such towns or places or by furnishing tuition and board or tuition and transportation at some approved public elementary or high school in another district. For the purposes of this section, counties with unincorporated towns or unorganized places shall for those towns and places have the powers granted under RSA 194.

II. The county commissioners shall annually on or before August 1 certify the amount of money deemed necessary to be raised by taxation for the education of all the children residing in the unincorporated towns or unorganized places.

III. The certified amount shall be assessed on the taxpayers of each unincorporated town or unorganized place under RSA 81 on a pro rata basis based upon the actual number of school children who reside in each town or place.

Source. 1989, 266:3, eff. July 1, 1990.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 31

POWERS AND DUTIES OF TOWNS

Corporate Entities

31:1 Public Corporations. Every town is a body corporate and politic, and by its corporate name may sue and be sued, prosecute and defend, in any court or elsewhere.

Source. RS 31:1. CS 32:1. GS 34:1. GL 37:1. PS 40:1. PL 42:1. RL 51:1.

31:2 Parishes. All places incorporated by the name of parishes with town privileges are towns, and are entitled to the privileges, vested with all the powers, and subject to all the liabilities, of towns.

Source. RS 31:2. CS 32:2. GS 34:2. GL 37:2. PS 40:2. PL 42:2. RL 51:2.

Powers

31:3 In General. Towns may purchase and hold real and personal estate for the public uses of the inhabitants, and may sell and convey the same; may recognize unions of employees and make and enter into collective bargaining contracts with such unions; and may make any contracts which may be necessary and convenient for the transaction of the public business of the town.

Source. RS 31:3. CS 32:3. GS 34:3. GL 37:3. PS 40:3. PL 42:3. RL 51:3. RSA 31:3. 1955, 255:1, eff. July 14, 1955.

31:3–a Suits Involving State-Mandated Programs. If legal proceedings have been commenced by a town against the state over whether a state program or responsibility violates the provisions of Part I, Article 28–a of the New Hampshire constitution relative to mandated programs, all penalties or liens which the state may impose on the town for failure to comply with the state program or mandate shall be stayed until the court proceedings are completed. For the purposes of this section, the term "town" shall mean every political subdivision of the state, which shall include any village district, school district, city, county, unincorporated town, or unorganized place.

Source. 1993, 299:1, eff. Jan. 1, 1994.

31:4 Appropriations. Towns may at any legal meeting grant and vote such sums of money as they judge necessary for any purpose for which a municipality may act if such appropriation is not prohibited by the laws or by the constitution of this state.

Source. 1849, 861:1. RS 31:4. CS 32:4. 1862, 2580:3. GS 34:4. 1868, 1:6; 26:1. 1872, 40:1. 1875, 39:1. 1876, 2:1. GL 37:4, 9; 49:10; 50:1. 1883, 69:3. 1889, 7:1; 82:1. PS 40:4. 1891, 1:1. 1895, 29:1. 1897, 23:1. 1899, 13:1, 2; 34:1. 1901, 8:1; 17:1; 54:1. 1905, 18:1. 1909, 73:1. 1911, 81:1; 146:1. 1913, 58:1. 1915, 58:1; 64:1. 1917, 225:1. 1919, 17:1; 41:1. 1923, 27:1, 2. 1925, 11:1. PL 42:4. 1929, 172:1. 1931, 90:1. 1937, 119:2; 133:101. 1939, 20:1; 51:1; 90:1. 1941, 65:1; 74:1. RL 51:4. 1943, 34:1. 1945, 54:1, 2; 106:1. 1947, 130:1. 1949, 42:1; 59:1; 133:3; 161:1. RSA 31:4. 1957, 85:1; 186:1; 287:1. 1961, 81:1; 168:1. 1963, 90:1. 1965, 8:1; 224:1. 1969, 49:1; 125:1; 247:1; 445:1, 2. 1971, 159:1; 310:1, 336:1. 1973, 582:2. 1974, 15:3, 5. 1975, 2:1; 273:1. 1977, 14:1; 263:1. 1979, 156:1. 1983, 187:1, eff. Aug. 10, 1983.

31:4–a Deficit Reduction. Towns may vote, at any annual meeting, to raise such sums of money as the voters judge necessary for the purpose of reducing an accumulated general fund deficit.

Source. 1994, 147:1, eff. July 22, 1994.

31:5 At Special Meetings.

I. (a) No money shall be raised or appropriated or shall any appropriation previously made be reduced or rescinded at any special town meeting except by vote by ballot, nor unless the ballots cast at such meeting shall be equal in number to at least ½ of the number of legal voters borne on the checklist of the town entitled to vote at the annual or biennial election next preceding such special meeting; and such checklist, corrected according to law, shall be used at any meeting upon the request of 10 legal voters of the town. This section shall not apply to money to be raised for the public defense or any military purpose in time of war. In case an emergency arises requiring an immediate expenditure of money, the selectmen may petition the superior court for permission to hold a special town meeting which, if granted, shall give said meeting the same authority as an annual town meeting.

(b) "Emergency" for the purposes of this section shall mean a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt, or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

(c) To verify that an emergency exists, a petitioner shall present, and the court shall consider, a number of factors including:

(1) The severity of the harm to be avoided.

(2) The urgency of the petitioner's need.

(3) Whether the claimed emergency was foreseeable or avoidable.

(4) Whether the appropriation could have been made at the annual meeting.

(5) Whether there are alternative remedies not requiring an appropriation.

II. On or before the date of filing the petition with the superior court, the selectmen shall forward a copy of the petition and the warrant article or articles, by certified mail, to the commissioner of the department of revenue administration. The petition to the superior court shall include a certification that the commissioner of the department of revenue administration has been notified pursuant to this paragraph.

III. In the event that the legislative body at an annual meeting amends or rejects the cost items or fact finder's reports as submitted pursuant to RSA 273–A, notwithstanding paragraphs I and II, the selectmen may call one special meeting for the sole purpose of addressing all negotiated cost items without petitioning the superior court for authorization. Such special meeting may be authorized only by a contingent warrant article inserted on the warrant or official ballot either by petition or by the governing

body. The wording of the question shall be as follows: "Shall (the local political subdivision), if article _____ is defeated, authorize the governing body to call one special meeting, at its option, to address article _____ cost items only?" The refusal of the legislative body to authorize a special meeting as provided in this paragraph shall not affect any other provision of law. Any special meeting held under this paragraph shall be combined with the revised operating budget meeting under RSA 40:13, XI, if any, and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.

IV. When the selectmen vote to petition the superior court for permission to hold a special town meeting, the selectmen shall post notice of such vote within 24 hours after taking the vote and a minimum of 10 days prior to filing the petition with the court. The selectmen shall post notice of the court date for an evidentiary hearing on the petition within 24 hours after receiving notice of the court date from the court. Such notices shall be posted at the office of the selectmen and at 2 or more other conspicuous places in the town, and in the next available edition of a local newspaper with a wide circulation in the town.

Source. 1876, 2:1. 1881, 69:2. PS 40:4. 1917, 161:1. PL 42:5. 1927, 56:1. RL 51:5. 1943, 37:1. RSA 31:5. 1989, 172:1. 1991, 166:1, eff. July 26, 1991. 1997, 317:1, eff. Aug. 20, 1997; 318:1, eff. Aug. 22, 1997. 1998, 55:1, eff. July 4, 1998.

31:5–a Appropriations of Disaster Funds. Notwithstanding RSA 31:5, the selectmen may call a special town meeting to authorize the expenditure of federal funds allocated to the town as a result of a major disaster as declared by the governor and to appropriate the local matching share for such funds. The authorization to expend federal funds and the appropriation of matching funds shall be the only action taken at such meeting. Any special meeting called under this section shall have the same authority as that of an annual town meeting.

Source. 1975, 318:1, eff. Aug. 6, 1975.

31:5–b Legalization of Meetings.

I. In the past, irregularities and procedural defects in actions of municipal legislative bodies have been cured by actions of the general court. The procedure in this section is an alternative approach which enables municipalities to effect legalization by local action.

II. Whenever the legislative body of a municipality has voted by the requisite majority, by written ballot or in any other manner legally authorized, to take any legal actions and the vote is subsequently discovered to be procedurally defective, such defects may be cured and legalized by a vote at a special meeting called for the purpose of ratifying the procedurally defective action. Procedurally defective actions shall mean minor procedural irregularities such as failure to comply with statutory requirements regarding time or place of notice, vote, hearing, or wording, or with any procedural act not contrary to the spirit or intent of the law. The ratification of the procedurally defective action shall be subject to the following requirements:

(a) The municipality may, on the authority of the governing body, call a special town meeting for the exclusive purpose of curing such defect.

(b) The special town meeting called for that purpose may not take place less than 21 calendar days after the original vote.

(c) Not less than 7 calendar days prior to the special town meeting, not counting the day of the special town meeting, the governing body shall conduct a public hearing at which the reasons for the special town meeting shall be explained.

(d) The municipality shall comply with all statutory notice and procedural requirements for holding special town meetings.

(e) The necessary majority required to cure the defects shall be the same as the majority as required for passage of the original article.

III. When any procedural defect has been cured under this section, actions of the voters shall be valid as if all statutorily required proceedings had been complied with.

Source. 1988, 284:1. 1989, 287:1, eff. July 28, 1989.

31:6 For Holidays. City councils may, at any legal meeting, grant and vote money, not exceeding $2,000, for providing municipal Christmas trees or for public patriotic exercises for Memorial Day, Independence Day, Veterans Day or other holidays.

Source. 1909, 77:1. 1921, 42:1. PL 42:6. RL 51:6. RSA 31:6. 1969, 445:3, eff. July 3, 1969.

31:7 Contract With Hospital. The treasurer of any town or city which provides a free hospital bed shall make a contract with the hospital concerning the admission of patients, and the rates, rules and regulations governing such admission shall be approved by the selectmen of towns or the city council of cities before the payment of any money to the hospital.

Source. 1899, 13:3. PL 42:7. RL 51:7.

31:8 Town Officers' Associations. For the encouragement of equitable taxation and the education

of public officials in tax problems and other matters pertaining to the proper and efficient discharge of the duties of their respective offices, each town and city shall pay annually to the New Hampshire Association of Assessing Officials, the New Hampshire City and Town Clerks' Association and the New Hampshire Tax Collectors' Association, such amounts as shall be due for annual membership for its officials therein, providing that the amount paid for any one annual membership hereunder shall not exceed $20. Members of these several organizations in addition to the annual membership fee, shall be entitled to receive their actual expenses incurred in attending the annual convention of their respective associations, the same to be audited by the selectmen of towns and the finance committee of cities and paid out of city and town funds.

Source. 1921, 51:1. PL 42:8. RL 51:8. 1949, 137:1. RSA 31:8. 1963 60:1. 1971, 372:1. 1973, 122:1. 1977, 31:1, eff. May 28, 1977.

31:8–a Authorization to Pay Dues. The board of selectmen may vote to pay, from amounts appropriated by the town for town officers' expenses, such amounts as shall be payable for annual membership in the New Hampshire Municipal Association and expenses incurred in attending regular meetings of the said association, provided that the appropriation of such dues has not previously been rejected by a vote at the annual town meeting and provided further that the association shall not record association positions before the general court or committees thereof on matters which do not directly affect New Hampshire towns and cities, nor engage in partisan political activity by endorsing, or otherwise supporting, any political party or candidate.

Source. 1961, 81:2, eff. June 13, 1961.

31:9 Legislative Counsel. Towns may at any legal meeting authorize the employment by the selectmen of counsel in legislative matters in which the town is directly or indirectly interested, or may ratify the previous employment by the selectmen of such counsel and may grant and vote money therefor.

Source. 1901, 62:1. PL 42:9. RL 51:9.

31:9–a Sponsoring Certain Benefits. A town may at any legal meeting vote to sponsor a group life, accident, medical, surgical and hospitalization insurance benefit or any combination of such benefits for regular employees of the town and their dependents under which plan said employees agree to pay the premiums. In such case the town treasurer is authorized to withhold from the compensation of such employees who agree to such plan the amount of the premiums and pay over the same to the company furnishing such benefits.

Source. 1963, 90:3, eff. July 23, 1963.

31:9–b Time for Payment. All elected and appointed officials of a municipal corporation shall be paid monies due them for services rendered as approved by a vote of the municipality from the time of election, or appointment, to the expiration of the term of office for which they are elected or appointed. Said monies shall be paid after the services have been rendered either weekly, bi-weekly, monthly, quarterly or semi-annually as agreed upon between the governing board and the officials involved. As used in this section the words "municipal corporation" shall mean a town, a village district or a school district, but shall not include a city or county.

Source. 1971, 512:7. 1975, 137:1, eff. Jan. 1, 1976.

31:9–c Lockups. The selectmen of any town, upon petition of 30 or more legal voters of the town, shall provide a suitable lockup for the temporary detention of offenders.

Source. 1874, 53:1. GL 269:25. 1883, 60:1. PS 264:23. PL 378:27. RL 440:26. RSA 570:29. 1973, 532:4, eff. Nov. 1, 1973.

Emergency Borrowing

31:10 When Allowed. Towns may incur indebtedness and issue notes for temporary loans, other than loans in anticipation of taxes, in any case where moneys belonging to them are lost or rendered unavailable through any default, suspension of payment or other casualty. They may proceed in like manner where moneys received for the use of a school or village district, but not yet paid over thereto, are so lost or rendered unavailable.

Source. 1925, 1:1. PL 42:10. RL 51:10.

31:11 Method. The power may be exercised in cities by a ⅔ vote of the city councils. It may be exercised by the selectmen of towns and the governing boards of districts without vote of the voters in town or district meeting. Provided, that no sum in excess of $100,000 shall be so borrowed without vote of the city, town, or district.

Source. 1925, 1:1. PL 42:11. RL 51:11. 2003, 289:3, eff. Sept. 1, 2003.

31:12 Amount; Debt Limit. Loans so effected shall not exceed the amount of the funds so lost or unavailable; and the proceeds thereof shall be held in lieu of such funds and applied to the same uses. The loans shall not be included in determining the authorized borrowing capacity of the municipality.

Source. 1925, 1:1. PL 42:12. RL 51:12.

31:13 Due Date; Refunding. The notes originally issued for such loans shall be payable not later than the tenth day of December following the next annual tax assessment after their issue; but by vote

of the city councils, or at a legal town or district meeting, such notes may be renewed from time to time in whole or in part pending determination of the amount recoverable on account of the funds, or may be refunded in whole or in part by the issue of bonds of the municipality subject in all other respects to the provisions of RSA 33.

Source. 1925, 1:1. PL 42:13. RL 51:13. RSA 31:13. 1963, 151:3, eff. Aug. 18, 1963.

31:14 Recovered Funds. Whenever such municipality recovers any portion of the funds, the net sum so recovered shall be applied to the payment of any balance remaining unpaid on such notes or bonds.

Source. 1925, 1:1. PL 42:14. RL 51:14.

Forestry

31:15 to 31:17 Repealed.

[Repealed 1975, 254:2, eff. Aug. 5, 1975.]

History

Former RSA 31:15 to 31:17, which were derived from 1913, 27:1–3; PL 42:15–17; and RL 51:15–17, related to purchase and management of forests lands and sale of wood and timber therefrom. See now RSA 31:110 et seq.

Public Water Supplies

31:17–a Referendum. Upon the written application of 10 percent of the registered voters in a town, presented to the selectmen or one of them at least 15 days before the day prescribed for an annual town meeting, the selectmen shall insert in their warrant for such meeting an article relative to the use of fluoride in the public water system for said town. If the town has an official ballot, the town clerk shall insert on such ballot the following question: "Shall fluoride be used in the public water system?" Beside this question shall be printed the word "yes" and the word "no" with the proper boxes for the voter to indicate his or her choice. If a majority of those voting in a water system that serves one municipality does not approve the use of fluoride in the public water system, no fluoride shall be introduced into the public water system for said town; or if fluoride has prior to said vote, been introduced, such use shall be discontinued until such time as the majority of those voting in the town approve the use of fluoride. After such popular referendum, the selectmen shall not insert an article relative to the use of fluoride in the public water system in the warrant nor shall such question be inserted on the official ballot for a minimum period of 3 years from the date of the last popular referendum and only upon written application at that time of not less than 10 percent of the registered voters of said town. The procedure for a referendum on the use of fluoride in a town that is part of public water system serving more than one municipality shall be the procedure in RSA 485:14–a.

Source. 1959, 273:1. 1979, 335:1, eff. Aug. 21, 1979. 2004, 225:3, eff. July 1, 2004. 2008, 230:6, eff. Aug. 19, 2008.

Rehabilitation of Property

31:18 Isolated Dwellings; Abandoned or Wasting Real Estate. Whenever a town may find that real estate in said town is in an isolated location and is uneconomic for farm or home use or has been abandoned or allowed to go to waste, said town may at any legal meeting grant and vote such sums as it may judge necessary to purchase or rent said property and for the repair and improvement of any buildings thereon for the purpose of getting said land and buildings back into productive use and shall by vote authorize the selectmen to make such purchase or such improvements and repairs and to use or dispose of said property. The property acquired under the provisions hereof may be used or disposed of for such recreational, forestry or other purposes as the town may deem to be in the public interest, or may be sold at public auction or private sale by the selectmen or their authorized agents when in the opinion of the selectmen such sale would result in increasing the taxable valuation of the town, or be for the public interest.

Source. 1941, 66:1. RL 51:18. 1947, 223:1, eff. June 25, 1947.

Trust Funds

31:19 In General.

I. Towns may take and hold in trust gifts, legacies, and devises made to them for the establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization.

II. Towns may authorize the board of selectmen, or town council if there is one, to accept such trusts without further action by the town.

III. Such authority to accept shall continue in effect for one year from the date of town meeting or action by the town council. The authority to accept trusts may be granted for an indefinite period, in which case the warrant article or vote granting such authority shall use the words, "indefinitely" or "until rescinded" or similar language.

Source. GL 49:7; 50:3. PS 40:5. 1901, 83:1. 1907, 70:1. PL 42:18. 1941, 43:1. RL 51:19, RSA 31:19. 1995, 137:1, eff. May 24, 1995.

31:19–a Trust Funds Created by Towns.

I. A town may at any annual or special meeting grant and vote such sums of money as it deems necessary to create trust funds for the maintenance and operation of the town; and any other public purpose that is not foreign to the town's institution or incompatible with the objects of its organization. The town may appoint agents to expend any funds in the trust for the purposes of the trust. An annual accounting and report of the activities of the trust shall be presented to the selectmen and published in the annual report.

II. Trust funds created pursuant to this section shall be revocable by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be irrevocable, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such fund to the town treasurer.

III. Notwithstanding any other provision of this chapter, any trust fund created under this section shall be subject to the same provisions concerning custody, investment, expenditure, change of purpose, and audit as are reserve funds established under RSA 34:1, 34:1–a, 35:1 or 35:1–c. The legal validity of such a fund properly established shall not be affected by its designation as a "trust," "reserve," "capital reserve," or any other designation.

IV. The local legislative body may authorize the acceptance of privately donated gifts, legacies, and devises to be utilized for the same purposes as a trust fund created under this section; provided, however, that such gifts, legacies, or devises shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:19.

V. A trust fund created under the provisions of this section that is established for the purpose of maintaining health insurance funds for the benefit of employees and retired employees of any town shall be exempt from the provisions of RSA 35:8 or 34:4, and, when so established, the town may name its own trustees who may expend any funds in the trust for the payment of health claims or health insurance premiums for the benefit of any employees or retired employees of the town. An annual accounting and report of the activities of the trust shall be presented to the selectmen and published in the annual report.

Source. 1983, 264:2. 1991, 231:1. 1993, 176:1, 2. 1995, 20:2, 3, eff. June 11, 1995. 1998, 44:1, eff. July 4, 1998.

31:19–b Deferred Compensation Plan Trusts.

I. In this section, "eligible employer" means a governing body of a political subdivision, and any instrumentality whose income is exempt from federal taxation under section 115 of the Internal Revenue Code.

II. All eligible employers are authorized to adopt resolutions establishing deferred compensation plans for their employees under section 457(b) of the Internal Revenue Code; and, further, establishing trusts, custodial accounts, or annuity contracts described in section 401(f) of the Internal Revenue Code to receive all assets and income of deferred compensation plans for the exclusive benefit of employee and retiree participants and their beneficiaries as required by section 457(g) of the Internal Revenue Code.

III. Notwithstanding any other provision of the law to the contrary, all Internal Revenue Code section 457(b) deferred compensation plans adopted and all Internal Revenue Code section 457(g) trusts, accounts, or contracts created by any eligible employer after August 20, 1996, which meet the requirements of this section, are hereby deemed to be qualifying deferred compensation plans under this section.

IV. The eligible employer which establishes a deferred compensation plan trust under section 457(g) of the Internal Revenue Code is hereby authorized to serve as a trustee of such trust and is further authorized to appoint an administrator to administer the deferred compensation plan trust and receive all plan assets and income for such purposes. An administrator may be within or outside the state so long as it administers a deferred compensation plan trust which qualifies as an Internal Revenue Code section 457(b) deferred compensation plan and an Internal Revenue Code section 457(g) trust account or contract. Any appointments made after August 20, 1996 of administrators and investments of plan assets in trusts created by those administrators that meet the requirements of this section are hereby ratified.

V. All amounts deferred under an Internal Revenue Code section 457(b) plan, after a trust has been established, shall be transferred to the trust within a period that is not longer than is reasonably necessary for the proper administration of the accounts of participants. All assets and income held in any deferred compensation plan trust established under this section shall be held, managed, and invested for the exclusive benefit of employee and retiree participants and their beneficiaries and shall not be diverted to

any other purpose including any debt or obligation of the eligible employer under state or federal law.

Source. 1998, 371:1, eff. June 26, 1998.

31:19–c Authorization for Municipalities to Establish OPEB Trusts.

I. The legislative body of a municipality that created, on or before January 1, 2012, an actuarial liability to pay other post-employment benefits (OPEB) to employees or officers after their termination of service may establish an irrevocable trust to pay those benefits. In this section, the term "other post-employment benefits" means employee benefits other than pensions that are received after employment ends, and may include such medical, disability, or other health benefits, as are covered by Statement No. 45 of the Governmental Accounting Standards Board (GASB). The term "trust" means a trust qualified under GASB Statement No. 43.

II. Deposits to any fund under such a trust and any earnings on those deposits shall be irrevocable and shall be held in trust for the exclusive benefit of retirees and their beneficiaries in accordance with the terms of the plans or programs providing other post-employment benefits, except that funds governed by the trust may be withdrawn for other purposes only when an employer's liability owed to former officers or employees for other post-employment benefits has been satisfied or otherwise eliminated pursuant to subparagraph V(b). The assets of any trust created pursuant to this section or in which a municipality participates pursuant to this section shall be exempt from taxation and execution, attachment, garnishment, or any other process. No public officer, employee, or agency shall divert, use, or authorize the use of such funds for any purpose other than as provided in law for other post-employment benefits covered by the trust and administrative expenses.

III. The trustees of any trust created pursuant to this section shall have the full power to invest, reinvest, and manage the assets of the trust. The trustees shall invest the assets of the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The trustees shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. The board of trustees may engage a trust administrator, investment consultants, or other qualified professionals to assist with management and investment of the funds of the trust and may pay for these services out of the funds of the trust.

IV. Trusts created by a municipality pursuant to this section shall by administered by the board of trustees established by the municipality pursuant to RSA 31:22. The accounts of the trustees shall be subject to the auditing and reporting requirements of RSA 31:33. Other provisions of RSA 31:19 through 31:38–a governing trusts shall also apply unless they are contrary to this section.

V. The municipality may withdraw money from the funds of a trust created pursuant to this section only:

(a) As needed to pay other post-employment benefits owed to former officers and employees; or

(b) When all other post-employment benefits liability owed to former officers or employees of the employing entity has been satisfied or otherwise defeased.

Source. 2012, 219:1, eff. July 1, 2012.

31:20 For Cemeteries. Towns shall take and hold in trust gifts, legacies and devises made to them for the care of cemeteries and burial lots when the terms of the gift, legacy or devise do not impose any liability upon the town beyond the amount of the gift, legacy or devise and the income thereof.

Source. GL 49:7; 50:3. PS 40:5. 1901, 83:1. 1907, 70:1. PL 42:19. RL 51:20.

31:21 Funds of Cemetery Associations, etc. Towns may receive from cemetery associations or individuals funds for the care of cemeteries or any lot therein, and the income thereof shall be expended by the town in accordance with the terms of the trust or contract under which the funds were received.

Source. GL 49:7; 50:3. PS 40:5. 1901, 83:1. 1907, 70:1. PL 42:20. RL 51:21.

31:22 Trustees. All such trusts shall be administered by a board of 3 trustees, unless a town at an annual or special town meeting votes that such trusts shall be administered by a board of 5 trustees. In towns with a board of 3 trustees, one trustee shall be elected by a ballot at each annual town meeting for a term of 3 years. In towns with a board of 5 trustees the 2 additional trustees shall be appointed initially by the selectmen, one for one year and one for 2 years. Thereafter all trustees shall be elected by ballot at the annual town meeting to replace those whose terms expire. The term of each trustee shall be 3 years. Vacancies shall be filled by the selectmen for the remainder of the term. The board may recommend to the appointing authority the names of no more than 2 persons who may serve as alternate

members on the board. The alternate members shall be appointed to one-year terms. In cities said trustees shall be chosen and hold their office for such term as shall be provided for by city ordinance. Trustees shall organize by electing one of their number bookkeeper, who shall keep the records and books for the trustees, and shall require a voucher before making any disbursement of funds from said trusts.

Source. 1915, 162:2. PL 42:21. RL 51:22. 1943, 70:1. 1945, 68:1. 1953, 21:1. RSA 31:22. 1979, 141:1, eff. June 5, 1979. 2014, 70:1, eff. July 26, 2014.

31:22–a Cy Pres, Cemetery Trust Funds. Upon petition of a majority of the board of trustees and upon a finding that it is in the public interest, the superior court or the probate court may direct the application of only accumulated excess trust income for the general care, capital improvements to or expansion of the cemetery relative to which the particular trust applies. The court shall determine from the terms of the particular trust whether the excess income accumulation of the particular burial lot trust fund will not be required for the care of the burial lot in the foreseeable future. In determining this requirement the court shall consider:

I. The financial status of the trust account.

II. A projection of future interest rates.

III. A projection of future labor costs necessary to maintain the lot.

Source. 1977, 128:2. 1992, 284:1, eff. Jan. 1, 1993.

31:23 Single Trustee. A town wherein the total book value of trust funds is less than $15,000, acting under an appropriate article in the warrant for any annual town meeting, may vote that the board shall consist of one trustee only, in which case said trustee shall be chosen by ballot at the same and each succeeding annual town meeting; and such vote may be rescinded in like manner. All the duties and obligations imposed by law upon a board of trustees shall devolve upon the trustee so chosen; vacancies shall be filled by the selectmen for the remainder of the year; and said trustee shall receive from the town treasury such compensation as the town meeting may determine.

Source. 1945, 85:1. RSA 31:23. 1983, 264:1, eff. Aug. 17, 1983.

31:24 Trustees; Expenses. The expenses of trustees or the trustee provided for in RSA 31:23 shall be charged as incidental town charges.

Source. 1915, 162:5. PL 42:27. 1941, 43:3. RL 51:29. 1945, 85:3. RSA 31:24. 1973, 544:8. 1979, 376:17, eff. Aug. 22, 1979.

31:25 Custody; Investment. The trustees shall have the custody of all trust funds held by their town. Any person who directly or indirectly receives any such trust funds for deposit or for investment in securities of any kind shall, prior to acceptance of such funds, make available at the time of such deposit or investment an option to have such funds secured by collateral having value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the town depositing or investing such funds. Only securities defined by the bank commissioner, as provided by rules adopted pursuant to RSA 383–B:3–301(e), shall be eligible to be pledged as collateral. The funds shall be invested only in deposits in any federally or state-chartered bank or association authorized to engage in a banking business in this state, or in deposits in any credit union in this state, or in state, county, town, city, school district, water and sewer district bonds and the notes of towns or cities in this state; and such stocks and bonds as are legal for investment by any bank or association chartered by this state to engage in a banking business; and in participation units in the public deposit investment pool established pursuant to RSA 383:22; or in obligations with principal and interest fully guaranteed by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U.S.C. section 80a–1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations. Deposits in a federally or state-chartered bank or association or credit union shall be made in the name of the town which holds the same as a trust, and it shall appear upon the books thereof as a trust fund. Shares of mutual funds are also permitted if they are registered with the Securities and Exchange Commission, qualified for sale in the state of New Hampshire in accordance with the New Hampshire uniform securities act of the New Hampshire secretary of state's office, and which have in their prospectus a stated investment policy which is consistent with the investment policy adopted by the trustees of trust funds in accordance with this chapter, and when so invested, the trustees shall not be liable for the loss thereof. The trustees may retain investments as received from donors, until the maturity thereof. The trustees shall formally adopt an investment policy for all investments made by them or by their agents for any trust funds in their custody in conformance with the provisions of applicable statutes. Such investment policy shall be reviewed and confirmed at least annually. A copy of

the investment policy shall be filed with the attorney general.

Source. 1915, 162:3. 1917, 75:1; 171:1. PL 42:22. 1929, 100:1. 1933, 46:1. 1939, 72:11. 1941, 21:1. RL 51:23. RSA 31:25. 1969, 447:1. 1992, 24:2, II, eff. April 3, 1992. 1996, 209:4, eff. Aug. 9, 1996. 1997, 181:1, eff. Aug. 16, 1997. 2001, 54:1, eff. Jan. 1, 2002. 2007, 164:1, eff. Aug. 17, 2007. 2015, 272:39, eff. Oct. 1, 2015.

31:25–a Retention of Nonlegal Securities. Any security which at the time of its purchase under RSA 31:25 constituted a legal investment for any bank or association chartered by this state to engage in a banking business or for trustees of trust funds under the laws and conditions then existing may be retained notwithstanding the fact that, because of changes in the law relating to legal investments or because of conditions arising subsequent to the purchase of such security, its purchase might not then be legal; provided, however, that no such security that is not a prudent investment under the circumstances existing at the time of its retention and thereafter may be retained by the trustees; and provided further, that the aggregate total of the market value of all securities retained under this section shall not exceed 20 percent of the total market value of all the investments held by the trustees.

Source. 1983, 118:1, eff. May 25, 1983. 1997, 181:2, eff. Aug. 16, 1997. 2001, 54:2, eff. Jan. 1, 2002.

31:25–b Prudent Investment Defined. For purposes of RSA 31:25–a, a prudent investment is one which a prudent man would purchase for his own investment having primarily in view the preservation of the principal and the amount and regularity of the income to be derived therefrom.

Source. 1983, 118:1, eff. May 25, 1983.

31:25–c Report to the Attorney General. The trustees shall report annually to the attorney general any securities retained under the provisions of RSA 31:25–a, which shall appear as an addendum to the annual report required to be filed under RSA 31:38.

Source. 1983, 118:1, eff. May 25, 1983.

31:25–d Application of Prudent Investor Rule. The trustees of trust funds may manage and invest such funds in accordance with the prudent investor rule under RSA 564–B:9–901—RSA 564–B:9–906 without regard to the investment limitations of RSA 31:25 and RSA 31:25–a, provided, however, the trustees of trust funds:

I. Notify the attorney general in writing of their decision to invest according to the prudent investor rule; and

II. Hire or employ the trust department of a bank or a brokerage firm to provide investment advice and assistance under RSA 31:38–a, III.

Source. 2008, 264:1, eff. Aug. 25, 2008.

31:26 Investments by Single Trustee. In towns which have chosen a single trustee of trust funds such funds shall be invested only by deposit in any federally or state-chartered bank or association authorized to engage in a banking business in this state, or in state, county, town, city, school district, water and sewer district bonds and the notes of towns or cities in this state and when so invested the trustee shall not be liable for the loss thereof; and in any common trust fund established by the New Hampshire Charitable Foundation in accordance with RSA 292:23; or in obligations fully guaranteed as to principal and interest by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U.S.C. section 80a–1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations. Deposits in a federally or state-chartered bank or association shall be made in the name of the town which holds the same as a trust, and it shall appear upon the books thereof as a trust fund. Any person who directly or indirectly receives any such trust funds for deposit or for investment in securities of any kind shall, prior to acceptance of such funds, make available at the time of such deposit or investment an option to have such funds secured by collateral having value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the town depositing or investing such funds. Only securities defined by the bank commissioner as provided by rules adopted pursuant to RSA 383–B:3–301(e) shall be eligible to be pledged as collateral. The trustee may retain investments as received from donors until the maturity thereof.

Source. 1945, 85:2. RSA 31:26. 1969, 447:2. 1992, 24:2, III, eff. April 3, 1992. 2001, 54:3, eff. Jan. 1, 2002. 2007, 347:2, eff. Sept. 14, 2007. 2015, 272:40, eff. Oct. 1, 2015.

31:27 Collective Investments. Notwithstanding any statute or rule of law to the contrary, town and city trustees of trust funds may establish, maintain and operate one or more common trust funds, in which may be combined money and property belonging to the various trusts in their care, for the purpose of facilitating investments, providing diversification and obtaining reasonable income; provided however, that said common trust funds shall be limited to the investments authorized in RSA 31:25; provided further, that not more than $10,000, or more than 10 percent of the fund whichever is greater, of any town

or city common trust funds shall be invested under RSA 31:25 in the obligations of any one corporation or organization, excepting deposits in any federally or state-chartered bank or association authorized to engage in a banking business in this state, in credit unions in this state, or in obligations of the United States and of the state of New Hampshire and its subdivisions; or in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in shares of open ended mutual funds selected by the trustees for investment under RSA 31:25, and provided further, that the participating contributory interests of said trusts are properly evidenced by appropriate bookkeeping entries showing on an annual basis the capital contribution of and the profits and income allocable to each trust.

Source. 1951, 227:1, par. 31–a. RSA 31:27. 1959, 253:1. 1969, 447:3. 1992, 24:2, IV, eff. April 3, 1992. 1997, 181:3, eff. Aug. 16, 1997. 2001, 54:4, eff. Jan. 1, 2002.

31:28 Exception. The provisions of RSA 31:27 shall not apply where the instrument creating the particular trust specifically prohibits collective investments or where such investment shall violate any specific court order made in any particular trust.

Source. 1951, 227:1, par. 31–c, eff. Aug. 29, 1951.

31:29 Contributions and Withdrawals. Contribution to any common trust fund shall be made on the basis of its market value at the time such contribution is recorded in the books of the trustees. The withdrawal of a particular trust fund from any common trust fund shall be made proportionately on the basis of the market value of said common trust fund at the time such withdrawal is recorded in the books of the trustees.

Source. 1951, 227:1, par. 31–b, eff. Aug. 29, 1951.

31:30 Liberal Construction of Provisions. The provisions of RSA 31:25, 31:27-29, and 31:28 shall be construed liberally to effectuate the purposes stated in RSA 31:27.

Source. 1951, 227:1, par. 31–e, eff. Aug. 29, 1951.

31:31 Trust Funds for Districts. Except where otherwise specifically provided in the charter of a city or by special act of the legislature whenever a gift, legacy or devise shall be made in trust to a school district, village district or any subdivision of a town and accepted by it, the same shall be held in custody and administered by the trustees of trust funds of such town or in case of districts embracing 2 or more towns by the trustees of trust funds of that town which the voters of said district may elect. The governing body of any such district or subdivision shall expend such district or subdivision trust funds, or the income thereof to be expended, consistently with the terms of the trust. The provisions of RSA 31:32 shall not apply to expenditures of district or subdivision trust funds.

Source. 1941, 43:2. RL 51:24.

31:32 Expenditures. Trust funds, or the income thereof, to be expended, shall be paid to trustees or agents of the town established to carry out the objects designated by such trusts, and, if there be no such trustees or agents, then such expenditures shall be made by the full board of town trustees.

Source. 1915, 162:3. 1919, 96:1. PL 42:23. RL 51:25.

31:33 Audit and Publication of Reports of Trustees.

I. The accounts of the trustees shall be audited annually by the auditor of the town, the securities shall be exhibited to the auditor, and he shall certify the facts found by his audit and the list of all securities held. The trustees shall submit to the auditor a detailed statement of the securities held by them and the particular trust to which they belong, and exhibit to him a statement of all receipts and expenditures with proper vouchers.

II. The legislative body of a town may authorize the printing of the reports of the trustees and of the auditor in summary form rather than in full detail in the annual town report.

III. In a year in which a town accepts gifts, legacies and devises for any trust created, the trustees and auditor shall print the names of the donors and the value of such gifts, legacies and devises at the time of donation in the annual town report.

Source. 1915, 162:3. PL 42:24. RL 51:26. RSA 31:33. 1975, 78:1. 1977, 45:1, eff. June 11, 1977.

31:34 Records. The trustees shall keep a record of all trusts in a record book or maintained in electronic format, which shall be open to the inspection of all persons in their town.

Source. 1915, 162:3. PL 42:25. RL 51:27. 2014, 32:1, eff. July 26, 2014.

31:35 Compensation of Bookkeeper. The bookkeeper of the trustees shall receive such compensation as the town meeting may determine.

Source. 1915, 162:4. PL 42:26. RL 51:28. 1948, 70:2. 1953, 21:2. RSA 31:35. 1983, 264:3, eff. Aug. 17, 1983.

31:36 Deposits. Deposits in any federally or state-chartered bank or association or any credit union shall be made in the name of the town which holds the same in trust, and it shall appear upon the book thereof that the same is a trust fund.

Source. 1915, 162:7. PL 42:28. RL 51:30. 2001, 54:5, eff. Jan. 1, 2002.

31:37 Payment by Towns. Each town shall pay over to the trustees the full amount of its trust funds.

Source. 1915, 162:6. PL 42:29. RL 51:31.

31:38 Reports. A copy of the reports required of the town and city trustees and of the auditor thereof shall be filed annually with the attorney general, the department of revenue administration, and with the governing body of the town or city.

Source. 1951, 227:1, par. 31–d, eff. Aug. 29, 1951. 2014, 32:2, eff. July 26, 2014.

31:38–a Professional Banking and Brokerage Assistance.

I. The provisions of RSA 31:19 through 31:38 as amended shall remain in full force and effect. This section is intended only to provide help to trustees covered by this subdivision by enabling them to have professional banking and brokerage assistance in the performance of their duties as trustees.

II. "Bank" as used in this section means a savings bank, national bank or trust company in this state, any building and loan association or cooperative bank, incorporated and doing business under the laws of this state or any federal savings and loan association located and doing business in this state.

II–a. "Brokerage firm" in this section means a firm registered under the securities law effecting transactions in securities for the accounts of others.

II–b. "Portfolio management department" in this section means the department of a brokerage firm responsible for investment management of client accounts.

II–c. "Investment advisor" in this section means a qualified investment advisory firm registered with the appropriate regulatory authorities. Such firm may or may not be associated with a brokerage firm as defined in paragraph II–a.

III. Any trustee or trustees of trust funds authorized by this chapter may hire or employ the trust department or departments of a bank or banks or a brokerage firm to assist in the management and investment of trust fund resources or to provide bookkeeping services in connection therewith or to do both. They may also place securities in the nominee name of a trust department or departments or a brokerage firm to facilitate transfers for such securities. Trust fund records maintained by any bank or brokerage firm must be available at all times for examination by local auditors, by independent accountants or auditors retained by a municipality, or by the auditors of the department of revenue administration; and such records shall be municipal records and property. In employing such trust departments, portfolio management departments, or investment advisors, the trustees may enter into contracts or agreements delegating the management of such trust funds to those departments subject to investment guidelines adopted by the trustees under applicable statutes and subject to at least quarterly review and approval of such management by the trustees.

IV. Any expenses incurred pursuant to paragraph III of this section by a trustee or trustees of trust funds authorized by this chapter shall be charges against the trust funds involved and shall be identified and reported in the annual report of the trustee or trustees as expenditures out of trust funds made pursuant to RSA 31:38–a, III.

Source. 1977, 214:1. 1983, 107:1, eff. July 23, 1983; 264:4, eff. Aug. 17, 1983. 1996, 209:5-7, eff. Aug. 9, 1996.

Power to Make Bylaws

31:39 Purpose and Penalties.

I. Towns may make bylaws for:

(a) The care, protection, preservation and use of the public cemeteries, parks, commons, libraries and other public institutions of the town;

(b) The prevention of the going at large of horses and other domestic animals in any public place in the town;

(c) The observance of Memorial Day, whereby interference with and disturbance of the exercises for such observance, by processions, sports, games or other holiday exercises, may be prohibited;

(d) Regulation of the use of mufflers upon boats and vessels propelled by gasoline, oil or naphtha and operating upon the waters within the town limits;

(e) The kindling, guarding and safekeeping of fires, and for removing all combustible materials from any building or place, as the safety of property in the town may require;

(f) The collection, removal and destruction of garbage, snow and other waste materials;

(g) Regulating the operation of vehicles, except railroads as common carriers, upon their streets;

(h) Regulating the conduct of public dances;

(i) Regulating the conduct of roller skating rinks;

(j) Regulating the sanitary conditions of restaurants within town limits in accordance with the provisions of RSA 147:1;

(k) Issuing a license for the operation of a restaurant and other food serving establishments

within the town limits and charging a reasonable fee for same;

(*l*) Making and ordering their prudential affairs;

(m) Issuing permits for tattooing facilities and charging a fee for the permit; and

(n) Regulating noise.

(*o*) Requiring the reporting of contributions to, and expenditures by, any candidate or political committee made for the purpose of influencing the election of any candidate for local elective office, or any person or committee for the purpose of influencing the vote on any local ballot or referendum question.

(p) Regulating the retail display and accessibility of martial arts weapons including throwing stars, throwing darts, nunchaku, blow guns, or any other objects designed for use in the martial arts that are capable of being used as lethal or dangerous weapons.

II. Towns may appoint all such officers as may be necessary to carry the bylaws into effect.

III. Towns may enforce the observance of the bylaws by suitable penalties not exceeding $1,000 for each offense to enure to such uses as the town may direct.

Source. RS 31:6, 7. 1845, 242:1. CS 32:6, 7, 8. GS 34:5, 6, 7; 45:5. GL 37:5, 6, 7; 49:6. PS 40:7, 8. 1901, 5:1. 1909, 94:1. 1919, 86:3. 1925, 140:1. PL 42:30. 1937, 84:1. RL 51:32. 1949, 133:4. RSA 31:39. 1969, 68:1. 1971, 93:1; 512:8. 1981, 211:1. 1983, 166:1. 1985, 71:1. 1993, 306:1, eff. Aug. 22, 1993. 2007, 43:1, eff. July 20, 2007. 2010, 263:1, eff. July 6, 2010.

31:39–a Conflict of Interest Ordinances. The legislative body of a town or city may adopt an ordinance defining and regulating conflicts of interest for local officers and employees, whether elected or appointed. Any such ordinance may include provisions requiring disclosure of financial interests for specified officers and employees, establishing incompatibility of office requirements stricter than those specified by state law or establishing conditions under which prohibited conflicts of interest shall require removal from office. Any such ordinance shall include provisions to exempt affected officers and employees who are in office or employed at the time the ordinance is adopted for a period not to exceed one year from the date of adoption. The superior court shall have jurisdiction over any removal proceedings instituted under an ordinance adopted under this section.

Source. 1981, 221:1, eff. Aug. 10, 1981.

[There is no RSA 31:39–b.]

31:39–c Administrative Enforcement of Ordinances. Notwithstanding any other provision of law, a town may use the following provisions in the enforcement of its ordinances and regulations:

I. Any town may establish, by ordinance adopted by the legislative body, a system for the administrative enforcement of violations of any municipal code, ordinance, bylaw, or regulation and for the collection of penalties, to be used prior to the service of a formal summons and complaint. Such a system may be administered by a police department or other municipal agency. The system may include opportunities for persons who do not wish to contest violations to pay such penalties by mail. The system may also provide for a schedule of enhanced penalties the longer such penalties remain unpaid; provided, however, that the penalty for any separate offense shall in no case exceed the maximum penalty for a violation as set forth in RSA 31:39, III.

II. A written notice of violation containing a description of the offense and any applicable schedule of penalties, delivered in person or by first-class mail to the last-known address of the offender, shall be deemed adequate service of process for purposes of any administrative enforcement system established under paragraph I.

III. If the administrative enforcement system established under paragraph I is unsuccessful at resolving alleged violations, or in the case of a town that has not established such a system, a summons may be issued as otherwise provided by law, including use of the procedure for plea by mail set forth in RSA 31:39–d.

Source. 2009, 270:1, eff. Jan. 1, 2010.

31:39–d Local Ordinance Citations; Pleas by Mail. In addition to any other enforcement procedure authorized by law, and regardless of whether a town has adopted an administrative enforcement procedure under RSA 31:39–c, a local official with authority to prosecute an offense under any municipal code, ordinance, bylaw, or regulation, if such offense is classified as a violation under applicable law, may issue and serve upon the defendant, in addition to a summons to appear in the district court, a local ordinance citation as set forth in this section. The defendant receiving such a citation may plead guilty or nolo contendere by mail by entering that plea as provided herein. If such a plea is accepted by the district court and the prescribed fine is paid with the plea by mail, the defendant shall not be required to appear personally or by counsel; otherwise the de-

fendant shall appear as directed by the court. The following procedure shall be used:

I. Notwithstanding any other provision of law, a complaint and summons may be served upon the defendant by postpaid certified mail, return receipt requested. Return receipt showing that the defendant has received the complaint and summons shall constitute an essential part of the service. If service cannot be effected by certified mail, then the court may direct that service on the defendant be completed as in other violation complaints.

II. The local ordinance citation shall contain:

(a) The caption: "Local Ordinance Citation, Town (City) of _____".

(b) The name of the offender, and address if known to the prosecuting official.

(c) The code, ordinance, bylaw, or regulation the offender is charged with violating.

(d) The act or circumstances constituting the violation.

(e) The place of the violation.

(f) The date, if any, upon which the offender received written notice of the violation by the municipality.

(g) The time and date, if any, upon which any further violation or continuing violation was witnessed subsequent to such written notice.

(h) The amount of the penalty that is payable by the offender. If the offense is a continuing one for which a penalty is assessed for each day the offense continues, the amount of the penalty shall be based on the number of days the violation has continued since the time notice was given to the offender, up to a maximum of 10 days' violation charged in one citation.

(i) Instructions informing the defendant that the defendant may answer the citation by mail or may personally appear in court upon the date on the summons, and instructing the defendant how to enter a plea by mail, together with either the amount of the penalty specified in the citation, or a request for a trial.

(j) The address of the clerk of the district court where the plea by mail may be entered.

(k) A warning to the defendant that failure to respond to the citation on or before the date on the summons may result in the defendant's arrest as provided in paragraph V.

(*l*) The signature of the prosecuting official.

III. Defendants who are issued a summons and local ordinance citation and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the civil penalty, as set forth in the citation, to the clerk of the court prior to the arraignment date, or shall appear in court on the date of arraignment.

IV. Civil penalties collected by the district court under this section shall be remitted to the municipality issuing the citation. Whenever a defendant (a) does not enter a plea by mail prior to the arraignment day and does not appear personally or by counsel on or before that date or move for a continuance; or (b) otherwise fails to appear for a scheduled court appearance in connection with a summons for any offense, the defendant shall be defaulted and the court shall determine what the civil penalty would be upon a plea of guilty or nolo contendere and shall impose an administrative processing fee in addition to the civil penalty. Such fee shall be the same as the administrative processing fee under RSA 502–A:19–b, and shall be retained by the court for the benefit of the state.

V. The court may, in its discretion, issue a bench warrant for the arrest of any defendant who:

(a) Is defaulted in accordance with the provisions of paragraph IV of this section;

(b) Fails to pay a fine or other penalty imposed in connection with a conviction for a violation of a local code, ordinance, bylaw, or regulation which a court has determined the defendant is able to pay, or issues a bad check in payment of a fine or other penalty; or

(c) Fails to comply with a similar order on any matter within the court's discretion.

VI. For cause, the court in its discretion may refuse to accept a plea by mail and may impose a fine or penalty other than that stated in the local ordinance citation. The court may order the defendant to appear personally in court for the disposition of the defendant's case.

VII. The prosecuting official may serve additional local ordinance citations, without giving additional written notice or appeal opportunity under paragraph I, if the facts or circumstances constituting the violation continue beyond the date or dates of any prior citation. A plea of guilty or nolo contendere to the prior citation shall not affect the rights of the defendant with respect to a subsequent citation.

VIII. Forms and rules for the local ordinance citation and summons shall be developed and adopted by the New Hampshire supreme court.

IX. This section is not intended in any way to abrogate other enforcement actions or remedies in the district or superior court, nor to require written notice as a prerequisite to other types of actions or remedies for violations of local codes, ordinances, bylaws, or regulations.

IX–a. For any offense that is subject to enforcement under RSA 676:17, a person who fails to respond to a citation under this section within the time stated in the citation shall be subject to the subsequent offense penalties of RSA 676:17.

X. This section shall not apply to violations of the New Hampshire building code as defined in RSA 155–A:1, IV, or to motor vehicle offenses under title XXI or any local law enacted thereunder.

Source. 2009, 270:1, eff. Jan. 1, 2010. 2014, 77:1, 2, eff. Jan. 1, 2015.

31:40 Taxicabs. Towns within which any taxicab shall be operated shall have the power to make bylaws relating to the licensing of such vehicles therein, fixing reasonable license fees therefor, and requiring proof of reasonable insurance or bond for the protection of passengers riding therein, and failure to conform to such bylaws shall constitute a violation and any fines collected hereunder shall inure to such uses as said towns may direct. The word "taxicabs" as used in this section shall mean any rubber-tired motor vehicle, having a manufacturers rated capacity of not more than 7 passengers, used in the call and demand transportation of passengers for compensation to or from points chosen or designated by the passengers and not operated on a fixed schedule, between fixed termini, or any such vehicle leased or rented, or held for leasing or renting, with or without driver or operator.

Source. 1943, 146:1. RSA 31:40. 1973, 531:4, eff. Oct. 31, 1973 at 11:59 p.m.

31:41 Open-Air Motion Picture Theatres. Towns shall have the power to make bylaws relating to the regulation and licensing of open-air motion picture theatres within the limits of the town, and may fix reasonable fees for the operation of said theatres, and failure to conform to such bylaws shall constitute a violation and any fines collected hereunder shall inure to such uses as said towns may direct.

Source. 1949, 252:1, par. 32–b. RSA 31:41. 1973, 531:5, eff. Oct. 31, 1973 at 11:59 p.m.

31:41–a Motor Vehicle Race Tracks. Towns shall have the power to make bylaws relating to the regulation and licensing of motor vehicle race tracks within the limits of the town, and may fix fees not to exceed $100 annually for the operation of such race tracks, and failure to observe such bylaws shall constitute a violation and any fines collected hereunder shall inure to such uses as said towns may direct. For the purposes of this section, a motor vehicle shall be defined as any self-propelled vehicle, except tractors, activated by an internal combustion engine and not operated exclusively on stationary tracks.

Source. 1967, 149:1. 1973, 531:6, eff. Oct. 31, 1973 at 11:59 p.m.

31:41–b Hazardous Embankments. Towns shall have the power to make bylaws regulating hazardous embankments, including the removal, stabilization, or fencing thereof, for the protection of the health and safety of the public. Whoever violates any such bylaw shall be guilty of a violation for each offense and the penalty therefor shall inure to such uses as the town may direct. Regulation of "excavation" as defined in RSA 155–E:1, II shall be in accordance with RSA 155–E, but any hazardous embankment resulting from excavation, whether undertaken prior to, on, or after August 4, 1989, may be subject to bylaws made under the authority of this section.

Source. 1971, 212:1. 1973, 531:7. 1989, 363:16. 1991, 310:2, eff. Aug. 23, 1991.

31:41–c Electioneering. Towns shall have the power to make bylaws regulating the distribution of campaign materials or electioneering or any activity which affects the safety, welfare and rights of voters at any election held for any purpose in such town. Such power shall not extend to the display of printed or written matter attached to any legally parked motor vehicle, nor shall such power extend to activities conducted wholly on private property so as not to interfere with people approaching or entering a polling place. Failure to conform to bylaws adopted under this section shall constitute a violation. A copy of the bylaws adopted under this section shall be provided to the town clerk immediately following adoption so that they may be made available to candidates filing for office, and shall be posted at each polling place at least 72 hours in advance of any town election.

Source. 1981, 298:1. 1989, 272:1, eff. July 25, 1989. 1997, 243:1, eff. Aug. 18, 1997.

31:41–d Pinball Machines and Coin Operated Amusements. Towns may adopt bylaws regulating and licensing the location and operation of coin operated amusement devices, including pinball machines. Bylaws may include, without limitation because of enumeration, provisions governing: hours of operation; use by persons under a specified age; numbers of devices allowed; reasonable license fees; and parking and building requirements. Any person who violates such a bylaw shall be guilty of a violation.

Source. 1981, 517:1, eff. Aug. 28, 1981.

31:41–e Drug-Free Zones; Public Housing Authorities. A town may adopt bylaws establishing as a drug-free zone any area inclusive of public housing authority property and within 1,000 feet of such public housing authority property. Any person violating such bylaw shall be guilty of a violation, in addition to any penalties imposed under RSA 318–B. If such drug-free zones are established, the town shall publish a map clearly indicating the boundaries of such drug-free zone, which shall be posted in a prominent place in the district or municipal court of jurisdiction, the local police department, and on the public housing authority property. The town shall also develop signs or markings for the drug-free zone which shall:

I. Be posted in one or more prominent places in or near the public housing authority property; and

II. Indicate that the posted area is a drug-free zone which extends to 1,000 feet surrounding such property; and

III. Warn that a person who violates RSA 318–B, the controlled drug act, within the drug-free zone, shall be subject to severe criminal penalties under RSA 318–B and a penalty of up to $1,000 under this section.

Source. 1991, 364:6, eff. Jan. 1, 1992.

31:42 Regulation by Selectmen. Prior to adoption of bylaws by a town under RSA 31:41, 41–a or 41–d, the selectmen may regulate the operation of open-air motion picture theatres, motor vehicle race tracks or coin operated amusement devices within the limits of the town and fix reasonable fees for such operation. Such regulations made by the selectmen shall be effective only until the next annual town meeting. Nothing herein contained shall be deemed to prohibit the town from adopting bylaws in accordance with RSA 31:41, 41–a, or 41–d, at any special town meeting, which shall supersede any regulations made by the selectmen.

Source. 1949, 252:1, par. 32–c. RSA 31:42. 1967, 149:2. 1981, 517:2, eff. Aug. 28, 1981.

31:43 When in Force. Bylaws adopted by any town without limitation shall continue in force until altered or annulled by vote of the town or bylaw.

Source. RS 31:8. CS 32:9. GS 34:8. GL 37:8. PS 40:12. PL 42:31. RL 51:33.

Curfew Regulations

31:43–a Adoption of Curfew Law. Any city by vote of its city council, and any town at any meeting, may adopt the provisions of this subdivision.

Source. 1913, 172:1. PL 379:8. RL 441:8. RSA 571:8. 1973, 532:7, eff. Nov. 1, 1973.

31:43–b City of Rochester. The city of Rochester may, in like manner as this subdivision was adopted, rescind such adoption, or suspend the operation of the provisions of this subdivision in said city during such period of the year as it may designate.

Source. 1963, 182:1. RSA 571:8–a. 1973, 532:7, eff. Nov. 1, 1973.

31:43–c Minors under 16. In all such cities and towns it shall be unlawful for any minor under the age of 16 years to be upon any public street, or in any public place, after the hour of 9 o'clock in the evening, unless accompanied by a parent, guardian, or other suitable person.

Source. 1913, 172:1. PL 379:9. RL 441:9. RSA 571:9. 1973, 532:7, eff. Nov. 1, 1973.

31:43–d Curfew Signal. Whistles which can be heard in every part of the city, town, or village shall be blown, or bells shall be rung at the appointed time, and shall be called the curfew signal, after which all children under 16 years of age shall be required to be off the street, except they are in company of a parent, guardian, or other suitable adult person.

Source. 1913, 172:3. PL 379:10. RL 441:10. RSA 571:10. 1973, 532:7, eff. Nov. 1, 1973.

31:43–e Penalty, Custodian. Any parent, guardian, or person having the control of any minor under the age of 16 years who shall permit any such minor to be upon any public street or in any public place in any such city or town, in violation of this subdivision, shall be guilty of a misdemeanor.

Source. 1913, 172:2. PL 379:11. RL 441:11. RSA 571:11. 1973, 532:7, eff. Nov. 1, 1973.

31:43–f Penalty, Minors. For the first violation of this subdivision by any child it shall be taken to its home by the officers, and the parents or guardian shall be notified of the penalty for any subsequent violation.

Source. 1913, 172:4. PL 379:12. RL 441:12. RSA 571:12. 1973, 532:7, eff. Nov. 1, 1973.

31:43–g Second Offense. Upon any subsequent violation by any child said parents or guardians shall be guilty of a misdemeanor.

Source. 1913, 172:4. PL 379:13. RL 441:13. RSA 571:13. 1973, 532:7, eff. Nov. 1, 1973.

Public Playgrounds

31:44 to 31:50–a Repealed.

[Repealed 1979, 185:2, eff. Aug. 5, 1979.]

History

Former RSA 31:44, which was derived from 1917, 86:1; PL 42:32; 1927, 98:1; 1937, 75:1; RL 51:34; and 1945, 120:1, related to

establishment and management of public playgrounds. See now RSA 35–B:1.

Former RSA 31:45, which was derived from 1917, 86:2; PL 42:33; 1939, 100:1; and RL 51:35, related to tax. See now RSA 35–B:2.

Former RSA 31:46, which was derived from 1917, 86:3; PL 42:34; and RL 51:36, related to officials authorized to exercise the powers conferred by RSA 31:44. See now RSA 35–B:3.

Former RSA 31:47, which was derived from 1917, 86:5; PL 42:35; 1929, 146:1; and RL 51:37, related to members of a recreation commission. See now RSA 35–B:4.

Former RSA 31:48, which was derived from 1917, 86:5; PL 42:36; and RL 51:38, related to organization and rulemaking authority of a recreation commission. See now RSA 35–B:5.

Former RSA 31:49, which was derived from 1917, 86:7, 9; PL 42:37; and RL 51:39, related to use of public property. See now RSA 35–B:6.

Former RSA 31:50, which was derived from 1917, 86:7; PL 42:38; and RL 51:40, related to refusal of use of public property. See now RSA 35–B:6.

Former RSA 31:50–a, which was derived from 1961, 118:1, related to cooperative arrangements between towns. See now RSA 35–B:7.

Powers as to Shade and Ornamental Trees

31:51 Regulations. Towns may make regulations from time to time for the planting, protection and preservation of the shade and ornamental trees situated upon any lands within the limits of the town appropriated to public uses.

Source. 1861, 2502:1. GS 34:9. 1868, 1:6. GL 37:9. 1889, 82:1. PS 40:9. PL 42:39. RL 51:41.

31:52 Rights of Owners. Nothing in this subdivision shall be construed to deprive the owner of real estate of the right to plant, rear and protect any tree between the carriage path and sidewalk in any public street or highway on which his estate is situate, if it does not interfere with the public travel.

Source. 1861, 2502:3. GS 34:11. GL 37:11. PS 40:11. PL 42:40. RL 51:42.

Mobs or Riots

31:53 Town's Liability.

[Repealed 1994, 25:1, I, eff. June 21, 1994.]

History

Former RSA 31:53, which was derived from 1854, 1519:1; GS 34:12; GL 37:12; PS 40:13; PL 42:41; and RL 51:43, related to a town's liability for damages by a riotous mob.

31:54 Limitation.

[Repealed 1994, 25:1, II, eff. June 21, 1994.]

History

Former RSA 31:54, which was derived from 1854, 1519:2; GS 34:13; GL 37:13; PS 40:14; PL 42:42; and RL 51:44, related to a limitation on a town's liability for damages by a riotous mob.

31:55 Recovery Over.

[Repealed 1994, 25:1, III, eff. June 21, 1994.]

History

Former RSA 31:55, which was derived from 1854, 1519:4; GS 34:15; GL 37:15; PS 40:15; PL 42:43; and RL 51:45, related to a town's ability to recover sums paid out for damages by a riotous mob.

31:56 Use of Militia. The mayor of any city and the selectmen of any town are authorized, at the expense of the city or town, to call out sufficient military force to suppress or prevent a mob riot within its limits.

Source. 1854, 1519:3. GS 34:14. GL 37:14. PS 40:16. PL 42:44. RL 51:46.

Pensions

31:57 To Whom Payable; Maximum. Towns may grant pensions to any fireman, police officer, or constable, who, by reason of permanent disability directly incurred in the performance of his official duty, is no longer able to perform services in such capacity, or who has served faithfully for not less than 25 years; provided that no pension shall be granted for more than one year at a time. The maximum amount of such pension shall be in the case of a permanent man ½ of the pay received by him at the time of his retirement or disability, and in case of a part-time man, call man or special man, $2,500.

Source. 1907, 85:1, 2. 1911, 107:1. PL 42:45. 1927, 17:1. RL 51:47. RSA 31:57. 1965, 144:1. 1973, 63:1, eff. June 1, 1973.

31:58 Adoption of Provisions. The provisions of the foregoing section may be adopted by any town by a major vote of the legal voters thereof at any regular election duly warned and holden therein in the warrant for which due notice is given of the intention to act upon the matter. At such election the following question shall be submitted to the voters: "Are you in favor of adopting the law to provide a pension for firemen, police officers, and constables?" Said provisions may be adopted by any city by major vote of the city councils.

Source. 1907, 85:3. 1909, 115:1. PL 42:46. RL 51:48.

31:59 Administration. When such provisions have been adopted the city councils of the city or the selectmen of the town shall thereafter, under such regulations and restrictions and subject to such provisions as they may by vote or ordinance prescribe, grant pensions as herein authorized.

Source. 1907, 85:4. PL 42:47. RL 51:49.

Town Central Purchasing Department

31:59–a Authority Granted. Any town at an annual meeting, under an article in the warrant for said meeting, may vote to establish a central purchasing department for said town.

Source. 1959, 111:1, eff. July 19, 1959.

31:59–b Purchasing Agent. If the town shall vote to establish such a department the selectmen shall appoint a purchasing agent for said town. Said

agent shall be a resident of the town at the time of his appointment. He shall purchase all supplies for any agency of said town and may establish rules and regulations for competitive bidding for said purchases.

Source. 1959, 111:1, eff. July 19, 1959.

31:59–c Definitions. As used in this subdivision the following terms shall be construed as follows:

I. "Supplies" shall mean and include all materials, equipment, printing, furniture, furnishings of every name and nature.

II. "Purchase" shall mean and include all contracts for the purchase of supplies, as well as the act of purchasing.

Source. 1959, 111:1, eff. July 19, 1959.

31:59–d Application of Subdivision. In any town which has voted to establish a purchasing department as provided in this subdivision the authority of any official or board to make purchases shall be suspended during the time said provisions are in effect. Nothing in this subdivision shall be construed as affecting in any way a school district, or the purchase of supplies therefor, located in a town which has voted to establish a purchasing department for the town.

Source. 1959, 111:1, eff. July 19, 1959.

Zoning Regulations

31:60 to 31:89 Repealed.

[Repealed 1983, 447:5, I, eff. Jan. 1, 1984.]

History

Former RSA 31:60, which was derived from 1925, 92:1; PL 42:48; RL 51:50; RSA 31:60; and 1969, 249:1, related to grant of regulatory power. See now RSA 674:16.

Former RSA 31:60–a, which was derived from 1982, 40:2, related to regulation of unvented space heaters.

Former RSA 31:61, which was derived from 1925, 92:2; PL 42:49; and RL 51:51, related to zoning districts. See now RSA 674:20.

Former RSA 31:61–a, which was derived from 1981, 523:1, related to innovative land use controls. See now RSA 674:21.

Former RSA 31:62, which was derived from 1925, 92:3; PL 42:50; RL 51:52; and 1951, 203:2, related to purposes of zoning regulations. See now RSA 674:17.

Former RSA 31:62–a, which was derived from 1979, 139:1, related to growth management and timing of development. See now RSA 674:22.

Former RSA 31:62–b, which was derived from 1979, 139:1, related to interim regulation of growth management. See now RSA 674:23.

Former RSA 31:63, which was derived from 1925, 92:4; PL 42:51; RL 51:53; 1949, 110:1; RSA 31:63; 1963, 5:1; and 1975, 11:1, related to method of enacting zoning regulations in cities. See now RSA 675:2.

Former RSA 31:63–a, which was derived from 1963, 5:2; 1965, 318:1; 1967, 216:1; 1975, 11:2; and 1979, 81:1, 329:1, related to method of enacting zoning regulations in towns and village districts. See now RSA 675:3.

Former RSA 31:63–b, which was derived from 1967, 216:1, related to petitions to amend zoning ordinances. See now RSA 675:4.

Former RSA 31:63–c, which was derived from 1971, 396:2, related to abolishing planning boards or zoning commissions. See now RSA 673:18.

Former RSA 31:64, which was derived from 1925, 92:5; PL 42:52; RL 51:54; RSA 31:64; 1965, 318:2; and 1977, 413:1, related to amendment and repeal of zoning regulations. See now RSA 675:5.

Former RSA 31:65, which was derived from 1925, 92:6, PL 42:53; and RL 51:55, related to zoning commissions.

Former RSA 31:66, which was derived from 1925, 92:7; PL 42:54; and RL 51:56, related to establishment and powers of boards of adjustment. See now RSA 673:1, 674:33.

Former RSA 31:67, which was derived from 1925, 92:7; PL 42:55; 1933, 36:1; and RL 51:57, related to members of boards of adjustment. See now RSA 673:3, 5, 12, 13.

Former RSA 31:67–a, which was derived from 1973, 505:1 and 1975, 100:1, related to alternate members of boards of adjustment. See now RSA 673:11, 12, 13.

Former RSA 31:68, which was derived from 1925, 92:7; PL 42:56; RL 51:58; RSA 31:68; and 1981, 508:1, related to meetings of boards of adjustment. See now RSA 673:10, 15, 17.

Former RSA 31:69, which was derived from 1925, 92:7; PL 42:57; and RL 51:59, related to appeals to boards of adjustment. See now RSA 676:5.

Former RSA 31:70, which was derived from 1925, 92:7; PL 47:58; and RL 51:60, related to effect of appeal to board of adjustment. See now RSA 676:6.

Former RSA 31:71, which was derived from 1925, 92:7; PL 42:59; RL 51:61; RSA 31:71; 1973, 422:1; and 1981, 380:1, related to hearings before boards of adjustment. See now RSA 676:7.

Former RSA 31:72, which was derived from 1925, 92:7; PL 42:60; 1941, 2:1; and RL 51:62, related to powers of boards of adjustment. See now RSA 674:33.

Former RSA 31:73, which was derived from 1933, 36:2 and RL 51:63, related to disqualification of members of boards of adjustment. See now RSA 673:14.

Former RSA 31:74, which was derived from 1925, 92:7; PL 42:61; RL 51:64; 1949, 278:1; RSA 31:74; 1973, 341:1; and 1977, 266:1, related to motion for rehearing of board of adjustment decision. See now RSA 677:2.

Former RSA 31:75, which was derived from 1925, 92:7; PL 42:62; RL 51:65; and 1949, 278:1, related to contents of motion for rehearing of board of adjustment decision. See now RSA 677:3.

Former RSA 31:76, which was derived from 1949, 278:2, related to action on motion for rehearing of board of adjustment decision. See now RSA 677:3.

Former RSA 31:77, which was derived from 1949, 278:2; RSA 31:77; 1967, 233:1; and 1979, 121:1, related to appeal from decision on motion for rehearing of board of adjustment decision. See now RSA 677:4.

Former RSA 31:77–a, which was derived from 1975, 405:1, related to priority of appeal from board of adjustment decision. See now RSA 677:5.

Former RSA 31:78, which was derived from 1949, 278:2; RSA 31:78; and 1979, 121:2, related to burden of proof on appeal from board of adjustment decision. See now RSA 677:6.

Former RSA 31:79, which was derived from 1949, 278:2, related to parties to appeal from board of adjustment decision. See now RSA 677:7.

Former RSA 31:80, which was derived from 1949, 278:2, related to certified copy of record on appeal from board of adjustment decision. See now RSA 677:8.

Former RSA 31:81, which was derived from 1949, 278:2, related to restraining orders. See now RSA 677:9.

Former RSA 31:82, which was derived from 1949, 278:2, related to the consideration of evidence. See now RSA 677:10.

Former RSA 31:83, which was derived from 1949, 278:2, related to judgment on appeal from board of adjustment decision. See now RSA 677:11.

Former RSA 31:84, which was derived from 1925, 92:7; PL 42:63; and RL 51:66, related to compliance with court order to send up the record. See now RSA 677:12.

Former RSA 31:85, which was derived from 1925, 92:7; PL 42:64; and RL 51:67, related to hearing on appeal of board of adjustment decision. See now RSA 677:13.

Former RSA 31:86, which was derived from 1925, 92:7; PL 42:65; and RL 51:68, related to allowance of costs of appeal from board of adjustment decision. See now RSA 677:14.

Former RSA 31:87, which was derived from 1925, 92:7; PL 42:66; and RL 51:69, related to speedy hearings.

Former RSA 31:88, which was derived from 1925, 92:8; PL 42:67; RL 51:70; RSA 31:88; and 1977, 350:1, related to remedies for violations.

Former RSA 31:89, which was derived from 1925, 92:9; PL 42:68; and RL 51:71, related to conflicting provisions. See now RSA 676:14.

Authority to Establish Historic Districts

31:89–a to 31:89–*l* Repealed.

[Repealed 1983, 447:5, I, eff. Jan. 1, 1984.]

History

Former RSA 31:89–a, which was derived from 1963, 178:1, related to purposes. See now RSA 674:45.

Former RSA 31:89–b, which was derived from 1963, 178:1, related to authority to establish and regulate historic districts. See now RSA 674:46.

Former RSA 31:89–bb, which was derived from 1973, 95:1, related to abolition of historic districts. See now RSA 674:47.

Former RSA 31:89–c, which was derived from 1963, 178:1, related to creation of historic district commissions. See now RSA 673:1.

Former RSA 31:89–d, which was derived from 1963, 178:1; 1974, 44:3; and 1981, 262:1, related to members of historic district commissions. See now RSA 673:4, 5, 12.

Former RSA 31:89–e, which was derived from 1963, 178:1, related to organization, meetings and rules of historic district commissions. See now RSA 673:8, 9, 10, 17.

Former RSA 31:89–f, which was derived from 1963, 178:1, related to powers and duties of historic district commissions. See now RSA 674:46–a.

Former RSA 31:89–g, which was derived from 1963, 178:1, related to interpretation of statutes relating to historic districts. See now RSA 674:48.

Former RSA 31:89–h, which was derived from 1963, 178:1, related to appeals from historic district commission decisions. See now RSA 677:17, 18.

Former RSA 31:89–i, which was derived from 1963, 178:1, related to separability of statutes relating to historic districts.

Former RSA 31:89–j, which was derived from 1963, 178:1, related to enforcement through zoning ordinances.

Former RSA 31:89–k, which was derived from 1969, 169:1 and 1971, 160:1, related to enforcement by historic district commissions. See now RSA 676:10.

Former RSA 31:89–*l*, which was derived from 1969, 169:1, related to remedies for violations. See now RSA 674:50.

Miscellaneous

31:90 Stock Voting. The selectmen of any town holding stock in any railroad as trustee or otherwise are authorized to vote thereon at all meetings of such corporation, and may appoint, in writing, an agent for that purpose.

Source. 1864, 2890:5. GS 34:20. GL 37:17. PS 40:18. Const., Art. 5. PL 42:69. RL 51:88.

31:91 Soliciting Funds. The right to grant permits for soliciting funds for charitable purposes and for the sale of tags, flowers or other objects for charitable purposes shall be vested in the mayor and aldermen of a city or the selectmen of towns.

Source. 1923, 121:1. PL 42:70. RL 51:89. RSA 31:91. 1955, 270:1, eff. July 22, 1955.

31:92 Taking of Land. Whenever any town cannot obtain by contract, for a reasonable price, any land required for public use, such land may be taken, the damages assessed, and the same remedies and proceedings had as in case of laying out highways by selectmen.

Source. 1872, 38:1. PS 40:6. PL 42:71. RL 51:90.

31:92–a Water Pollution. Any town which shall have received an order by the department of environmental services under the provisions of RSA 147, 485, or 485–A shall proceed forthwith to acquire whatever easements and lands as are necessary to comply with said order provided a majority of the voters vote in favor of said acquisition at any regular or special town meeting called for the purpose of taking action on such order, and may enter upon, for the purpose of survey leading to land description, any land within its limits. In so proceeding, the selectmen or other duly authorized agents shall institute any necessary land taking in accordance with the provisions of RSA 31:92 and, anything contained in RSA 231 or in the statutes generally notwithstanding, the decision of the selectmen of the town or towns in which such land or lands are situated shall not be vacated and any subsequent appeal or other action by the owner or owners shall be based solely on the amount of damages assessed, and the duly appointed agents of the town shall have full right of immediate entry for the purposes of detailed surveys, borings, or the conduct of any and all other actions necessary or desirable to aid the town in implementation of the order by the department of environmental services.

Source. 1969, 377:1. 1986, 202:6, I(a). 1989, 339:9, eff. Jan. 1, 1990. 1996, 228:108, eff. July 1, 1996.

31:93 Town Seal. Every town shall provide for the use of its town clerk an official seal, bearing the name of the town and the date of its incorporation, and of such general design as may be approved by the selectmen thereof. Papers issued from the office of the town clerk may be attested therewith.

Source. 1917, 149:1. PL 42:72. RL 51:91.

31:94 Fiscal Year. The fiscal year of towns, village precincts and departments thereof excepting school districts shall end on December 31.

Source. 1869, 26:4. GL 40:10. PS 43:49. 1893, 24:1. 1915, 102:1. 1917, 129:9, 10. PL 42:73. RL 51:92. 1943, 142:1, eff. Dec. 31, 1944.

31:94–a Optional Fiscal Year. Cities and towns and counties, may adopt a single 18 month accounting period running from January 1 of the calendar year following adoption and ending June 30 of the next following year. Thereafter, accounting periods for such towns, cities, and counties shall run from July 1 to June 30 of the following year.

Source. 1969, 497:1. 1971, 454:1, eff. Aug. 29, 1971.

31:94–b Adoption. The provisions of RSA 31:94–a shall not take effect in any town, city or county unless adopted in the following manner:

I. In towns operating under the municipal budget law, by unanimous vote of the selectmen together with the approval of a ⅔ majority of the members of the budget committee, or by an article in the town warrant adopted by a majority of the legal voters of the town present and voting on such adoption;

II. In towns not operating under the municipal budget law, by an article in the town warrant, adopted by a majority of the legal voters of the town present and voting on such adoption;

III. In cities, by ⅔ vote of the city council;

IV. In counties, by majority vote of the members of the county convention present and voting.

Source. 1969, 497:1. 1973, 474:1. 1986, 208:4, eff. Aug. 5, 1986.

31:94–c Authorization to Use Accounting Period. Any town, city or county which adopts the provisions of RSA 31:94–a may budget their receipts and expenditures, raise and appropriate revenues, and assess taxes on the basis of a single 18 month accounting period running from January 1 of the calendar year following adoption and ending June 30 of the next following year. Thereafter, they shall operate their fiscal affairs on the basis of a 12 month accounting period running from July 1 to June 30 of the next following year.

Source. 1969, 497:1, eff. Sept. 1, 1969.

31:94–cc Proration of Property Tax Exemptions During Transition Period. Any city or town which adopts the provisions of RSA 31:94–a and assesses taxes on the basis of the 18-month accounting period as permitted under RSA 31:94–c shall prorate any exemption or tax credit available under RSA 72:28, 29–a, 30, 31, 32, 35, 36–a, 37, 37–a, 39–b, 62, 66, and 70 to reflect that 18-month period.

Source. 1978, 7:1. 1991, 70:1, eff. April 1, 1992. 1996, 140:9, eff. Jan. 1, 1998.

31:94–d Debt During Transition Period. Towns, cities, and counties which have adopted the provisions of RSA 31:94–a may incur debt under the provisions of RSA 33 in an amount not to exceed 1/3 of all taxes assessed on April 1 of the year following adoption of RSA 31:94–a, excluding payments upon outstanding debts, said debt to be discharged in not more than 20 years. For the purposes of this section, taxes assessed shall include all taxes reimbursed to the town, city or county in accordance with the provisions of RSA 31–A. Debt incurred pursuant to this section shall not be included in the debt limit of the town, city or county, and the funds borrowed pursuant to this section shall be used only to defray additional costs that result from the adoption of an 18 month transitional accounting period.

Source. 1969, 497:1. 1973, 239:1, eff. Aug. 18, 1973.

31:94–e Transition Period. Where the provisions of RSA 31:94–a are adopted by a town, city or county, the selectmen, city treasurer or county treasurer, respectively, may borrow money in anticipation of taxes, for the transition period in the manner provided by RSA 33:7, I for cities and towns and RSA 29:8 for counties.

Source. 1973, 474:2, eff. Aug. 29, 1973.

31:95 Budget. Immediately upon the close of the fiscal year the budget committee in towns where such committees exist, otherwise the selectmen, shall prepare a budget on blanks prescribed by the commissioner of revenue administration; provided, however, that any full-time employee of the town, village district, school district or other associated agencies shall be ineligible to serve on the budget committee. Such budget shall be posted with the town warrant and shall be printed in the town report at least one week before the date of the town meeting.

Source. 1917, 129:8. PL 42:74. RL 51:93. RSA 31:95. 1973, 544:8. 1981, 282:1, eff. Jan. 1, 1982.

31:95–a Tax Maps.

I. Every city and town shall, prior to January 1, 1980, have a tax map, so-called, drawn. Each tax map shall:

(a) Show the boundary lines of each parcel of land in the city or town and shall be properly indexed.

(b) Accurately represent the physical location of each parcel of land in the city or town.

(c) Show on each parcel of land the road or water frontage thereof.

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

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

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

IV. Tax maps shall be updated at least annually to indicate ownership and parcel size changes.

V. Each tax map shall be open to public inspection in a city or town office during regular business hours.

Source. 1971, 426:1. 1975, 402:1, eff. Aug. 15, 1975. 2004, 203:10, eff. June 11, 2004.

31:95–b Appropriation for Funds Made Available During Year.

I. Notwithstanding any other provision of law, any town or village district at an annual meeting may adopt an article authorizing, indefinitely until specific rescission of such authority, the board of selectmen or board of commissioners to apply for, accept and expend, without further action by the town or village district meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year. The following shall apply:

(a) Such warrant article to be voted on shall read: "Shall the town (or village district) accept the provisions of RSA 31:95–b providing that any town (or village district) at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the selectmen (or commissioners) to apply for, accept and expend, without further action by the town (or village district) meeting, unanticipated money from a state, federal, or other governmental unit or a private source which becomes available during the fiscal year?"

(b) If a majority of voters voting on the question vote in the affirmative, the proposed warrant article shall be in effect in accordance with the terms of the article until such time as the town or village district meeting votes to rescind its vote.

II. Such money shall be used only for legal purposes for which a town or village district may appropriate money.

III. (a) For unanticipated moneys in the amount of $10,000 or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

(b) The board of selectmen may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than $10,000. For unanticipated moneys in an amount less than such amount, the board of selectmen shall post notice of the funds in the agenda and shall include notice in the minutes of the board of selectmen meeting in which such moneys are discussed. The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular board of selectmen meeting.

IV. Action to be taken under this section shall:

(a) Not require the expenditure of other town or village district funds except those funds lawfully appropriated for the same purpose; and

(b) Be exempt from all provisions of RSA 32 relative to limitation and expenditure of town or village district moneys.

Source. 1979, 42:1. 1991, 25:1. 1993, 176:3, eff. Aug. 8, 1993. 1997, 105:1, eff. Aug. 8, 1997. 2005, 188:2, eff. Aug. 29, 2005. 2014, 237:1, eff. Sept. 19, 2014.

31:95–c Special Revenue Funds.

I. Towns may, pursuant to RSA 31:95–d, vote to restrict revenues, or any portion of revenues, from a specific source to expenditures for specific purposes. Such revenues and expenditures shall be accounted for in a special revenue fund separate from the general fund.

II. Notwithstanding paragraph IV, towns may establish, pursuant to RSA 31:95–d, special revenue funds to:

(a) Provide special highway funds from appropriate revenues, such as revenues from block grants from the state highway fund, motor vehicle permit fees collected under RSA 261:165, parking meter fees and fines in accordance with RSA 231:131, and any other highway related revenues not otherwise designated by law. Appropriations

from the special highway fund shall be used for highway expenditures.

(b) Provide special capital improvement plan funds from appropriate revenues, which include any portion of town revenues otherwise allotted to the general fund except property taxes, provided that the town has adopted and has in place an up-to-date capital improvement plan as prescribed and developed in accordance with the provisions of RSA 674:5 through 674:8. Any funds from sources includable in subparagraph (a) included in the capital improvement plan shall be used solely for highway purposes. Appropriations from the special capital improvement plan fund shall be used to fund those individual capital projects identified in an up-to-date duly adopted town capital improvement plan.

III. Any surplus in any fund created under paragraph I or II shall not be deemed part of the general fund accumulated surplus nor shall any surplus be expended for any purpose or transferred to any appropriation until such time as the legislative body shall have voted to appropriate a specific amount from said fund for a specific purpose related to the purpose or source of the revenue.

IV. This section shall not be construed to prohibit the establishment of capital reserve funds pursuant to RSA 35:1 or town created trust funds pursuant to RSA 31:19–a. The provisions of this section shall be limited to those town activities funded primarily through user fees including, but not limited to, municipal airports and solid waste facilities.

Source. 1989, 279:1. 1993, 184:1, eff. Aug. 8, 1993. 1996, 148:1, 2, eff. May 24, 1996.

31:95–d Procedure for Adoption; Rescission or Change of Purpose.

I. Any town may adopt the provisions of RSA 31:95–c to restrict revenues, or any portion of such revenues, from a specific source to expenditures for specific purposes in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting under the procedures set out in RSA 39:3, and shall be voted on by ballot. The question shall not be placed on the official ballot.

(b) The selectmen shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be: "Shall we adopt the provisions of RSA 31:95–c to restrict (here insert portion as a fractional or dollar amount) of revenues from (here insert source) to expenditures for the purpose of (here insert purpose)? Such revenues and expenditures shall be accounted for in a special revenue fund to be known as the (. . .) fund, separate from the general fund. Any surplus in said fund shall not be deemed part of the general fund accumulated surplus and shall be expended only after a vote by the legislative body to appropriate a specific amount from said fund for a specific purpose related to the purpose of the fund or source of the revenue."

II. If a majority of those voting on the question vote "Yes", RSA 31:95–c shall apply within the town on a date set by the selectmen.

III. If the question is not approved, the question may later be voted upon according to the provisions of RSA 31:95–d, I.

IV. (a) Any town which has adopted RSA 31:95–c may consider rescinding its action in the manner described in RSA 31:95–d, I(a) and (b). The wording of the question shall be the same as set out in RSA 31:95–d, I(c), except the word "adopt" shall be changed to "rescind."

(b) If a majority of those voting on the question vote "Yes", RSA 31:95–c shall not apply within the town, and any remaining amounts in the rescinded fund shall become part of the general fund accumulated surplus.

V. No change shall be made to a special revenue fund adopted under RSA 31:95–c unless the town has voted to consider changing the source or fractional portion of revenues or specific purpose of expenditures of the fund in the manner described in subparagraphs I(a) and (b) and authorized such change by a vote of ⅔ of all the voters present and voting at an annual town or district meeting.

Source. 1989, 279:1, eff. July 28, 1989. 1996, 148:3, 4, eff. May 24, 1996. 2012, 181:2, eff. Aug. 10, 2012.

31:95–e Acceptance of Personal Property Donated to Towns and Village Districts.

I. Any town or village district at an annual meeting may adopt an article authorizing the board of selectmen or board of commissioners to accept gifts of personal property, other than money, which may be offered to the town or village district for any public purpose, and such authorization shall remain in effect until rescinded by a vote of town or village district meeting.

II. Prior to the acceptance of any such gift with a value of $5,000 or more, the selectmen or board of commissioners shall hold a public hearing on the proposed acceptance. For gifts with a value of less than $5,000, a public hearing on the proposed acceptance shall be at the discretion of the selectmen or board of commissioners. If no public hearing is held, the board of selectmen or board of commissioners shall post notice of the gift in the agenda and shall include notice in the minutes of the board of selectmen or board of commissioners meeting at which such gift is discussed. The acceptance of gifts under this paragraph shall be made in public session of any regular board of selectmen or board of commissioners meeting.

III. No acceptance of any personal property under the authority of this section shall be deemed to bind the town or village district to raise, appropriate or expend any public funds for the operation, maintenance, repair, or replacement of such personal property.

Source. 1991, 25:2, eff. June 18, 1991. 1997, 105:2, eff. Aug. 8, 1997. 1998, 196:1, eff. Aug. 17, 1998. 2008, 24:1, eff. July 11, 2008.

31:95–f Geographic Information Systems. Any town may establish computer-based geographic information systems and control the distribution of that information, subject to RSA 91–A. The town may finance the completion and perpetuation of the system through establishing a special revenue fund under RSA 31:95–c and 31:95–d or through nonprofit corporations. The town may charge fees for the use of the system.

Source. 1994, 76:2, eff. July 5, 1994.

31:95–g Option to Assign Appraisal Responsibility. The legislative body of any municipality may vote to authorize the elected officials to delegate the assessing functions imposed on them under RSA 75:1, 75:11, and 79–A:5 to a person certified by the department of revenue administration under RSA 21–J:14–f.

Source. 2001, 297:6, eff. Sept. 15, 2001.

31:95–h Revolving Funds.

I. A town may, by vote of the legislative body, establish a revolving fund. Each revolving fund shall be limited to one of the following purposes:

(a) Facilitating, maintaining, or encouraging recycling as defined in RSA 149–M:4;

(b) Providing ambulance services;

(c) Providing public safety services by municipal employees or volunteers outside of the ordinary detail of such persons, including but not limited to public safety services in connection with special events, highway construction, and other construction projects, or for any other public safety purpose deemed appropriate by the municipality;

(d) Creating affordable housing and facilitating transactions relative thereto;

(e) Providing cable access for public, educational, or governmental use; or

(f) Financing of energy conservation and efficiency and clean energy improvements by participating property owners in an energy efficiency and clean energy district established pursuant to RSA 53–F.

II. If a town establishes a revolving fund for any of the purposes listed in paragraph I, it may deposit into the fund all or any part of the revenues from fees, charges, or other income derived from the activities or services supported by the fund, and any other revenues approved by the legislative body for deposit into the fund. The money in the fund shall be allowed to accumulate from year to year, and shall not be considered part of the town's general surplus. The town treasurer shall have custody of all moneys in the fund, and shall pay out the same only upon order of the governing body, or other board or body designated by the local legislative body at the time the fund is created; provided, that no further approval of the legislative body, if different from the governing body, shall be required. Such funds may be expended only for the purposes for which the fund was created.

III. The legislative body may, at the time it establishes a revolving fund or at any time thereafter, place limitations on expenditures from the fund including, but not limited to, restrictions on the types of items or services that may be purchased from the fund, limitations on the amount of any single expenditure, and limitations on the total amount of expenditures to be made in a year. No amount may be expended from a revolving fund established hereunder for any item or service for which an appropriation has been specifically rejected by the legislative body during the same year.

IV. The provisions of this section shall not preclude the establishment of a revolving fund for any other purpose authorized by law.

Source. 2005, 79:1, eff. Aug. 6, 2005. 2008, 68:1, eff. July 20, 2008; 391:1, eff. Sept. 15, 2008. 2010, 215:3, eff. Aug. 27, 2010. 2013, 9:1, eff. July 6, 2013. 2017, 95:1, eff. Aug. 7, 2017.

31:96 Interlocal Cooperation on Federal or Interstate Flood Control Projects. Powers granted to a town by paragraph XXXV of RSA 31:4 may be exercised jointly with other towns similarly affected,

and any 2 or more such towns may enter into agreements with one another for joint or cooperative action pursuant to the following provisions:

I. Such agreement shall be approved by a vote of the majority of those present and voting at any regular or special meeting of the town.

II. Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition, and nature of any joint or cooperative agency, or of any separate legal or administrative entity, if one is created thereby, together with the powers delegated thereto;

(c) Its purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(f) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(g) Any other necessary and proper matters.

III. The attorney general shall approve any agreement submitted to him hereunder unless he finds that it does not meet the conditions set forth herein and shall detail in writing addressed to the selectmen of the towns concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 30 days of its submission shall constitute approval thereof.

IV. Financing of joint projects by agreement shall be as provided by law.

V. Prior to its entry in force, an agreement made pursuant to this section shall be filed with the town clerk of each signatory town and with the secretary of state.

VI. No agreement made pursuant to this section shall relieve any town of any obligation or responsibility imposed upon it by law, except that to the extent of actual or timely performances by a joint board or other agency or entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

VII. This section shall not apply to cooperative efforts undertaken by towns pursuant to other special or general statutes.

VIII. Any town entering into an agreement pursuant to this section may appropriate funds and may sell, lease, give or otherwise supply the joint board or agency or legal entity created hereunder by providing such personnel or services therefor as may be within its legal power to furnish.

Source. 1957, 287:2, eff. Oct. 1, 1957.

31:97 State Guarantee. In view of the general public benefits resulting from flood control in the state, the governor and council are authorized in the name of the state of New Hampshire to guarantee unconditionally, but at no time in excess of the total aggregate sum for the entire state of $500,000, the payment of all or any portion, as they may find to be in the public interest, of the principal of and interest on any bonds or notes issued by any municipality, town, city, county or district for purposes authorized by RSA 31:96 and RSA 52:1–a and the full faith and credit of the state are pledged for any such guarantee. The state's guarantee shall be endorsed on such bonds or notes by the state treasurer; and all notes or bonds issued with state guarantee shall be sold (1) at public sealed bidding, (2) after publication of advertisement for bids, (3) to the highest bidder. Any and all such bids may be rejected and a sale may be negotiated with the highest bidder. In the event of default in payment of any such notes or bonds, the state may recover any losses suffered by it by action against the town as provided in RSA 530.

Source. 1957, 287:4, eff. Oct. 1, 1957.

31:98 Contingency Fund.

[Repealed 1969, 125:2, eff. July 8, 1969.]

History

Former RSA 31:98, which was derived from 1965, 123:1, related to contingency funds for unanticipated expenses.

31:98–a Contingency Fund. Every town annually by an article separate from the budget and all other articles in the warrant may establish a contingency fund to meet the cost of unanticipated expenses that may arise during the year. Such fund shall not exceed one per cent of the amount appropriated by the town for town purposes during the preceding year excluding capital expenditures and the amortization of debt. A detailed report of all expenditures from the contingency fund shall be made annually by the selectmen and published with their report.

Source. 2013, 115:2, eff. Aug. 24, 2013. 2014, 190:5, eff. Sept. 9, 2014.

31:99 License to Occupy Portion of Street. The selectmen of a town may grant a license in writing to any person to occupy a portion of any street, designated by distinct limits, for the purpose of laying thereon lumber and other materials for building purposes, but not for retail sale except as provided in RSA 31:100, for a time not exceeding 4 months, whenever they shall deem it necessary or proper, subject to such terms and conditions, to be expressed in the license, as the public convenience and safety may require.

Source. 1844, 144:1. CS 119:8. GS 252:8. GL 269:8. PS 264:9. PL 378:9. RL 440:8. RSA 570:8. 1973, 532:1, eff. Nov. 1, 1973; 558:8, eff. Nov. 2, 1973.

31:100 Street Fairs. The selectmen of a town or governing body of a city may grant a license in writing to any person or persons to use and occupy a portion of any street or sidewalk, as may be designated in general or in specific terms, for the purpose of conducting thereon street fairs or other community events, including but not limited to the sale of merchandise by commercial retailers, or by community associations conducting street fairs or other promotions. Such licenses may include the right to encumber the designated area with boxes, shelves, stands and other devices useful in conducting such sales and shall be issued for not in excess of 3 consecutive business days. Licenses may also be subject to such other terms and conditions, to be expressed in the license, as the public convenience and safety may require.

Source. 1971, 278:1. RSA 570:8–a. 1973, 532:1, eff. Nov. 1, 1973.

31:101 Effect of License. A person so licensed, who shall first cause the license to be recorded at length by the town clerk, and who shall comply with the terms expressed therein, shall be exempt from the penalties imposed by this chapter for any act authorized by the license.

Source. 1844, 144:2. CS 119:9. GS 252:9. GL 269:9. PS 264:10. PL 378:10. RL 440:9. RSA 570:9. 1973, 532:1, eff. Nov. 1, 1973.

31:102 Obstructing Access to Highways. No person shall obstruct the highway by parking an automobile, other vehicle or object in or in front of a driveway to any dwelling, store, shop or other place of business, factory, field or forest so as to obstruct the passage of vehicles from the highway into such driveway or from such driveway into the highway. Any officer with police power or selectman is hereby authorized, if in his opinion the same is necessary, to employ a wrecker or other apparatus to remove such obstruction at the expense of the owner or operator of said obstructing vehicle or object and the owner or operator of the wrecker or apparatus used in said removal shall have a lien upon the vehicle or object so removed for his fee or charge for said removal.

Source. 1941, 58:1. RL 440:10. RSA 570:10. 1973, 532:1, eff. Nov. 1, 1973.

31:102–a Hawkers, Peddlers and Vendors. The governing board of a city, town or village district may adopt, by ordinance or regulation, provisions for the licensure and regulation of itinerant vendors, hawkers, peddlers, traders, farmers, merchants, or other persons who sell, offer to sell, or take orders for merchandise from temporary or transient sales locations within a town or who go from town to town or place to place within a town for such purposes. Any person who violates any provision of such ordinance or regulation shall be guilty of a class B misdemeanor, and each continuing day of violation after notice shall constitute a separate offense. A city, town, or village district shall be specifically prohibited, however, from licensing or regulating a candidate for public office in the process of obtaining signatures on nomination papers, who seeks to have the candidate's name placed on the ballot for the state general election by submitting nomination papers under RSA 655:40. Provisions adopted under this section shall be in addition to any requirements imposed by the state under either RSA 320 or RSA 321 and may include, but shall not be limited to:

I. Classification of licensees consistent with constitutional requirements of equal protection;

II. Imposition of reasonable requirements, including fees, for the issuance of a license;

III. Restrictions as to the areas of the municipality open to licensees and the hours and days of their operation; and

IV. Other reasonable conditions and terms deemed necessary for public convenience and safety as the governing board determines.

Source. 1973, 558:9. 1981, 515:1. 1993, 164:1, eff. July 23, 1993. 2001, 274:2, eff. Jan. 1, 2002. 2010, 298:1, eff. Sept. 11, 2010.

31:102–b Background Checks for Certain Vendors.

I. Any municipality may require persons who go from door to door, place to place within a town, or town to town, who sell, offer to sell, or take orders for merchandise or offer to perform personal services for household repairs or improvements, to submit to a state records check only, or both a federal and state records check. Municipalities that require a criminal history records check shall have such person submit to the municipality a notarized criminal history records release form, as provided by the division of state

police, which authorizes the release of the person's criminal records, if any. To obtain a federal records check, such person shall also submit to the municipality, with the release form, a complete set of fingerprints.

II. For a state and federal criminal records check, the municipality shall request that such person submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. The municipality shall submit the criminal history records release form and inked fingerprint card to the division of state police which shall conduct a criminal records check through its records and through the Federal Bureau of Investigation. Fingerprints taken digitally by Live Scan or similar device shall be transmitted directly to the New Hampshire division of state police. In the event that the first set of fingerprints is invalid due to insufficient pattern, the municipality may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 10 years. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the local law enforcement agency of the municipality which shall maintain the confidentiality of all criminal history records information received pursuant to this section. The municipality may charge a fee to recover the costs of such investigation.

III. To obtain a state records check only, the municipality shall submit a state criminal history records release form, completed by such person, to the division of state police.

IV. Such person shall also include the location of all municipalities in which such person seeks to transact business. Such municipalities, in accordance with their licensing requirements, shall have access to the results of the criminal history records check and the New Hampshire division of state police shall release copies of the criminal history records to such municipalities. Such person shall be responsible for any additional fees for any administrative costs incurred by the New Hampshire division of state police under this section.

Source. 2010, 298:2, eff. Sept. 11, 2010.

31:103 Interim Zoning Ordinance.

[Repealed 1983, 447:5, II, eff. Jan. 1, 1984.]

History

Former RSA 31:103, which was derived from 1973, 534:1, related to procedures for enacting emergency temporary zoning and planning ordinances. See now RSA 675:4–a.

31:103–a Contributions to County or State. A town may, by vote of the legislative body, voluntarily contribute funds, services, property, or other resources toward any county or state project, program, or plan. Any contribution involving the expenditure of funds under this section shall be subject to the requirements of RSA 32.

Source. 2016, 79:2, eff. July 18, 2016.

Liability for Damages Limited, Indemnification, Insurance

31:104 Liability of Municipal Executives. Notwithstanding any provisions of law to the contrary, no member of the governing board of any municipal corporation or political subdivision, no member of any other board, commission, or bureau of any municipal corporation or political subdivision created or existing pursuant to a statute or charter, and no chief executive officer of such municipal corporation or political subdivision, including but not limited to city councilors and aldermen, selectmen, county convention members, members of boards of adjustment, members of planning boards, school board members, mayors, city managers, town managers, county commissioners, regional planning commissioners, town and city health officers, overseers of public welfare, and school superintendents shall be held liable for civil damages for any vote, resolution, or decision made by said person acting in his or her official capacity in good faith and within the scope of his or her authority.

Source. 1973, 595:1. 1991, 72:1, eff. July 12, 1991. 2008, 96:1, eff. Jan. 1, 2009. 2010, 214:1, eff. Jan. 1, 2011.

31:105 Indemnification for Damages. A city, town, county, village district or precinct, school district, chartered public school, school administrative unit, or any other municipal corporation or political subdivision may by a vote of the governing body indemnify and save harmless for loss or damage occurring after said vote any person employed by it and any member or officer of its governing board, administrative staff or agencies including but not limited to selectmen, school board members, chartered public school trustees, city councilors and aldermen, town and city managers, regional planning commissioners, town and city health officers, overseers of public welfare, and superintendents of schools from personal financial loss and expense including reasonable legal fees and costs, if any, arising out of any claim, demand, suit, or judgment by reason of negli-

gence or other act resulting in accidental injury to a person or accidental damage to or destruction of property if the indemnified person at the time of the accident resulting in the injury, damage, or destruction was acting in the scope of employment or office.

Source. 1973, 595:1. 1991, 72:2. 1995, 260:2, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008. 2010, 214:2, eff. Jan. 1, 2011.

31:106 Indemnification; Civil Rights Suits. All cities, towns, counties, village districts and precincts, school districts, chartered public schools, school administrative units, and other municipal corporations and political subdivisions shall indemnify and save harmless any person employed by it and any member or officer of its governing board, administrative staff, or agencies including but not limited to selectmen, school board members, chartered public school trustees, city councilors and aldermen, town and city managers, regional planning commissioners, town and city health officials, overseers of public welfare, and superintendents of schools from personal financial loss and expense including reasonable legal fees and costs, if any, arising out of any claim, demand, suit, or judgment by reason of any act or omission constituting a violation of the civil rights of an employee, teacher or student, or any other person under any federal law if such act or omission was not committed with malice, and if the indemnified person at the time of such act or omission was acting within the scope of employment or office.

Source. 1973, 595:1. 1991, 72:3. 1995, 260:3, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008. 2010, 214:3, eff. Jan. 1, 2011.

31:107 Purchase of Insurance. A political entity permitted or required to indemnify its officers and employees under RSA 31:105 and 106 may purchase a comprehensive general liability insurance policy necessary to protect itself and its officers and employees against such liability. The insurance policy may be issued by any insurance company organized or authorized to do business in this state.

Source. 1973, 595:1, eff. Jan. 1, 1974.

31:108 Attachment, Trustee Process Prohibited. No attachment or trustee process shall be available or allowed where immunity has been granted pursuant to RSA 31:104 or where indemnification has been voted pursuant to RSA 31:105 or where indemnification is required pursuant to RSA 31:106.

Source. 1973, 595:1, eff. Jan. 1, 1974.

Oil Refinery Siting

31:109 Local Option for Oil Refinery Siting in Towns. Notwithstanding the provisions of any other law, an oil refinery shall not be located in any town without a vote of approval of a majority of the voters present and voting on the question at an annual meeting or a special town meeting called for such purpose. All votes on the question shall be taken by written ballot. The following question shall be placed on the ballot "Shall an oil refinery be permitted within the town of ( )?" Said question shall be printed in the form prescribed by RSA 59:12–a. If a majority of those voting on the question shall vote in the affirmative, approval of the location of the oil refinery in the town shall be deemed granted. If a majority of those voting on the question shall vote in the negative, such approval shall be deemed not granted and no oil refinery may be located in such town unless approval is subsequently granted in accord with this section. Nothing in this section shall be construed as changing, modifying or affecting in any way the provisions of RSA 31 and RSA 36 relating to zoning regulations.

Source. 1974, 36:1, eff. April 5, 1974.

Town and City Forests

31:110 Establishment. The legislative body of any city or town may vote to establish by purchase, lease, grant, tax collector's deed, transfer, bequest or other devise, a city or town forest.

Source. 1975, 254:1, eff. Aug. 5, 1975.

31:111 Purpose. The main purpose of such city or town forest shall be to encourage the proper management of timber, firewood and other natural resources through planting, timber stand improvement, thinning, harvesting, reforestation, and other multiple use programs consistent with the forest management program, any deed restrictions and any pertinent local ordinances or regulations.

Source. 1975, 254:1, eff. Aug. 5, 1975.

31:112 Management.

I. A city or town forest established under RSA 31:110 shall be managed by a forestry committee consisting of not less than 3 nor more than 5 members. In cities the members shall be appointed by the mayor and aldermen and in towns they shall be appointed by the selectmen. When a forestry committee is first established, terms of the members shall be for one, 2 or 3 years, and so arranged that the terms of approximately ⅓ of the members shall expire each year, and their successors shall be appointed for terms of 3 years each. The committee shall include the city or town tree warden, if there is one. The committee shall choose its chairman, shall serve without compensation and shall make an annual report to the city or town and shall send a copy to the director of the division of forests and lands, depart-

ment of natural and cultural resources. Vacancies for the unexpired terms shall be filled in the same manner as the original appointments.

II. If a city or town has adopted RSA 36–A, a city or town forest may be managed by the city or town conservation commission, with the tree warden, if any, as an ex-officio member, as determined by the legislative body.

Source. 1975, 254:1, eff. Aug. 5, 1975. 2017, 156:14, I, eff. July 1, 2017.

31:113 Appropriations Authorized. For the purposes of establishing or maintaining a city or town forest, a city or town may raise and appropriate such funds as it deems necessary. The proceeds from said forest shall be placed in a special forest maintenance fund and shall be allowed to accumulate from year to year, unless otherwise voted by the legislative body of such city or town.

Source. 1975, 254:1, eff. Aug. 5, 1975.

31:114 Director of Forests and Lands.

[Repealed 1995, 299:19, I, eff. Jan. 1, 1996.]

History

Former RSA 31:114, which was derived from 1975, 254:1, related to assistance to towns and cities and maintenance of inventory of city and town forests in state by director.

Community Development

31:115 Eligibility for Federal Funds. For the purpose of determining eligibility for federal funds which are or may be available under the Housing and Community Development Act of 1974 (P.L. 93–383), any city or town may perform any eligible activity as defined by that act or by any regulation duly adopted thereunder.

Source. 1975, 433:1, eff. Aug. 17, 1975.

Manufactured Housing Foundations

31:116 Manufactured Housing Foundations. No town shall impose requirements that manufactured housing, as defined by RSA 674:31, which is located in parks be placed on other than the structural carriers designed for that purpose.

Source. 1977, 481:1. 1983, 230:3, eff. Aug. 17, 1983.

Woodstoves

31:117 Woodstoves. Towns may make bylaws providing for the adoption of the model code, promulgated by the state fire marshal pursuant to RSA 153:14, IV, relative to the installation and operation of solid fuel heating appliances and, further, to provide for the inspection of such appliances. A reasonable fee may be charged for such inspection to the owner of the property where such appliance is installed.

Source. 1979, 449:4, eff. Aug. 24, 1979.

Manufactured Housing

31:118, 31:119 Repealed.

[Repealed 1983, 447:5, III, eff. Jan. 1, 1984.]

History

Former RSA 31:118, which was derived from 1981, 406:2 and 1983, 230:4, related to the definition of "manufactured housing". See now RSA 674:31.

Former RSA 31:119, which was derived from 1981, 406:2, related to exclusion of manufactured housing. See now RSA 674:32.

Central Business Service Districts

31:120 Purpose. The declared purpose of this subdivision is to enable municipalities to establish central business service districts in high density areas of predominantly commercial uses to provide property services at a more intensive level than is provided in the balance of the municipality; to provide funds for capital expenditures of not more than $20,000 per project; and to authorize the establishment of charges to owners of property within such central business service districts in an amount not to exceed the costs to the municipality of providing such services at levels over and above those provided in the balance of the municipality.

Source. 1983, 109:1, eff. July 23, 1983. 2009, 81:1, eff. Aug. 8, 2009.

31:121 Authority Granted. For the purposes of this subdivision, the legislative body of any city or town shall have the authority to establish one or more central business service districts.

Source. 1983, 109:1. 1994, 85:1, eff. July 5, 1994.

31:122 Services Advisory Committee; Cost.

I. (a) The services which may be provided by a municipality in a central business service district under the provisions of this subdivision may include property-related services performed in the public right-of-way, including sidewalk snow removal, landscaping, street and sidewalk cleaning, refuse collection, and other business development services and activities related to the maintenance of an attractive, useful, and economically viable business environment. These services and activities may be either those of a routine nature provided for all properties, or may be particular to those in the central business service district.

(b) After a duly noticed public hearing, capital expenditures of not more than $20,000 per project that have been approved by a ⅔ vote of the advisory board shall be subject to approval by a ⅔ vote of the governing body.

II. The legislative body of each municipality electing to establish a central business service district shall appoint an advisory board of 7 members, not less than 5 of whom shall be owners or tenants of property within the proposed district. Upon consultation with the advisory board, the legislative body of each municipality shall define the central business service district, select specific services and levels of services to be provided in the district, and, subject to RSA 31:123, authorize which specific department, agency, or other party is to undertake the work.

III. The costs of providing special services in the central business service district shall be those accruing to the municipality which result exclusively from the provision of services in the district which exceed those being provided in the balance of the municipality. The costs of services provided throughout the municipality or available to all properties and the costs of services or levels of services regularly and routinely provided within the central business service district prior to July 23, 1983, may not be included as costs for the purpose of this subdivision.

Source. 1983, 109:1. 1991, 334:1, eff. Aug. 27, 1991. 2009, 81:2, 3, eff. Aug. 8, 2009.

31:123 Method of Appropriation. Each municipality shall adopt a budget for capital expenditures or services to be performed in a central business service district as part of its budget process. At the end of the fiscal year, a full accounting of expenditures shall be made. Balances or deficits of the central business service district account shall be reflected in the subsequent year's account budget to offset appropriation requirements.

Source. 1983, 109:1, eff. July 23, 1983. 2009, 81:4, eff. Aug. 8, 2009.

31:124 Assessments. Upon local adoption of the budget, the municipality may levy assessments in an amount not greater than the net appropriation to a central business service district account. The assessments shall be made against the owners of commercial and industrial properties and such other types of property as may be determined by the municipality abutting any public right-of-way in the central business service district and shall be based upon the relative linear foot frontage of the owner's property as a percentage of the total linear foot frontage of the applicable property in the district or another formula determined by the municipality to be in relative proportion to benefits received by each property owner in the central business service district. Assessments shall be billed and collected as specified by ordinance. Interest and other collection procedures shall be made by the tax collector or other official responsible for property tax collection. Enforcement powers for nonpayment shall be the same as those provided under RSA 80 relative to property tax collection.

Source. 1983, 109:1. 1993, 169:1, eff. July 23, 1993. 1996, 264:1, eff. Aug. 9, 1996.

31:125 Limit on Liability. The provisions of RSA 507–B relative to bodily injury actions against governmental units shall apply to all municipal activities performed in connection with a central business service district.

Source. 1983, 109:1, eff. July 23, 1983.

Validity of Municipal Legislation

31:126 Presumption of Procedural Validity. Municipal legislation, after 5 years following its enactment, shall, without further curative act of the legislature, be entitled to a conclusive presumption of compliance with statutory enactment procedure. Any claim that municipal legislation is invalid for failure to follow statutory enactment procedure, whether that claim is asserted as part of a cause of action or as a defense to any action, may be asserted within 5 years of the enactment of the legislation and not afterward.

Source. 1988, 33:1, eff. May 23, 1988.

31:127 Definitions. In this subdivision:

I. "Enactment procedure" includes any required notice, copying, filing, service, reporting, publication, posting, public hearing, voting procedure, vote count, ballots, or the form or timing of any of these.

II. "Municipal legislation" means any charter, ordinance, code, bylaw, vote, resolution or regulation enacted by, or any condition or requirement imposed by, a properly authorized official, board, governing body or legislative body of any city, town or village district. It shall not include an "election" as defined in RSA 652:1.

Source. 1988, 33:1, eff. May 23, 1988.

31:128 Certified Copy of Legislation Prima Facie Evidence of Enactment. A certified copy of the municipal legislation, or a certified code, codification or compilation which includes the legislation, shall constitute prima facie evidence that the legislation was enacted on or prior to the date of certification. Certification shall be by the town or city clerk, or by the official enacting the legislation, or by the chairman, secretary or clerk of the board or body enacting the municipal legislation. The copy or code shall specify, by name or title, which officer, board or body of the municipality enacted the legislation. This

method of proving municipal legislation shall not be exclusive.

Source. 1988, 33:1, eff. May 23, 1988.

31:129 Limitation. This subdivision shall not affect any claim of invalidity which is founded upon the substance of the municipal legislation, or upon the lack of authority of the municipality or its officials, under the federal and state constitutions and laws, to enact such legislation.

Source. 1988, 33:1, eff. May 23, 1988.

31:130 Conformity With Enabling Statute. The forms of questions prescribed by municipal enabling statutes shall be deemed advisory only, and municipal legislation shall not be declared invalid for failure to conform to the precise wording of any question prescribed for submission to voters, so long as the action taken is within the scope of, and consistent with the intent of, the enabling statute or statutes.

Source. 1991, 113:2, eff. July 13, 1991.

31:131 Origin of Warrant Articles. Any question which an enabling statute authorizes to be placed in the warrant for a town meeting by petition may also be inserted by the selectmen, even in the absence of any petition. So long as the subject matter of an action taken at a town meeting was distinctly stated in the warrant, no defect in the process by which such subject matter came to appear in the warrant shall affect the validity of such action.

Source. 1991, 113:2, eff. July 13, 1991.

Records Storage and Management

31:132 Records Storage. A municipality may offer storage space for paper records or other storage media formats, such as electronic records, and associated records management services to any agency of the United States government, political subdivisions of the state, and qualified non-profit organizations operating under Internal Revenue Code section 501(c). A municipality, by written agreement, shall establish a rate for service that is no higher than the actual expense of operation and associated capital costs.

Source. 2004, 62:1, eff. May 3, 2004. 2015, 6:1, eff. July 4, 2015.

31:133 Liability Limitation. A municipality shall employ the highest standards in record management practices. However, a municipality's liability for loss, damage, delay, improper delivery, or nondelivery shall be limited to the actual value of the storage container and the value of the paper contained within the storage container.

Source. 2004, 62:1, eff. May 3, 2004.

Water and/or Sewer Utility Districts

31:134 Statement of Purpose. The establishment of water and/or sewer utility districts will enable municipalities to provide property services at a more intensive level than is provided in the balance of the municipality; provide funds for capital expenditures towards constructing and maintaining those utilities; provide funds for the operation and maintenance of those utilities; and authorize the establishment of charges to owners and users of property within such water and/or sewer utility districts in an amount not to exceed the costs to the municipality of providing such utility services at levels over and above those provided in the balance of the municipality.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:135 Definition. In this subdivision, "water and/or sewer utility" means an entity established for the acquisition, operation, and management of water and sewer infrastructure.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:136 Water and/or Sewer Utility Authorized; Intermunicipal Agreement.

I. For the purposes of this subdivision, the legislative body of any city or town shall have the authority by a majority vote to establish one or more water and/or sewer utility districts and designate a water and/or sewer utility commission to be the governing body to manage the activities of the district.

II. In the case where a utility district encompasses land within more than one municipality, the district may be authorized by majority vote of the legislative bodies within each affected jurisdiction in accordance with the terms of an intermunicipal agreement under RSA 53–A:3. Such agreement shall be contingent upon approval of the legislative bodies of each of the parties to the agreement, and shall, in addition to the requirements of RSA 53–A:3, II, specify the following:

(a) The source of the water.

(b) The disposition of sewage.

III. For a water and/or sewer utility that encompasses more than one municipality, the intermunicipal agreement shall create the water and/or sewer utility commission and representation on such commission shall be proportional to the number of the owners or users, or both, of properties in the water and/or sewer utility district as defined by the intermunicipal agreement.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:137 Commissioners. For the convenient management of any water and/or sewer utility district, a municipality shall vest the construction, management, control, and direction of such district in a board of commissioners to consist of 3, 5, or 7 citizens of each municipality, the commissioners to have such powers and duties as the municipality may prescribe. Their term of office shall be for 3 years and until their successors are elected and qualified. The first board of commissioners may be chosen for terms of one, 2, and 3 years, respectively.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:138 Election or Appointment.

I. The board of commissioners may be elected by the legal voters of the municipality at any meeting or election at which the provisions of this subdivision are accepted, or at any special meeting or election thereafter called for that purpose, and their successors shall be elected at each annual meeting or election thereafter in the manner or form as the municipality may determine.

II. The board of commissioners may be appointed by the mayor and board of aldermen or city council or by the selectmen of the town in the manner or form as the municipality may determine.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:139 Services Provided; Cost.

I. The services provided by a water and/or sewer utility district under this subdivision may include property-related services, including but not limited to providing public drinking water and water for domestic uses; water for fire suppression; and wastewater management; related construction, operation, and maintenance of capital facilities needed in the performance of these services; and other business development services and activities related to the maintenance of an attractive, useful, and economically viable business environment within the district. These services and activities may be either those of a routine nature provided for all properties, or may be particular to those in the water and/or sewer utility district.

II. The legislative body of each municipality shall define the water and/or sewer utility district, select specific services and levels of services to be provided, and, subject to RSA 31:137, authorize the department, agency, or other party that is to undertake the work.

III. The costs of providing services in the water and/or sewer utility district shall be those accruing to the municipality, which result exclusively from the provision of services in the district, and which exceed those being provided in the balance of the municipality.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:140 Method of Appropriation. Each municipality shall adopt a budgetary appropriation for capital and operating expenditures including replacement and upgrades, or services to be performed in a water and/or sewer utility district as part of its budget process. The expense of constructing and maintaining the facilities needed to perform the authorized services to the district, or paying off any capital debt or interest incurred in constructing or maintaining the district on an annual basis shall be included in the budgetary appropriation. At the end of each fiscal year, a full accounting of expenditures shall be made.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:141 Assessments and Fees. Upon adoption of the budgetary appropriation, the municipality may levy assessments or fees, or both, in an amount not greater than the net appropriation to a water and/or sewer utility district fund. The assessments and fees shall be made against the owners or users, or both, of properties in the water and/or sewer utility district and shall be based upon a formula determined by the municipality to be in relative proportion to benefits received by each property owner or user, or both, in the water and/or sewer utility district. Assessments and fees shall be billed and collected as specified by ordinance adopted by majority vote of the governing body of the municipality after a public hearing or in accordance with the terms of the intermunicipal agreement. Government property and non-profit organizations within the district shall be subject to the assessment and fees. Interest and other collection procedures shall be made by the tax collector or other official responsible for property tax collection. Enforcement powers for nonpayment shall be the same as those provided under RSA 80 relative to property tax collection.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:142 Limit on Liability. The provisions of RSA 507–B relative to bodily injury actions against governmental units shall apply to all municipal activities performed in connection with a water and/or sewer utility district.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:143 Authority to Incur Capital Debt. The commission shall have the authority to issue bonds under RSA 33 or RSA 33–B, as approved by the governing body of the municipality or, if intermunici-

pal, in accordance with the terms of the intermunicipal agreement.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:144 Assessment Funds.

I. The funds received from the collection of water and/or sewer assessments and fees shall be kept as separate and distinct funds to be known as the water assessment fund and the sewer assessment fund respectively. Such funds shall be allowed to accumulate from year to year, shall not be commingled with municipal tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. Such funds shall be expended only for the purposes of this subdivision as it relates to public drinking water and domestic supplies or the previous expansion or replacement of water lines or water treatment facilities; or for wastewater or the previous expansion or replacement of sewage lines or sewage treatment facilities.

II. Except when a capital reserve fund is established pursuant to paragraph III, all assessment funds shall be held in the custody of the municipal treasurer. Estimates of anticipated assessments or fees and anticipated expenditures from the assessment funds shall be submitted to the governing body under RSA 32:6 if applicable, and shall be included as part of the municipal budget submitted to the legislative body for approval. Notwithstanding RSA 41:29 or RSA 48:16, the treasurer shall pay out amounts from the assessment funds only upon order of the governing body of the district. Expenditures shall be within amounts appropriated by the legislative body.

III. At the option of the governing body of the district, all or part of any surplus in the assessment funds may be placed in one or more capital reserve funds under RSA 35:7 and placed in the custody of the trustees of trust funds. If such a reserve fund is created, then the governing body of the district may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body, but all such expenditures shall be reported to the municipality pursuant to RSA 31:148. This section shall not be construed to prohibit the establishment of other capital reserve funds for any lawful purpose relating to municipal water.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:145 District Utility Fund. Notwithstanding RSA 31:144, the local legislative body upon establishing a utility district may vote to establish a separate and distinct fund to be known as the district utility fund to serve as a collective operating fund for the district, or to administer funds common to the district that are not directly attributable to water or wastewater services. Such fund shall be allowed to accumulate from year to year, shall not be commingled with town or city tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. Such fund shall function as a collective water and sewer fund and shall be authorized to be managed in the same ways as water or sewer funds are used under RSA 31:144.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:146 Abatement and Appeal of Assessments and Fees.

I. Any person aggrieved by an assessment or fee made under this subdivision may, within 2 months of the notice of assessment, apply in writing to the governing body of the district for an abatement of such assessment or fee.

II. Upon receipt of an application under paragraph I, the governing body of the district shall review the application and shall, in writing, grant or deny the application in whole or in part to correct any error in the assessment or fee within 6 months after the notice of assessment or imposition of the fee.

III. If the governing body of the district neglects or refuses to abate the assessment or fee, any person aggrieved may petition the superior court in the county where the property is located within 8 months of the notice of assessment or imposition of the fee.

IV. For purposes of this section, "notice of assessment" means the date shown on the assessment bill.

V. Each assessment bill or fee shall require a separate request and appeal.

VI. For good cause shown, the governing body of the district may abate any such assessment or fee made by them or by their predecessors.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:147 Liens and Collection of Assessments. In the collection of assessments and fees under RSA 31:141, municipalities shall have the same liens and use the same collection procedures as authorized by RSA 38:22. Interest on overdue charges shall be assessed in accordance with RSA 76:13.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:148 Reports. In municipalities adopting this subdivision, the governing body of the district shall annually, at the time other municipal officers report, make a report to the municipality of the condition of the plant financially and otherwise, showing the funds of the district, the expenses and income thereof, and

all other material facts. This report shall be published in the annual report of the municipality.

Source. 2013, 214:1, eff. Sept. 8, 2013.

31:149 Local Option. Any city or town may adopt this subdivision and shall thereafter have all the authority, powers, duties, and responsibilities set forth in this subdivision.

I. A city may adopt this subdivision by majority vote of the legislative body of the city after notice and hearing.

II. A town may adopt this subdivision by majority vote of the voters present and voting at any legal town meeting under a proper article after notice and hearing.

Source. 2013, 214:1, eff. Sept. 8, 2013.

CHAPTER 32

MUNICIPAL BUDGET LAW

32:1 Statement of Purpose. The purpose of this chapter is to clarify the law as it existed under former RSA 32. A town or district may establish a municipal budget committee to assist its voters in the prudent appropriation of public funds. The budget committee, in those municipalities which establish one, is intended to have budgetary authority analogous to that of a legislative appropriations committee. It is the legislature's further purpose to establish uniformity in the manner of appropriating and spending public funds in all municipal subdivisions to which this chapter applies, including those towns, school districts and village districts which do not operate with budget committees, and have not before had much statutory guidance.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:2 Application. RSA 32:1–13, shall apply to all towns, school districts, cooperative school districts, village districts, municipal economic development and revitalization districts created under RSA 162–K, and any other municipal entities, including those created pursuant to RSA 53–A or 53–B, which adopt their budgets at an annual meeting of their voters, except RSA 32:5–b, which shall apply only in those towns or districts adopting that section pursuant to RSA 32:5–c. RSA 32:14–23, concerning budget committees, shall apply only in those towns or districts adopting that subdivision pursuant to RSA 32:14, I, and shall apply automatically in school districts or village districts located wholly within towns adopting that subdivision.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2011, 234:5, eff. July 5, 2011. 2012, 186:3, eff. June 11, 2012.

32:3 Definitions. In this chapter:

I. "Appropriate" means to set apart from the public revenue of a municipality a certain sum for a specified purpose and to authorize the expenditure of that sum for that purpose.

II. "Appropriation" means an amount of money appropriated for a specified purpose by the legislative body.

III. "Budget" means a statement of recommended appropriations and anticipated revenues submitted to the legislative body by the budget committee, or the governing body if there is no budget

committee, as an attachment to, and as part of the warrant for, an annual or special meeting.

IV. "District" includes a school district, cooperative school district, village district, district created pursuant to RSA 53–A or 53–B, or municipal economic development and revitalization district created pursuant to RSA 162–K.

V. "Purpose" means a goal or aim to be accomplished through the expenditure of public funds. In addition, as used in RSA 32:8 and RSA 32:10, I(e), concerning the limitation on expenditures, a line on the budget form posted with the warrant, or form submitted to the department of revenue administration, or an appropriation contained in a special warrant article, shall be considered a single "purpose."

VI. "Special warrant article" means any article in the warrant for an annual or special meeting which proposes an appropriation by the meeting and which:

(a) Is submitted by petition; or

(b) Calls for an appropriation of an amount to be raised by the issuance of bonds or notes pursuant to RSA 33; or

(c) Calls for an appropriation to or from a separate fund created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or trust fund under RSA 31:19–a; or

(d) Is designated in the warrant, by the governing body, as a special warrant article, or as a nonlapsing or nontransferable appropriation; or

(e) Calls for an appropriation of an amount for a capital project under RSA 32:7–a.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:1, eff. Aug. 9, 1996. 2003, 95:1, eff. Aug. 5, 2003. 2012, 181:1, eff. Aug. 10, 2012; 186:4, eff. June 11, 2012. 2013, 109:1, eff. Aug. 23, 2013.

Preparation of Budgets

32:4 Estimate of Expenditures and Revenues. All municipal officers, administrative officials and department heads, including officers of such self-sustaining departments as water, sewer, and electric departments, shall prepare statements of estimated expenditures and revenues for the ensuing fiscal year, and shall submit such statements to their respective governing bodies, at such times and in such detail as the governing body may require.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:5 Budget Preparation.

I. The governing body, or the budget committee if there is one, shall hold at least one public hearing on each budget, not later than 25 days before each annual or special meeting, public notice of which shall be given at least 7 days in advance, and after the conclusion of public testimony shall finalize the budget to be submitted to the legislative body. One or more supplemental public hearings may be held at any time before the annual or special meeting, subject to the 7-day notice requirement. If the first hearing or any supplemental hearing is recessed to a later date or time, additional notice shall not be required for a supplemental session if the date, time, and place of the supplemental session are made known at the original hearing. Public hearings on bonds and notes in excess of $100,000 shall be held in accordance with RSA 33:8–a, I. Days shall be counted in accordance with RSA 21:35.

II. All purposes and amounts of appropriations to be included in the budget or special warrant articles shall be disclosed or discussed at the final hearing. The governing body or budget committee shall not thereafter insert, in any budget column or special warrant article, an additional amount or purpose of appropriation which was not disclosed or discussed at that hearing, without first holding one or more public hearings on supplemental budget requests for town or district expenditures.

III. All appropriations recommended shall be stipulated on a "gross" basis, showing anticipated revenues from all sources, including grants, gifts, bequests, and bond issues, which shall be shown as offsetting revenues to appropriations affected. The budget shall be prepared according to rules adopted by the commissioner of revenue administration under RSA 541–A, relative to the required forms and information to be submitted for recommended appropriations and anticipated revenues for each town or district.

IV. Budget forms for the annual meeting shall include, in the section showing recommended appropriations, comparative columns indicating at least the following information:

(a) Appropriations voted by the previous annual meeting.

(b) Actual expenditures made pursuant to those appropriations, or in those towns and districts which hold annual meetings prior to the close of the current fiscal year, actual expenditures for the most recently completed fiscal year.

(c) All appropriations, including appropriations contained in special warrant articles, recommended by the governing body.

(d) If there is a budget committee, all the appropriations, including appropriations contained in

special warrant articles, recommended by the budget committee.

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

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

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

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

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

V–a. The legislative body of any town, school district, or village district may vote to require that all votes by an advisory budget committee, a town, school district, or village district budget committee, and the governing body or, in towns, school districts, or village districts without a budget committee, all votes of the governing body relative to budget items or any warrant articles shall be recorded votes and the numerical tally of any such vote shall be printed in the town, school district, or village district warrant next to the affected warrant article. Unless the legislative body has voted otherwise, if a town or school district has not voted to require such tallies to be printed in the town or school district warrant next to the affected warrant article, the governing body may do so on its own initiative.

V–b. Any town may vote to require that the annual budget and all special warrant articles having a tax impact, as determined by the governing body, shall contain a notation stating the estimated tax impact of the article. The determination of the estimated tax impact shall be subject to approval by the governing body.

VI. Upon completion of the budgets, an original of each budget and of each recommendation upon special warrant articles, signed by a quorum of the governing body, or of the budget committee, if any, shall be placed on file with the town or district clerk. A certified copy shall be forwarded by the chair of the budget committee, if any, or otherwise by the chair of the governing body, to the commissioner of revenue administration pursuant to RSA 21–J:34.

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

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

(c) If the operating budget warrant article is amended at the first session of the meeting in an official ballot referendum jurisdiction operating under RSA 40:13, the governing body and the budget committee, if one exists, may each vote on whether to recommend the amended article, and the recommendation or recommendations shall appear on the ballot for the second session of the meeting.

VIII. The procedural requirements of this section shall apply to any special meeting called to raise or appropriate funds, or to reduce or rescind any appropriation previously made, provided, however, that any budget form used may be prepared locally. Such a form or the applicable warrant article shall, at a minimum, show the request by the governing body or petitioners, the recommendation of the budget committee, if any, and the sources of anticipated offsetting revenue, other than taxes, if any.

IX. If the budget committee fails to deliver a budget prepared in accordance with this section, the governing body shall post its proposed budget with a notarized statement indicating that the budget is being posted pursuant to this paragraph in lieu of the budget committee's proposed budget. This alterna-

tive budget shall then be the basis for the application of the provisions of this chapter.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:2, eff. Aug. 9, 1996. 1997, 41:1, eff. July 11, 1997. 2001, 71:2, eff. July 1, 2001. 2002, 61:1, eff. June 25, 2002. 2004, 68:1, eff. July 6, 2004; 219:2, eff. Aug. 10, 2004; 238:5, eff. June 15, 2004; 238:12, eff. Aug. 10, 2004 at 12:01 a.m. 2007, 305:1, eff. Sept. 11, 2007. 2009, 2:1, eff. Feb. 20, 2009. 2010, 90:1, eff. July 24, 2010. 2012, 6:1, eff. May 21, 2012; 217:1, eff. July 1, 2013. 2014, 190:7, eff. Sept. 9, 2014.

32:5–a Presentation of Negotiated Cost Items at the Annual Meeting. Cost items, as defined under RSA 273–A:1, IV, shall be presented to the annual town or district meeting in accordance with the procedures established under RSA 32:5. For submission to the legislative body of the annual meeting, cost items must be finalized by the date prescribed in RSA 39:3 for towns and by the date prescribed in RSA 197:6 for school districts. Cost items not negotiated in time to meet these dates may be submitted to the legislative body pursuant to the provisions of RSA 31:5 for towns and RSA 197:3 for school districts.

Source. 1996, 214:3, eff. Aug. 9, 1996.

32:5–b Local Tax Cap. Upon adoption under RSA 32:5–c, the following shall apply:

I. In a town or district that has adopted this section, the estimated amount of local taxes to be raised for the fiscal year, as shown on the budget certified by the governing body or the budget committee and posted with the warrant for the annual meeting pursuant to RSA 32:5, shall not exceed the local taxes raised for the prior year, as shown on the same budget and adjusted as provided in paragraph I–a, by more than the tax cap authorized when this section was adopted.

I–a. If the local taxes raised for the prior year were reduced by any fund balance brought forward from previous years, the amount of such reduction shall be added back and included in the amount to which the tax cap is applied under paragraph I.

II. The tax cap shall be either a fixed dollar amount or a fixed percentage applied to the amount of local taxes raised by the town or district for the prior fiscal year as reported to the department of revenue administration, subject to adjustment as provided in paragraph I–a.

III. The legislative body may override the cap by the usual procedures applicable to annual meetings and deliberative sessions of the legislative body. The provisions of this section shall not limit the legislative body's authority to increase or decrease the amount of any appropriation or the total amount of all appropriations.

Source. 2011, 234:6, eff. July 5, 2011. 2013, 58:1, eff. Aug. 5, 2013.

32:5–c Adoption of Local Tax Cap.

I. The provisions of RSA 32:5–b may be adopted by any local political subdivision of the state whose legislative body raises and appropriates funds through an annual meeting. A ⅗ majority of those voting on the question shall be required to adopt the provisions of RSA 32:5–b. Only votes in the affirmative or negative shall be included in the calculation of the ⅗ majority.

II. The question shall be placed on the warrant of the annual meeting by the governing body or by petition under the procedures set out in RSA 39:3 or RSA 197:6.

III. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

IV. The wording of the question shall be: "Shall we adopt the provisions of RSA 32:5–b, and implement a tax cap whereby the governing body (or budget committee) shall not submit a recommended budget that increases the amount to be raised by local taxes, based on the prior fiscal year's actual amount of local taxes raised, by more than _____ (insert either a fixed dollar amount or a fixed percentage)?"

V. Voting on the question shall be by ballot, but the question shall not be placed on the official ballot used to elect officers, except in the case of a legislative body that uses an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49–D. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question. If a ⅗ majority of those voting on the question vote "yes," RSA 32:5–b shall apply within the local political subdivision beginning with the following fiscal year and for all subsequent years until it is rescinded as provided in paragraph VI.

VI. Any local political subdivision which has adopted RSA 32:5–b may consider rescinding its ac-

tion in the manner described in paragraphs I through V. The wording of the question shall be: "Shall we rescind the provisions of RSA 32:5–b, known as the tax cap, as adopted by the (local subdivision) on (date of adoption), so that there will no longer be a limit on increases to the recommended budget in the amount to be raised by local taxes?" A ⅗ majority of those voting on the question shall be required to rescind the provisions of this section, except in the case of repeal by charter enactment under RSA 49–D. Only votes in the affirmative or negative shall be included in the calculation of the ⅗ majority.

Source. 2011, 234:6, eff. July 5, 2011.

Appropriations

32:6 Appropriations Only at Annual or Special Meeting. All appropriations in municipalities subject to this chapter shall be made by vote of the legislative body of the municipality at an annual or special meeting. No such meeting shall appropriate any money for any purpose unless that purpose appears in the budget or in a special warrant article, provided, however, that the legislative body may vote to appropriate more than, or less than, the amount recommended for such purpose in the budget or warrant, except as provided in RSA 32:18, unless the municipality has voted to override the 10 percent limitation as provided in RSA 32:18–a.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2000, 193:2, eff. July 29, 2000.

32:6–a Continuation of Grant-Funded Programs.

[Repealed by 2004, 232:1, eff. June 11, 2004.]

History

Former RSA 32:6–a, which was derived from 2003, 109:1, related to continuation of grant-funded programs.

32:7 Lapse of Appropriations. Annual meeting appropriations shall cover anticipated expenditures for one fiscal year. All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, unless:

I. The amount has, prior to the end of that fiscal year, become encumbered by a legally-enforceable obligation, created by contract or otherwise, to any person for the expenditure of that amount; or

II. The amount is legally placed in any nonlapsing fund properly created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or a town-created trust fund under RSA 31:19–a; or

II–a. The amount is appropriated to a capital reserve fund pursuant to RSA 35:5.

III. The amount is to be raised, in whole or in part, through the issuance of bonds or notes pursuant to RSA 33, in which case the appropriation, unless rescinded, shall not lapse until the fulfillment of the purpose or completion of the project being financed by the bonds or notes; or

IV. The amount is appropriated from moneys anticipated to be received from a state, federal or other governmental or private grant, in which case the appropriation shall remain nonlapsing for as long as the money remains available under the rules or practice of the granting entity; or

V. The amount is appropriated under a special warrant article, in which case the local governing body may, at any properly noticed meeting held prior to the end of the fiscal year for which the appropriation is made, vote to treat that appropriation as encumbered for a maximum of one additional fiscal year; or

VI. The amount is appropriated under a special warrant article and is explicitly designated in the article and by vote of the meeting as nonlapsing, in which case the meeting shall designate the time at which the appropriation shall lapse, which in no case shall be later than 5 years after the end of the fiscal year for which the appropriation is made.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2017, 127:3, eff. Aug. 15, 2017.

32:7–a Appropriations for Capital Projects. In addition to any other appropriation authority, and notwithstanding any other provisions of law, at any annual meeting the legislative body may, by the affirmative vote of ⅔ of those present and voting, or by the affirmative vote of ⅗ of those voting on the question in a town or district that has adopted the official ballot referendum form of meeting, appropriate funds for a term beyond one fiscal year, but not to exceed 5 fiscal years, as follows:

I. The appropriation shall be only for an identified project, as described in the article authorizing the appropriation, for which it would be lawful to issue a bond or note under RSA 33:3 or RSA 33:3–c.

II. The article authorizing the appropriation shall state the term of years of the appropriation, the total amount of the appropriation, and the amount to be appropriated in each year of the term.

III. For each year after the first year, the amount designated for that year as provided in paragraph II shall be deemed appropriated without fur-

ther vote by the legislative body, unless the appropriation is rescinded as provided in paragraph VI. In a town or district that has adopted the official ballot referendum form of meeting, the amount designated for each year shall be included in the default budget for that year.

IV. If the amount appropriated for any year is not spent during the year, the unexpended amount shall not lapse, but shall be available for expenditure in a subsequent year during the term; provided that all unexpended amounts shall lapse at the end of the term.

V. The approval of an appropriation under this section shall not constitute the establishment of a capital reserve fund, and any amounts appropriated shall not be deposited into such a fund.

VI. Prior to the expiration of the term, the legislative body may, at any annual meeting, rescind the appropriation by an affirmative vote of a majority of those voting on the question. Upon rescission, any unexpended amount shall lapse immediately.

Source. 2013, 109:2, eff. Aug. 23, 2013.

Expenditures

32:8 Limitation on Expenditures. No board of selectmen, school board, village district commissioners or any other officer, employee, or agency of the municipality acting as such shall pay or agree to pay any money, or incur any liability involving the expenditure of any money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:9 Exception. Money may be spent to pay a judgment against the town or district, without an appropriation.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:10 Transfer of Appropriations.

I. If changes arise during the year following the annual meeting that make it necessary to expend more than the amount appropriated for a specific purpose, the governing body may transfer to that appropriation an unexpended balance remaining in some other appropriation, provided, however, that:

(a) The total amount spent shall not exceed the total amount appropriated at the town or district meeting.

(b) Records shall be kept by the governing body, such that the budget committee, if any, or any citizen requesting such records pursuant to RSA 91–A:4, may ascertain the purposes of appropriations to which, and from which, amounts have been transferred; provided, however, that neither the budget committee nor other citizens shall have any authority to dispute or challenge the discretion of the governing body in making such transfers.

(c) A statement comparing all legislative body appropriations against all expenditures shall be deemed adequate for purposes of the records required by subparagraph (b), so long as every expenditure has been properly authorized and properly classified and entered and any expenditures exceeding the original legislative appropriations are offset by unexpended balances remaining in other appropriations, in which case the governing body shall not be required to designate the specific source of each transfer.

(d) Any amount appropriated at the meeting under a special warrant article, or to a capital reserve fund pursuant to RSA 35:5, may be used only for the purpose specified in that article and shall not be transferred.

(e) The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero or does not approve an appropriation contained in a separate article, that purpose or article shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose.

II. As used in RSA 32:10, I(a)–(d), concerning transfers of appropriations and records thereof, "purpose" refers, in addition to its meaning in RSA 32:3, V, to individual line items in whatever detailed budget or chart of accounts is regularly used by the municipality. The general wording of a vote adopting a budget or portion of a budget shall not be considered a "purpose" to which an amount may be transferred. The definition of "purpose" as used in RSA 32:10, I(e) shall be the definition of "purpose" under RSA 32:3, V.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:4, eff. Aug. 9, 1996. 2004, 113:1, eff. July 16, 2004. 2017, 127:4, eff. Aug. 15, 2017.

32:11 Emergency Expenditures and Overexpenditures. When an unusual circumstance arises during the year which makes it necessary to expend money in excess of an appropriation which may result in an overexpenditure of the total amount appropriat-

ed for all purposes at the meeting or when no appropriation has been made, the selectmen or village district commissioners, upon application to the commissioner of revenue administration or the school board upon application to the commissioner of education, may be given authority to make such expenditure, provided that:

I. Such application shall be made prior to the making of such expenditure. No such authority shall be granted until a majority of the budget committee, if any, has approved the application in writing. If there is no budget committee, the governing body shall hold a public hearing on the request, with notice as provided in RSA 91–A:2.

II. The commissioner of revenue administration or the commissioner of education may accept and approve an application after an expenditure if caused by a sudden or unexpected emergency, in which case paragraph I shall not apply.

III. Neither the commissioner of revenue administration nor the commissioner of education shall approve such an expenditure unless the governing body designates the source of revenue to be used. Neither commissioner shall have the authority to increase the town or district's tax rate in order to fund such an expenditure.

IV. When applying to the commissioner of education for such authority, the school board shall send a copy of such application to the department of revenue administration. The commissioner of education, when granting authority to the school board, shall notify, in writing, the commissioner of revenue administration of any and all authorizations given to school boards for emergency expenditures or overexpenditures, and the revenue source for funding such expenditures.

V. Notwithstanding paragraphs I through IV, if the legislative body has by warrant article established a contingency fund in the annual budget for the purpose of unanticipated expenses, the board of selectmen may expend funds from such account to meet the costs of such expenses.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:5, eff. Aug. 9, 1996. 1999, 140:1, eff. Aug. 24, 1999. 2013, 115:1, eff. Aug. 24, 2013.

32:11–a Actual Expenditures for Special Education Programs and Services. Each school district shall provide in its annual report an accounting of actual expenditures by the district for special education programs and services for the previous 2 fiscal years. Such accounting shall include offsetting revenues from all sources, including but not limited to, reimbursements from state funds, federal funds, or medicaid funds, private or other health insurance coverage, transferred special education moneys received from another school district, and any other special education resources received by the district.

Source. 1999, 180:1, eff. Aug. 30, 1999.

32:12 Penalty. Any person or persons violating the provisions of this subdivision shall be subject to removal from office on proper petition brought before the superior court. Such petition shall take precedence over other actions pending in the court and shall be heard and decided as speedily as possible.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:13 Contracts; Expenditures Prior to Meeting.

I. This subdivision shall not be construed to imply that a local legislative body, through its actions on appropriations, has the authority to nullify a prior contractual obligation of the municipality, when such obligation is not contingent upon such appropriations and is otherwise valid under the New Hampshire law of municipal contracts, or to nullify any other binding state or federal legal obligation which supersedes the authority of the local legislative body.

II. This subdivision shall not be construed to affect the authority of the local governing body, in towns with a March annual meeting and a January through December fiscal year, to make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purposes during the same time period.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1997, 318:2, eff. Aug. 22, 1997. 2001, 71:3, eff. July 1, 2001.

Budget Committee

32:14 Adoption.

I. This subdivision may be adopted:

(a) By any town with a town meeting form of government, including those with a budgetary town meeting, official ballot town meeting, or representative town meeting pursuant to RSA 49–D:3, II, II–a, and III, or by a town with an official ballot town council form of government under which part or all of the annual town operating budget is voted upon by official ballot;

(b) By a cooperative school district, in accordance with RSA 195:12–a;

(c) By any village district, or district created under RSA 53–A or 53–B, which adopts its budget at an annual meeting of its voters, and which is located in more than one municipality; or

(d) By any school district or village district which adopts its budget at an annual meeting of its voters, but which lies wholly within a municipality that lacks authority to adopt this subdivision.

II. This subdivision may be adopted by a majority vote of those present and voting, under an article in the warrant for the annual meeting, inserted by the governing body or by petition.

III. Voting shall be by ballot, but the question shall not be placed on the official ballot used to elect officers. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question.

IV. If the vote is favorable, the town or district shall at that same meeting vote, by ballot or other means, determine the number of members-at-large, as provided in RSA 32:15, I, and whether they shall be elected or appointed by the moderator.

V. A town or district which has adopted this subdivision may rescind its adoption in the manner described in paragraphs II and III.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2008, 243:3, eff. Aug. 23, 2008.

32:15 Budget Committee Membership.

I. The budget committee shall consist of:

(a) Three to 12 members-at-large, who may be either elected or appointed by the moderator, as the town or district adopting the provisions of this subdivision shall by vote determine, who shall serve staggered terms of 3 years; and

(b) One member of the governing body of the municipality and, if the municipality is a town, one member of the school board of each school district wholly within the town and one member of each village district wholly within the town, all of whom shall be appointed by their respective boards to serve for a term of one year and until their successors are qualified. Each such member may be represented by an alternate member designated by the respective board, who shall, when sitting, have the same authority as the regular member.

II. If the meeting decides that members-at-large are to be appointed, the staggering of terms shall begin that same year, with ⅓ of such members chosen to hold office for one year, ⅓ for 2 years, and ⅓ for 3 years, and each year thereafter ⅓ shall be chosen for terms of 3 years and until their successors are appointed and qualified. If the number of members-at-large is not divisible by 3, the division shall be as even as possible over the 3 years. All such appointments shall be made within 30 days after the annual meeting.

III. If the meeting decides members-at-large are to be elected, the meeting shall either elect the initial members for one-year terms by means other than by official ballot, or shall authorize the moderator to appoint members to serve until the next annual meeting, as provided in RSA 669:17. Elections for staggered terms, as described in paragraph II, shall not begin until that next annual meeting, and shall be by official ballot if the municipality has adopted the official ballot system, as set forth in RSA 669.

IV. A town or district which has adopted this subdivision may vote at any subsequent annual meeting to change the number or manner of selection of its members-at-large. No such change shall take effect until the annual meeting following the meeting at which the change was adopted.

V. No selectman, town manager, member of the school board, village district commissioner, full-time employee, or part-time department head of the town, school district or village district or other associated agency shall serve as a member-at-large. Every member-at-large shall be domiciled in the town or district adopting this subdivision and shall cease to hold office immediately upon ceasing to be so domiciled.

VI. One of the members-at-large shall be elected by the budget committee as chair. The committee may elect other officers as it sees fit. A member-at-large shall cease to hold office immediately upon missing 4 consecutive scheduled or announced meetings of which that member received reasonable notice, without being excused by the chair.

VII. In municipalities where members-at-large are appointed, the chair shall notify the moderator immediately upon the occurrence of any vacancy in the membership-at-large, and the vacancy shall be filled by appointment by the moderator within 5 days of such notification, otherwise by the budget committee. In municipalities where members-at-large are elected, vacancies shall be filled by appointment by the budget committee. Persons appointed to fill vacancies shall serve until the next annual meeting at which time a successor shall be elected or appointed to either fill the unexpired term or start a new term, as the case may be.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1998, 141:1, 2, eff. Aug. 7, 1998.

32:16 Duties and Authority of the Budget Committee. In any town which has adopted the provi-

sions of this subdivision, the budget committee shall have the following duties and responsibilities:

I. To prepare the budget as provided in RSA 32:5, and if authorized under RSA 40:14–b, a default budget under RSA 40:13, IX(b) for submission to each annual or special meeting of the voters of the municipality, and, if the municipality is a town, the budgets of any school district or village district wholly within the town, unless the warrant for such meeting does not propose any appropriation.

II. To confer with the governing body or bodies and with other officers, department heads and other officials, relative to estimated costs, revenues anticipated, and services performed to the extent deemed necessary by the budget committee. It shall be the duty of all such officers and other persons to furnish such pertinent information to the budget committee.

III. To conduct the public hearings required under RSA 32:5, I.

IV. To forward copies of the final budgets to the clerk or clerks, as required by RSA 32:5, VI, and, in addition, to deliver 2 copies of such budgets and recommendations upon special warrant articles to the respective governing body or bodies at least 20 days before the date set for the annual or special meeting, to be posted with the warrant.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2004, 219:4, eff. Aug. 10, 2004.

32:17 Duties of Governing Body and Other Officials. The governing bodies of municipalities adopting this subdivision, or of districts which are wholly within towns adopting this subdivision, shall review the statements submitted to them under RSA 32:4 and shall submit their own recommendations to the budget committee, together with all information necessary for the preparation of the annual budget, including each purpose for which an appropriation is sought and each item of anticipated revenue, at such time as the budget committee shall fix. In the case of a special meeting calling for the appropriation of money, the governing body shall submit such information not later than 5 days prior to the required public hearing. Department heads and other officers shall submit their departmental statements of estimated expenditures and receipts to the budget committee, if requested.

Source. 1993, 332:1, eff. Aug. 28, 1993.

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

I. Bonds, and all interest and principal payments thereon.

II. Notes, except tax anticipation notes, and all interest and principal payments thereon.

III. Mandatory assessments imposed on towns by the county, state or federal governments.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2004, 68:2, eff. July 6, 2004.

32:18–a Legislative Body Override of Limitation of Appropriations.

I. Notwithstanding any other provision of law, in any municipality electing this subdivision, or any district wholly within a town electing this subdivision, if a bond request is not recommended in its entirety by the budget committee, the governing body of such municipality, after a majority vote by the governing body of the municipality in favor of the bond request at a duly posted meeting, shall place the bond request on the warrant.

II. The legislative body of any municipality described in RSA 32:18–a, I, may approve a bond request despite the 10 percent limitation provided in RSA 32:18 in the following manner:

(a) The governing body shall place the following statement at the beginning of the warrant article for such bond request: "Passage of this article shall override the 10 percent limitation imposed on this appropriation due to the non-recommendation of the budget committee." Immediately below the bond request on the warrant shall be displayed (1) the recommendation of the governing body and (2) the recommendation of the budget committee, as included in the budget forms for the annual meeting pursuant to RSA 32:5, IV.

(b) If those voting "Yes" on the bond request satisfy the requirements of RSA 33:8, the bond request is thereby approved.

III. If the bond request is approved pursuant to RSA 32:18–a, the governing body of such municipality shall forward a copy of the minutes of the duly posted meeting described in RSA 32:18–a, I to the commissioner of the department of revenue administration.

Source. 2000, 193:1, eff. July 29, 2000.

32:19 Collective Bargaining Agreements. Whenever items or portions of items in a proposed budget constitute appropriations, the purpose of which is to implement cost items of a collective bargaining agreement negotiated pursuant to RSA 273–A, either previously ratified or concurrently being submitted for ratification by the legislative body, or the purpose of which is to implement the recommendations of a neutral party in the case of a dispute, as provided in RSA 273–A:12, such items shall be submitted to the budget committee and considered in its budget preparation. Such appropriations shall be submitted to the legislative body and shall include a statement of the governing body's recommendation and a separate statement of the budget committee's recommendation. If such appropriations were not recommended by the budget committee, then such appropriations shall be exempt from the 10 percent limitation set forth in RSA 32:18. The failure of the budget committee to recommend any portion of such appropriations shall not be deemed an unfair labor practice under RSA 273–A.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2001, 71:4, eff. July 1, 2001.

32:19–a Presentation of Negotiated Cost Items at the Annual Meeting. Cost items, as defined under RSA 273–A:1, IV, shall be presented to the annual town or district meeting in accordance with the procedures established under RSA 32:5. For submission to the legislative body of the annual meeting, cost items must be finalized by the date prescribed in RSA 39:3 for towns and by the date prescribed in RSA 197:6 for school districts. Cost items not negotiated in time to meet these dates may be submitted to the legislative body pursuant to the provisions of RSA 31:5 for towns and RSA 197:3 for school districts.

Source. 1996, 214:6, eff. Aug. 9, 1996.

32:20 At Special Meetings. So long as the provisions of this subdivision remain in force in any municipality, no appropriation shall be made at any special meeting for any purpose not approved by the budget committee, unless it is within the allowable 10 percent increase if RSA 32:18 has been adopted, except as provided in RSA 32:19 or 32:18–a.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2000, 193:3, eff. July 29, 2000.

32:21 Exceptions. In cases where the town or a district wholly within the town has been ordered by the department of environmental services, under the provisions of RSA 147, 485 or 485–A, to install, enlarge or improve waterworks or to install, enlarge or improve sewerage, sewage, or waste treatment facilities, the 10 percent limitation of RSA 32:18 and 20, shall not apply.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 228:108, eff. July 1, 1996.

32:22 Review of Expenditures. Upon request by the budget committee, the governing body of the town or district, or the town manager or other administrative official, shall forthwith submit to the budget committee a comparative statement of all appropriations and all expenditures by them made in such detail as the budget committee may require. The budget committee shall meet periodically to review such statements. The provisions of this section shall not be construed to mean that the budget committee, or any member of the committee, shall have any authority to dispute or challenge the discretion of other officials over current town or district expenditures, except as provided in RSA 32:23.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:23 Initiation of Removal Proceedings. Upon receipt of the reports provided for by RSA 32:22, the budget committee shall examine the same promptly, and if it shall be found that the governing body or town manager have failed to comply with the provisions of this chapter concerning expenditures, a majority of the committee, at the expense of the municipality, may petition the superior court for removal as provided in RSA 32:12.

Source. 1993, 332:1, eff. Aug. 28, 1993.

32:24 Other Committees. Nothing in this subdivision shall prevent a municipality or school administrative unit from establishing advisory budget or finance committees, with such duties and powers as the municipality or school administrative unit sees fit, but no such committee's recommendations shall have any limiting effect on appropriations, as set forth in RSA 32:18, unless all the procedures in this subdivision are followed.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 98:1, eff. July 1, 1996.

Biennial Budgets

32:25 Biennial Budget; Authorization. Any city, town, unincorporated town, unorganized place, school district, village district, or county may budget receipts and expenditures, raise and appropriate revenues, and assess taxes on a biennial budget basis consisting of one distinct 24-month fiscal year or 2 distinct 12-month fiscal years. The governing body may allow for the carry over of funds from the first fiscal year of the biennium to the second.

Source. 1998, 54:1, eff. April 1, 1998. 2006, 148:1, eff. July 21, 2006.

32:26 Procedure for Adoption. Any city, town, unincorporated town, unorganized place, school district, village district, or county may adopt the provisions of RSA 32:25 relative to a biennial budget in the normal manner used in the political subdivision for acts of the local legislative body.

Source. 1998, 54:1, eff. April 1, 1998.

CHAPTER 33

MUNICIPAL FINANCE ACT

33:1 Definitions. This chapter may be referred to as the "Municipal Finance Act." The following terms, when used in this chapter, shall have the meanings set forth below, except when the context in which they are used requires a different meaning:

I. "Municipality" or "municipal corporation," town, city, school district or village district;

II. "Governing board," the selectmen of a town, the commissioners or comparable officers of a village district, and the school board of a school district;

III. "Net indebtedness," all outstanding and authorized indebtedness, heretofore or hereafter incurred by a municipality, exclusive of the following: unmatured tax anticipation notes issued according to law; or notes issued in anticipation of grants of federal or state aid or both; debts incurred for supplying the inhabitants with water or for the construction, enlargement, improvement or maintenance of water works; debts incurred to finance the cost of sewerage systems or enlargements or improvements thereof, or sewage or waste disposal works when the cost thereof is to be financed by sewer rents or sewer assessment; debt incurred pursuant to RSA 31:10; debts incurred to finance energy production projects, the reconstruction or enlargement of a municipally owned utility, or the manufacture or furnishing of light, heat, power or water for the public, or the generation, transmission or sale of energy ultimately sold to the public; debts incurred to finance small scale power facilities under RSA 374–D; debts in-

curred outside the statutory debt limit of the municipality under any general law or special act heretofore or hereafter enacted (unless otherwise provided in such legislation); and sinking funds and cash applicable solely to the payment of the principal of debts incurred within the debt limit.

Source. 1895, 43:1. PL 59:1. RL 72:1. 1953, 258:1, par. 1, eff. as of Jan. 1, 1954. RSA 33:1. 1955, 329:3. 1957, 142:3. 1961, 120:1. 1967, 38:1. 1981, 161:1, eff. Aug. 1, 1981; 545:1, eff. Aug. 29, 1981.

33:2 Repayment of Loans. Municipalities and counties shall not issue any bonds or notes payable on demand. They shall provide for the payment of all loans issued under authority of this chapter except notes issued under authority of RSA 33:7, in annual payments which shall be so arranged that the amount of the annual payment of principal and interest in any year on account of any loan shall not be less than the amount of principal and interest payable in any subsequent year by more than 2 percent of the principal of the entire loan. The total amount of such payments shall be sufficient to extinguish the entire loan on account of which they are made at maturity. The first payment of principal on any loan shall be made not later than 2 years and the last payment not later than 30 years after the date thereof, provided, however, that no loan issued to pay for public work or improvement shall exceed the expected useful life of said public work or improvement as determined by the governing board or the city councils in the case of cities, or the county commissioners in the case of counties. Each authorized issue of notes or bonds shall be a separate loan. The amount of each payment of principal and interest on all loans shall, without vote of the municipality or county, be annually assessed and collected. Sinking funds and debt retirement funds for the payment of debt shall not hereafter be established.

Source. 1917, 129:2, 3. PL 59:3, 4. RL 72:3. 1947, 5:1. 1949, 120:1. 1953, 258:1, par. 2, eff. Jan. 1, 1954.

33:2–a Call Bonds. The issuance of bonds or notes hereunder which are subject to call, at the election of the municipality, before the date fixed for final payment thereof, is authorized. The bonds or notes, in such cases, shall contain provisions setting forth the method or methods by which the option to call may be exercised, the procedure for payment in the event of call, and the legal effect of the making of the call. If such call bonds or notes are payable to bearer, they may be called, at the election of the municipality, on any date when interest thereon shall become payable, written notice of such election first having been given to the bank, banks or other institutions, if any, at which they are stated on their face to be payable, and published for 4 consecutive weeks at least once a week in one or more newspapers printed and published in Boston, Massachusetts, and in one newspaper printed and published in the state of New Hampshire and circulating in said municipality, the last such publications being at least 14 days before the date specified for payment; and thereupon, after the date so specified, interest thereon shall cease. If such call bonds or notes are payable to the registered holder, they may be called, at the election of the municipality, on any date when interest thereon shall become payable, written notice of such election first having been given to the registered holder by registered mail, postage prepaid, to such holder at his last address, as registered in the books of the municipal treasurer; and thereupon, after the date so specified, interest thereon shall cease.

Source. 1957, 103:1, eff. July 1, 1957.

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

Source. 1917, 129:5, 6. PL 59:5, 6. RL 72:5, 6. 1953, 258:1. RSA 33:3. 1971, 34:1, eff. May 31, 1971. 1996, 55:1, eff. June 23, 1996. 2006, 225:1, eff. July 31, 2006.

33:3–a Use of Bond Proceeds.

I. The proceeds of any sale of bonds or notes shall be used only for the purposes for which the loan was incurred except as otherwise authorized by this section; provided, however, that any premium received shall not be used to increase the amount to be spent for the purpose for which the loan was original-

ly incurred. The purposes for which the loan was incurred may include the payment of principal of and interest on any temporary indebtedness incurred under RSA 33:7–a and interest on any temporary indebtedness incurred under RSA 33:7–b.

II. If after notes or bonds have been issued and no expenditure of the proceeds has been made for the purpose or purposes for which the debt was incurred, or if a balance remains after the completion of the project or projects for which the debt was authorized, a city by a vote of ⅔ of the city council or a town, school district, or village district by a vote of ⅔ of the voters present and voting at an annual meeting, a county by a ⅔ vote of all the members of the county convention, a political subdivision which has adopted official ballot voting procedures pursuant to RSA 40:13 by a vote of ⅗ of those voting, and a municipality that has adopted an official ballot town council under RSA 49–D:3, I–a by a vote of ⅔ unless the municipal charter provides for a vote of ⅗, may authorize the expenditure of the sum or sums on hand, including any premiums received, for any purpose or purposes for which bonds or serial notes may be issued for an equal or longer period of time at any time which said sum or any portion thereof remains available; provided, however, that if the sum obtained by issuance of bonds or notes, as aforesaid, or any balance thereof, including any premium, is not appropriated as aforesaid, then the same shall be used to pay the principal of the loan as it matures. Only "yes" or "no" votes shall be included in the calculation of any majority.

III. Notwithstanding the provisions hereof, no appropriation for a loan or balance thereof shall be made which will increase the amount available from borrowed money for any purpose to an amount in excess of any limit imposed by general law or special act for such purpose.

Source. 1963, 151:1. 1981, 300:4, eff. June 16, 1981. 2006, 12:1, eff. Mar. 13, 2006.

33:3–b Additional Purpose. A city or town may issue its bonds or notes for the purpose of defraying the cost of a reappraisal by professional appraisers of the real estate in such city or town for tax assessment purposes, or for the acquisition of a tax map of said city or town; said bonds or notes to mature in a period of not more than 5 years from the date of issue.

Source. 1965, 55:1, eff. June 13, 1965.

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

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

(a) A public building.

(b) A water works.

(c) A sewerage system or sewage or waste treatment facility.

(d) A solid waste disposal or resource recovery facility.

(e) Broadband infrastructure as defined in RSA 38:38 to be purchased or constructed in areas not served by an existing broadband carrier or provider.

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

Source. 1969, 201:1. 1985, 417:1, eff. Sept. 1, 1985. 2006, 225:2, eff. July 31, 2006.

33:3–d Refunding Bonds.

I. A municipality or county may authorize the issuance of refunding bonds in order to pay all or part of any issue of bonds called or to be called for redemption, including any redemption premium thereon, all or part of the interest coming due on or prior to the date on which the outstanding bonds are redeemed, and the costs of issuing and marketing the refunding bonds. The authorization and issuance of refunding bonds shall be subject to the same requirements and provisions of law as would then be applicable to the authorization and issuance of the bonds being redeemed, as far as apt. In a town, school district, or village district, but not in a city, such refunding bonds may be authorized by the governing

body of such town, school district, or village district, notwithstanding the provisions of RSA 33:8. In this case, the authorization of refunding bonds shall not be subject to RSA 33:8–a, provided that there shall be at least one public hearing concerning any proposed refunding bond issue in excess of $100,000 held before the governing body of the town, school district, or village district. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the town, school district, or village district at least 7 days before the hearing is held.

II. Refunding bonds shall be payable in installments, the first of which shall be not later than the earliest stated principal maturity date of the bonds being refunded and the last of which shall be not later than the last date on which the bonds being refunded could have been made payable under that law applicable to the bonds being refunded. The installment payments of refunding bonds shall be arranged in accordance with RSA 33:2 except that any installment that is payable earlier than the date on which the first installment is required to be made payable may be in any amount. The proceeds of refunding bonds, exclusive of any premium and accrued interest and any proceeds used to pay issuing or marketing costs, shall, upon their receipt, be paid immediately to the paying agent for the bonds which are to be called and prepaid; and such paying agent shall hold such proceeds in trust until the bonds are redeemed. While such proceeds are held in trust, they may be invested for the benefit of the municipality or county as may be provided in any other applicable law of the state of New Hampshire relating to the investment or deposit of municipal or county funds; and the income derived from investment may be expended to pay the principal of and redemption premium, if any, on the refunded bonds and interest thereon until they are redeemed. Refunding bonds issued in accordance with this section shall be subject to the same statutory limit of indebtedness, if any, as the bonds refunded; provided, however, that upon the issuance of the refunding bonds, the bonds refunded shall no longer be counted in determining any limit of indebtedness of the municipality or county.

Source. 1983, 468:9. 1987, 54:1, eff. April 22, 1987. 2007, 347:3, eff. Sept. 14, 2007.

33:3–e Superfund Site Cleanup Bonds Authorized. A municipality may authorize the issuance of bonds, payable within 20 years from their dates of issuance, in order to pay all response costs associated with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 et seq. ("CERCLA"), national priorities list site ("superfund site") in which the municipality is a named potentially responsible party. Response costs shall include, but not be limited to, costs incurred for investigation, design, remedial action, legal fees and costs, consulting fees and costs, and other costs associated with the superfund site. Any debt incurred for this purpose shall be outside the debt limit prescribed in this chapter. Such debt shall at no time be included in the net indebtedness of any municipality for the purposes of determining its borrowing capacity. In the sole discretion of the municipality, it may extend the benefits of this bonding authority to one or more of the other potentially responsible parties at the superfund site. If a municipality elects to extend such benefits, its governing body shall enter into agreements with such other potentially responsible parties, in such form as it shall deem appropriate, to provide for payments to the municipality to pay principal and interest and other related costs of the bonded indebtedness incurred by the municipality on behalf of the other party or parties. For the purposes of this subdivision, "governing body" means the board of selectmen in a town, the board of aldermen or council in a city or town with a town council, the school board in a school district or the village district commissioners in a village district, or when used to refer to unincorporated towns or unorganized places, or both, the county commissioners.

Source. 1992, 275:2, eff. May 18, 1992.

33:3–f State Guarantee.

I. The governor and council may award an unconditional state guarantee of the principal of and interest on bonds issued under RSA 33:3–e. The full faith and credit of the state shall be pledged for any such guarantees of principal and interest. The principal amount of the bonds guaranteed under this section shall not exceed $20,000,000.

II. The total amount awarded under RSA 33:3–e and this section to any one superfund site, however, shall not exceed $10,000,000, plus interest. The governor, with the advice and consent of the council, is authorized to draw his warrant for such a sum out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The state's guarantee shall be evidenced on each guaranteed bond by an endorsement signed by the state treasurer in substantially the following form:

The state of New Hampshire hereby unconditionally guarantees the payment of the whole of the princi-

pal and interest thereon of the within bond and for the performance of such guarantee the full faith and credit of the state are pledged.

_____

State Treasurer

III. In connection with the award of a state guarantee, the governor and council may impose such terms and conditions as they may deem appropriate concerning the bonds and such terms and conditions as they may deem appropriate concerning reimbursement to the state if any state funds are used to honor the guarantee. Such terms and conditions may be contained in an agreement between the state and the municipality, to be executed on behalf of the state by the governor and the state treasurer and on behalf of the municipality by its governing body.

IV. Nothing in this subdivision shall be construed to affect in any way the ultimate liability of any party, under state or federal law, for hazardous waste cleanup costs.

Source. 1992, 275:2, eff. May 18, 1992. 2008, 49:4, eff. July 1, 2008.

33:3–g Broadband Infrastructure Bonds.

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

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

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

Source. 2006, 225:3, eff. July 31, 2006.

33:4 Debt Limit, Counties. Counties shall not incur net indebtedness to an amount, at any one time outstanding, exceeding 2 percent of the last assessed valuation thereof.

Source. 1917, 129:7. PL 59:7. 1933, 98:1. RL 72:7. 1951, 183:1. 1953, 258:1, par. 4. RSA 33:4. 1955, 329:1, eff. Aug. 5, 1955.

33:4–a Debt Limit, Municipalities.

I. Cities shall not incur net indebtedness, except for school purposes, to an amount, at any one time outstanding, exceeding 3 percent of their valuation determined as hereinafter provided.

II. Cities shall not incur net indebtedness for school purposes to an amount at any one time outstanding, determined as hereinafter provided, exceeding 7 percent of said valuation. Any debt incurred for school purposes by a city under this or any special statute heretofore or hereafter enacted shall be excluded in determining the borrowing capacity of a city for other than school purposes under the 3 percent limitation in paragraph I.

III. Towns shall not incur net indebtedness to an amount at any one time outstanding exceeding 3 percent of their valuation determined as hereinafter provided.

IV. School districts shall not incur net indebtedness to an amount at any one time outstanding exceeding 7 percent determined as hereinafter provided.

V. Village districts shall not incur net indebtedness to an amount at any one time outstanding exceeding one percent of their valuation determined as hereinafter provided.

Source. 1955, 329:1. 1957, 120:1. 1959, 209:3, eff. Sept. 27, 1959. 1998, 72:1, eff. July 18, 1998.

33:4–b Debt Limit; Computation. The debt limitations hereinbefore prescribed, except for counties, shall be based upon the applicable last locally assessed valuation of the municipality as last equalized by the commissioner of revenue administration under RSA 21–J:3, XIII and shall include the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X and XI; 72:16; 72:17; 73:26; 73:27 and 73:11 through 16 inclusive, all as amended, which was relieved from taxation by 1970, 5:3, 5:8 and 57:12, as determined

under the provisions of RSA 71:11 as amended. Whenever several municipalities possessing the power to incur indebtedness cover or extend over identical territory, each such municipality shall so exercise the power to incur indebtedness under the foregoing limitations so that the aggregate net indebtedness of such municipalities shall not exceed 9.75 percent of the valuation of the taxable property as hereinbefore determined, except as provided for cooperative school districts under RSA 195:6. A written certificate signed by the commissioner of the department of revenue administration shall be conclusive evidence of the base valuation of municipalities for computing debt limits hereunder.

Source. 1955, 329:1. 1957, 120:4. 1959, 209:4. 1970, 5:6; 57:14. 1973, 544:11, I. 1991, 306:1, eff. April 1, 1992.

33:4–c to 33:4–g Repealed.

[Repealed 1959, 209:5, eff. Sept. 27, 1959.]

History

Former RSA 33:4–c to 33:4–g, which were derived from 1955, 329:2 and 1957, 120:5, 6, related to exceeding debt limits and board of investigation.

33:5 Sewerage Systems and Sewage Treatment Works. Municipalities which have received orders from the department of environmental services to install sewage treatment works under the provisions of RSA 485–A, or to install a sewerage system or sewage treatment works under the provisions of RSA 485:27, or under RSA 147, or acts amending such statutes enacted in the future, may incur debt by the issue of bonds or notes for the construction of such sewerage systems and treatment works outside the limit of indebtedness prescribed by RSA 33:4. Such debt shall at no time be included in the net indebtedness of the municipality for the purpose of ascertaining its borrowing capacity.

Source. 1949, 78:1. 1953, 258:1, par. 5. RSA 33:5. 1986, 202:6, I(a). 1989, 339:11, eff. Jan. 1, 1990. 1996, 228:108, eff. July 1, 1996.

33:5–a Water Works. Municipalities may incur debt for supplying the inhabitants with water or for the construction, enlargement, or improvement of water works, by the issue of bonds or notes, for such purposes, as set forth in this chapter; provided, however, that such municipalities shall not incur debt for such purposes to an amount, at any one time outstanding, exceeding 10 percent of their last locally assessed valuation as last equalized by the commissioner of revenue administration determined as provided in RSA 33:4–b. Any municipality which shall have received orders from the department of environmental services under the provisions of RSA 485 requiring the alteration, enlargement, or application of any other improvement in such facilities as will ensure fitness and safety and adequate protection of the public health may incur debt thereof by the issue of bonds or notes outside the limit prescribed herein. All debt authorized by this section, inasmuch as it is all excluded from the definition of "net indebtedness" in RSA 33:1, shall at no time be included for the purpose of calculating the borrowing capacity of the municipality for other purposes. The debt limits established by this section may be exceeded by a municipality in accordance with the procedure prescribed in and subject to the provisions of RSA 33:6.

Source. 1957, 142:2. 1973, 544:8. 1986, 202:6, I(a), eff. Jan. 2, 1987. 1996, 228:13, eff. July 1, 1996.

33:5–b Voluntary Projects. Any city, town, village district, or other political subdivision may vote to incur debt for the purpose of installing a sewage disposal plant including treatment works or sewerage facilities or thereof, although at the time of such vote it has not received an order from the department of environmental services directing such installation under RSA 147, RSA 485, or RSA 485–A. Any such debt shall at no time be included in the net indebtedness of said city, town, village district, or other political subdivision for the purpose of ascertaining its borrowing capacity provided the approval of the governor and council hereinafter provided for is obtained.

Source. 1957, 213:1. 1961, 120:2. 1986, 202:6, I(a), eff. Jan. 2, 1987. 1996, 228:13, eff. July 1, 1996.

33:5–c Approval. Any such municipality which has voted to incur debt under the provisions of RSA 33:5–b shall submit a certified copy of the record of such action together with detailed plans of the proposed construction to the department of environmental services for review and approval, as hereinafter provided. After a review of the plans and such other independent investigation as is deemed necessary, if the department of environmental services determines that the proposed project is in the public interest, due consideration being given to the cost of said project in relation to the benefits which will accrue to public health or water pollution control, it shall furnish a report of its findings and recommendations including a recommendation concerning a state guarantee as provided for under RSA 485–A:7 to the governor and council for their approval.

Source. 1957, 213:1. 1965, 26:1. 1986, 202:6, I(a). 1989, 339:12, eff. Jan. 1, 1990. 1996, 228:108, eff. July 1, 1996.

33:5–d State Revolving Loan Funds. The terms of repayment by a municipality of any loan from the loan fund established under RSA 486:14, or from any other state revolving loan fund established for water pollution control, solid waste disposal or treatment or

other environmental improvement purposes, shall be governed by the statute and rules establishing the loan fund, notwithstanding any inconsistency with the provisions of this chapter relating to required annual installments, maximum period, or other such terms and conditions. In addition, a municipality may use proceeds of such a loan to pay interest on the loan during construction and for a period thereafter to the extent permitted by such statute or rules, and no authenticating certificate shall be required under RSA 33:11 on any bond, note or other document evidencing the loan.

Source. 1991, 179:1, eff. May 27, 1991.

33:6 Emergency Borrowing. Upon recommendation of the commissioner of revenue administration, approved by the governor and council, municipalities and counties may, within such limits as to amount, term and rate of interest as may be prescribed by the commissioner of revenue administration, incur debt outside the debt limit prescribed by RSA 33:4 for purposes made necessary by war or other national or local disaster or emergency. Such debt shall at no time be included in the net indebtedness of the municipality or county for the purpose of determining its borrowing capacity.

Source. 1953, 258:1, par. 6. RSA 33:6. 1973, 544:8, eff. Sept. 1, 1973.

33:6–a Exclusion From Debt Limit. Any municipality which has authorized the purchase and installation of parking meters under the provisions of RSA 249, and acts in amendment thereof which has incurred indebtedness or may incur indebtedness for the purchase and installation of such meters and the acquisition, construction and improvement of public parking facilities may have such indebtedness to an amount not exceeding ½ of one percent of its last assessed valuation computed under the provisions of RSA 33:4 excluded from the debt limit prescribed in RSA 33:4 if upon application to the commissioner of revenue administration, after hearing, the commissioner of revenue administration finds that the revenues from such sources may reasonably be expected to be adequate to retire such indebtedness and the costs connected therewith in accordance with the terms by which said indebtedness was incurred. Every such municipality shall annually in April report to the commissioner of revenue administration such information as the commissioner may require relative to the revenues from such sources, the costs of operation of such parking facilities and the amount of outstanding indebtedness for such purposes. If, at any time, the commissioner of revenue administration shall find the revenues available for retiring the debt are insufficient for the purpose, then the remaining amount of outstanding indebtedness shall be included in the limit of indebtedness prescribed by RSA 33:4.

Source. 1959, 153:1. 1973, 544:8, eff. Sept. 1, 1973.

33:6–b Exclusion From Debt Limit. Municipalities, other than school districts and counties, may incur debt for energy production projects including the reconstruction or enlargement of a municipally owned utility; the manufacture or furnishing of light, heat, power or water for the public; the generation, transmission or sale of energy ultimately sold to the public; or the construction, enlargement, or improvement of small scale power facilities, as such facilities are defined in RSA 374–D:1; by the issue of bonds or notes authorized under this chapter, RSA 374–D, and as otherwise provided by law. Any debt incurred for this purpose shall be outside the debt limit prescribed in this chapter. Such debt shall at no time be included in the net indebtedness of any municipality for the purposes of determining its borrowing capacity.

Source. 1981, 161:2, eff. Aug. 1, 1981; 545:2, eff. Aug. 29, 1981.

33:6–c Exclusion From Debt Limit. Any municipality which has voted to acquire land from a United States military base may incur debt by the issuance of bonds or notes beyond the limit of indebtedness as set forth in RSA 33:4–a, provided that the purpose of the acquisition is to further the economic development of the municipality. Such debt shall at no time be included in the net indebtedness of the municipality for the purpose of ascertaining its borrowing capacity.

Source. 1992, 260:10, eff. July 14, 1992.

33:6–d Exclusion From Debt Limit; Waste Site Cleanups. Municipalities may incur debt for cleanup projects pursuant to RSA 147–B, excluding Superfund sites, and for the closing or cleanup of landfills and other solid waste facilities as defined in RSA 149–M by the issue of bonds or notes authorized under this chapter and RSA 149–M:30. Any debt incurred for this purpose shall be outside the debt limit prescribed in this chapter. Such debt shall at no time be included in the net indebtedness of any municipality for the purposes of determining its borrowing capacity.

Source. 1992, 279:2, eff. May 18, 1992. 1996, 251:6, eff. Aug. 9, 1996.

33:6–e Exclusion From Debt Limit; Solid Waste Management Districts. The debt limit restrictions of this chapter shall not apply to a solid waste management district formed under RSA 53–B or to the debts or obligations incurred by such a

district. Debts or obligations of a member municipality to such a district shall at no time be included in the net indebtedness of the municipality for the purposes of determining its borrowing capacity.

Source. 1994, 367;15, eff. Aug. 8, 1994.

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

Source. 2006, 225:4, eff. July 31, 2006.

33:7 Tax Anticipation Notes.

I. CITIES AND TOWNS. Cities and towns may incur debt in anticipation of the taxes of the financial year in which the debt is incurred, in order to pay current maintenance and operation expenses, and may issue notes therefor to an aggregate principal amount not exceeding the total tax levy during the preceding financial year, provided that after the tax levy of the current year has been determined any city or town may borrow an amount not exceeding in the aggregate the total tax levy of the city or town for the current financial year. In order to meet necessary expenses which may arise during the period from the beginning of the financial year to the date of the annual town meeting, the treasurer of any town, with the approval of the selectmen, may issue notes, without a vote of the town therefor, to an aggregate principal amount not exceeding 30 percent of the total receipts from taxes during the preceding financial year.

II. VILLAGE DISTRICTS. Village districts may incur debt in anticipation of taxes and other revenue of the financial year in which the debt is incurred, in order to pay current maintenance and operation expenses, and may issue notes therefor to an aggregate principal amount not exceeding the total tax levy of the district during the preceding financial year. In order to meet necessary expenses which may arise during the period from the beginning of the financial year to the date of the annual district meeting, the treasurer of any district with the approval of the governing board, may issue notes, without a vote of the district therefor, to an aggregate principal amount not exceeding 30 percent of the total tax levy during the preceding financial year.

III. All notes issued under authority of this section shall be general obligations. They may be sold at discount and shall be payable not later than one year from their date. Notes issued for a shorter period than one year may be refunded or renewed, pursuant to a vote or resolution of the governing board, or the city councils in the case of cities, by the issue of other notes maturing within the required period, provided, however, that the period from the date of issue of the original loan to the date of maturity of the refunding or renewal loan shall not be more than one year.

IV. A village district established pursuant to RSA 52:1 may apply to the town it is situated in for tax anticipation money before the tax rate has been established for the town if said district presents to the selectmen a district budget, approved at a properly constituted district meeting called for the purpose of approving a budget. Towns may advance to any village district a share of any money borrowed by the town in anticipation of taxes, not exceeding the total approved budget amount to be paid to such district. The town may charge the district a proportionate share of the interest due on that town's tax anticipation notes.

V. For tax anticipation notes only, any town or village district at an annual meeting may adopt an article authorizing indefinitely until specific rescission of such authority the issuance of tax anticipation notes. The following shall apply:

(a) Such warrant article to be voted on shall read: "Shall the town (or village district) accept the provision of RSA 33:7 providing that any town (or village district) at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the selectmen (or commissioners) to issue tax anticipation notes?"

(b) If a majority of voters voting on the question vote in the affirmative, the proposed warrant article shall be in effect in accordance with the terms of the article until such time as the town (or village district) meeting votes to rescind its vote.

Source. 1953, 258:1, par. 7. RSA 33:7. 1957, 95:1; 98:1. 1967, 305:1. 1969, 171:1. 1979, 140:1. 1993, 176:4, eff. Aug. 8, 1993; 361:1, eff. Sept. 22, 1993. 1997, 105:3, 4, eff. Aug. 8, 1997.

33:7–a Temporary Loans. If a municipality votes to issue bonds or serial notes in accordance with this chapter, or when bonds have been authorized by a county convention, and such action was in accordance with the provisions of law in all respects, the officers authorized to issue the same may, in the name of the municipality, or county, make a temporary loan or loans in anticipation of the money to be

derived from the sale of such bonds or notes and may issue temporary notes therefor from time to time which are payable not later than 5 years from their respective dates of issue. Temporary notes issued for a period of less than 5 years may be renewed or paid from time to time by the issue of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same debt shall not exceed 5 years. When a temporary loan is made in anticipation of an issue of bonds or serial notes, the periods within which annual payments of an equivalent amount of the principal of such bonds or serial notes must commence and end under this chapter shall be measured from the date of the original note or notes representing such temporary loan, except that such annual payments need not commence less than one year after the date of such bonds or serial notes. No such notes shall be renewed beyond the third anniversary date of the original notes unless an amount of such notes, at least equal to the first legally payable installment of the bonds in anticipation of which said notes are issued, is paid and retired on or before said third anniversary date and, if such notes are renewed beyond the fourth anniversary date of the original notes, a like amount is paid or retired on or before said fourth anniversary date from funds other than proceeds of the obligation.

Source. 1957, 89:1. 1963, 151:2. 1965, 322:1. 1969, 172:1. 1973, 138:1; 544:11, III. 1975, 447:2. 1977, 160:1. 1983, 327:1. 1985, 143:1, eff. July 19, 1985.

33:7–b Anticipation of Federal or State Aid. A municipality may contract for or accept grants of federal or state aid or both in connection with any project for which the municipality may incur indebtedness under this chapter; and, after their receipt, such grants shall be expended according to the terms under which they are received or used to pay indebtedness incurred under this chapter. Any municipality which has contracted for or accepted an offer of a grant of federal or state aid or both, and any municipality which has not contracted for or accepted such aid but which has authorized such action and which has received a certificate from the department of environmental services stating that the department of environmental services has determined that such municipality may reasonably expect to receive an amount of federal aid with respect to a sewer project, may incur indebtedness in anticipation of the receipt of such aid by issuing its note or notes payable not more than 5 years from their dates, except that notes issued for a shorter period than 5 years may be funded and refunded from time to time by the issue of other notes which shall be payable no later than 5 years after the date of issue of the original note or notes creating the indebtedness being funded or refunded. In the case of a city the authority to contract for or accept grants of federal or state aid or both shall be given by a resolution passed in the manner provided in RSA 33:9, and in the case of a town, school district or village district the authority shall be given by a vote by ballot of ⅔ of all the voters present and voting at an annual or special meeting of such corporation; and the giving of such authority shall be sufficient to authorize the appropriate officers as specified in RSA 33:8 and 9 to issue notes as provided in this section without further proceedings by the municipality. Nothing contained in this section shall be construed to authorize the appropriation of any money in a manner which is inconsistent with laws relating to appropriations of money by municipalities.

Source. 1967, 38:2. 1971, 220:1. 1983, 160:1. 1986, 202:6, I(a). 1996, 228:108, eff. July 1, 1996.

33:7–c Borrowing in Emergency Due to Bankruptcy. Whenever any person, firm or corporation, who or which owns property subject to taxation under any provision of RSA 72, files a petition in bankruptcy, or is adjudicated bankrupt under any chapter of the federal bankruptcy laws, thus causing a substantial delay in or impediment to the payment or collection of property taxes assessed thereon by the city or town in which such property is located, such city or town, if the locally assessed value of such property of the bankrupt taxpayer exceeds 5 percent of the total locally assessed value of all taxable property within the city or town, may borrow money from time to time to meet any such deficit by issuance of its notes in such amount as may be approved by majority vote of its legislative body if a city, or of those present and voting at any annual or duly called special meeting, if a town. The discretion of fixing the date, maturities and denominations, interest or discount rate, the form and other details of said notes and of providing for the issuance and place of payment thereof shall be deemed delegated to the selectmen or the treasurer, unless otherwise voted by said legislative body or town meeting. The issuance of such notes and the provisions thereof shall also be subject to the approval of the commissioner of revenue administration, who may approve the same upon a finding that the proposed borrowing complies with the provisions of this section and is in the best interests of the municipality. The provisions of RSA 31:5 shall not apply to action by special town meetings under this section. Such notes may be renewed subject to the provisions of this section and subject to the approval of the commissioner of revenue adminis-

tration. Indebtedness incurred under this section shall not be subject to the debt limit prescribed by RSA 33:4–a and shall be excluded from the definition of net indebtedness in RSA 33:1. All taxes recovered from the bankrupt or through the bankruptcy proceedings shall be promptly applied toward the reduction of notes issued under this section. The commissioner may, from time to time, require reports from any such municipality as to progress in retirement of such indebtedness. All notes issued under this section shall be general obligations.

Source. 1988, 104:1, eff. April 18, 1988.

33:7–d Tax Lien Redemption Notes.

I. Any city or town in which the provisions of RSA 80:58-86 are in effect may incur debt in anticipation of redemption of real estate tax liens held by the city or town, in order to pay current maintenance and operation expenses or to fund cash deficits, and may issue notes therefor that are secured and made payable in accordance with this section, notwithstanding the provisions of RSA 33:7.

II. Notes issued under this section shall be general obligations but may also be secured, pursuant to a vote or a resolution of the local legislative body of the city or town, by a pledge of all or a portion of the proceeds of payments in redemption made under RSA 80:69 and RSA 80:71. Any such proceeds so pledged shall be deposited upon receipt in a segregated account to be held by the treasurer, or a corporate trustee designated by the treasurer, shall be applied without appropriation to the payment of such notes, and shall not be used for any other purpose until the notes and the interest on such notes are paid in full; provided that any earnings derived from investment of moneys in the account shall be credited to the general fund of the city or town and shall be available for appropriation for any lawful purpose. Any resolution adopted under this section may contain such covenants or restrictions with respect to maintenance, investment and disposition of the account, and any other provisions for protecting and enforcing the rights, security and remedies of the noteholders as may be, in the discretion of the city council or board of selectmen, reasonable and proper and not in violation of law. Any pledge made under this section shall be valid and binding and deemed continuously perfected from the time the pledge is made; and any proceeds so pledged and then held or thereafter acquired shall immediately be subject to the lien of that pledge. The resolution authorizing or creating the pledge need not be recorded other than in the records of the city or town clerk and no filing of the resolution need be made under RSA 382–A.

III. Notes issued under this section may be sold at a discount and shall be payable not later than 3 years from their dates. Notes issued for a shorter period may be refunded by the issue of other notes, provided that the period from the date of issue of the original notes to the date of maturity of the refunding notes shall not exceed 3 years. No notes may be issued or refunded under this section in a principal amount that would cause the total aggregate principal amount of notes outstanding under this section to exceed the total amount of real estate tax liens then held by the city or town.

Source. 1992, 173:1, eff. May 8, 1992.

33:7–e Lease Agreements of Equipment. The governing body may enter into leases of equipment as required by the municipality. Appropriations to fund lease agreements with nonappropriation clauses may be approved by a simple majority vote of the legislative body. Lease agreements with nonappropriation clauses shall not be treated as debt under RSA 33:4–a. For the purposes of this section, "lease" shall include lease-purchase, sale and lease back, installment sale, or other similar agreement to acquire use or ownership of such equipment as is from time to time required by the municipality. For purposes of this section and RSA 382–A, building or facility improvements related to the installation, purpose, or operation of such equipment shall be deemed to constitute equipment and the costs of such improvements may be financed through lease agreements under this section.

Source. 1999, 35:1, eff. July 10, 1999. 2014, 60:1, eff. July 26, 2014.

33:8 Town or District Bonds or Notes. Except as otherwise specifically provided by law, the issue of bonds or notes by any municipal corporation, except a city or a town which has adopted a charter pursuant to RSA 49–B, without a budgetary town meeting, and except a school district or municipality which has adopted official ballot voting procedures pursuant to RSA 40:13 shall be authorized by a vote by ballot of ⅔, and the issue of tax anticipation notes, by a vote of a majority, of all the voters present and voting at an annual or special meeting of such corporation, called for the purpose. The issue of notes or bonds by a school district or municipality which has adopted official ballot voting procedures pursuant to RSA 40:13 shall be authorized by a vote of ⅗. The issue of notes or bonds by a municipality that has adopted an optional form of legislative body under RSA 49–D:3, I–a or RSA 49–D:3, II–a shall be authorized by either

a ⅔ or ⅗ vote as adopted and provided for in the charter. If such charter does not specify which majority vote is required, then the required majority vote shall be ⅔. Only votes in the affirmative or negative shall be included in the calculation of any majority. No such action taken at any special meeting shall be valid unless a majority of all the legal voters are present and vote at such special meeting, unless the governing board of any municipality shall petition the superior court for permission to hold an emergency special meeting, which, if granted, shall give said special meeting the same authority as an annual meeting. The warrant for a special meeting shall be published once in a newspaper having a general circulation in the municipality within one week after the posting of such special meeting. The warrant for any such annual or special meeting shall be served or posted at least 14 days before the date of such special meeting. Every warrant shall be deemed to have been duly served or posted, if the return on the warrant shall so state, and it shall be certified by the officer or officers required to serve or post the same. All bonds or notes, authorized in accordance with this chapter, shall be signed by the governing board, or a majority of the governing board, and countersigned by the treasurer of the municipality, and shall have the corporate seal, if any, affixed to it. The discretion of fixing the date, maturities, denominations, the interest rate, or discount rate in the case of notes, the place of payment, the form and other details of said bonds or notes and of providing for the sale of such bonds or notes, may be delegated to the governing board or to the treasurer and shall, to the extent provision therefor shall not have been made in the vote authorizing the same, be deemed to have been delegated to the governing board. Bonding authority under this section may be limited or rescinded as provided in RSA 33:8–f.

Source. 1895, 43:3. PL 59:9. RL 72:9. 1953, 258:1, par. 8. RSA 33:8. 1969, 438:2. 1970, 18:2. 1983, 160:2. 1991, 304:1, eff. Aug. 23, 1991. 1999, 134:1, eff. Aug. 17, 1999. 2002, 246:1, eff. July 16, 2002. 2004, 254:1, eff. Aug. 14, 2004. 2009, 229:1, eff. Jan. 1, 2010.

33:8–a Procedure for Authorizing Bonds or Notes in Excess of $100,000.

I. There shall be at least one public hearing concerning any proposed municipal bond or note issue in excess of $100,000 held before the governing board of any municipality. Said hearing shall be held at least 15 days, but not more than 60 days prior to the meeting, or adjourned session thereof, at which the bond or note issued is to be voted upon. Notice of the time, place and subject of such hearing shall be published in a newspaper of general circulation in the municipality at least 7 days before it is held. Whenever possible the governing board shall determine the form of the warrant article after the public hearing.

II. All articles appearing in the warrant which propose a bond or note issue exceeding $100,000 shall appear in consecutive numerical order and shall be acted upon prior to other business except the election of officers, action on the adoption, revision, or amendment of a municipal charter, and zoning matters or as otherwise determined by the voters at the meeting. Polls shall remain open and ballots shall be accepted by the moderator on each such article, for a period of not less than one hour following the completion of discussion on each respective article. A separate ballot box shall be provided for each bond article to be voted upon pursuant to this section.

III. The provisions of this section shall not apply to cities nor to any borrowing under the authority of RSA 33:7, relative to tax anticipation notes.

IV. Upon favorable approval on the motion to reconsider the vote on a bond or note issue under paragraphs I and II, actual reconsideration of the bond issue shall not take place until the expiration of at least 7 days from the date on which the original vote on the motion was taken. Notice of time and place where such reconsideration shall take place shall be published in a newspaper of general circulation in the municipality at least 2 days before the reconsideration vote. Wherever required, the provisions of RSA 33:8–a shall apply.

V. Bonding authority under this section may be limited or rescinded as provided in RSA 33:8–f.

Source. 1971, 270:1. 1973, 25:1; 543:1. 1979, 43:1. 1983, 160:3, eff. Aug. 9, 1983. 2009, 229:2, eff. Jan. 1, 2010. 2014, 292:3, eff. Sept. 30, 2014.

33:8–b Bonds or Notes in Excess of $100,000.

[Repealed 1973, 25:2, eff. March 2, 1973.]

History

Former RSA 33:8–b, which was derived from 1971, 270:1, related to form of articles appearing in a warrant for bonds or notes in excess of $100,000. See now RSA 33:8–a.

33:8–c Alternate Procedure for Authorizing Town or Village District Bonds or Notes for Municipal Small Scale Power Facilities.

I. By a ⅔ vote, the governing board of a town or village district may call a special meeting for the purpose of authorizing the issuance of bonds or notes for the municipal financing of small scale power facilities, as such facilities are defined in RSA 374–D:1. A special meeting held under this section shall have the same authority as that of an annual

town meeting. The issuance of such bonds or notes shall be authorized by a vote of ⅔ of all the voters present and voting at the special meeting.

II. The warrant for such special meeting shall be published in a newspaper of general circulation in the municipality at least once a week for 2 consecutive weeks after the posting of such warrant. The warrant for such special meeting shall be served or posted at least 14 days before the date of the meeting. Every warrant shall be deemed to have been duly served or posted, if the return on the warrant shall so state, and it shall be certified by the officer or officers required to serve or post the warrant.

III. There shall be at least one public hearing concerning any such proposed municipal bond issue held before the governing board of the municipality, before a special meeting held to vote on such issue. Said hearing shall be held at least 15 days, but not more than 60 days before the special meeting at which the bonds or notes to be issued are to be voted on. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the municipality at least 7 days before it is held. If a hearing is held under RSA 35:8–a or RSA 32, said hearing shall be sufficient for this purpose.

IV. All bonds or notes authorized in accordance with this section shall be signed by the governing board, or a majority of the board, and countersigned by the treasurer of the issuing municipality, and shall have the corporate seal, if any, affixed to such bonds or notes. The discretion of fixing the date, maturities, denominations, the interest rate, or discount rate in the case of notes, the place of payment, the form and other details of said bonds or notes and of providing for their sale, may be delegated to the governing board or to the treasurer and shall, to the extent provision for such delegation shall not have been made in the authorizing vote, be deemed to have been delegated to the governing board.

Source. 1981, 545:3, eff. Aug. 29, 1981.

33:8–d Procedures for Authorizing Bonds or Notes in Municipalities Adopting Charters Pursuant to RSA 49–B, Without a Budgetary Town Meeting.

I. The town council of any town which has adopted a charter pursuant to RSA 49–B, and which has chosen the procedures as set forth in this section, shall have the authority to issue bonds or notes, as follows:

(a) At least one public hearing shall be held at least 15 days, but not more than 60 days, prior to the vote on the bond issue or note. Notice of the time, place and subject matter of such hearings shall be published in a newspaper of general circulation in the municipality at least 7 days before the hearing is held and posted in at least 2 public places in the municipality.

(b) The issuance of any bonds or notes shall appear as an agenda item on the public agenda of the town council meeting at which any vote is scheduled to be taken and any action taken on such item shall be by a recorded roll call vote.

(c) A ⅔ majority vote of the town council shall be required to authorize the issuance of bonds or notes.

(d) The authority of the town council to issue bonds or notes pursuant to this paragraph is limited to an amount not in excess of 10 percent of the town's operating budget for the most recently concluded fiscal year.

II. In the event that a proposed bond issue or note is in excess of 10 percent of the town's operating budget for the most recently concluded fiscal year, a referendum shall be held on said issuance, as follows:

(a) The town council shall, after notice and public hearing at a regularly scheduled council meeting, order a referendum on the issuance to be held on the Tuesday not less than 60 nor more than 67 days from the regular meeting at which the order is passed.

(b) The town council shall hold at least one additional public hearing on the proposed bond or note after the issuance of its order for a referendum. The hearing shall be held at least 30 days, but not more than 60 days, prior to the referendum.

(c) The same notice requirements for public hearings on issuance of bonds or notes by vote of the town council shall apply to public hearings on bonds or notes to be authorized by referendum.

(d) An additional public hearing shall be held if the proposed bond or note issue is substantively altered by the town council after public hearing. Subsequent public hearings shall be held at least 14 days after the prior public hearing and shall comply with the same notice requirements.

(e) An official copy of the final bond or note proposal shall be placed on file with the town clerk and made available to the public 7 days before the referendum and displayed at the voting place on the day of the referendum.

(f) The town clerk shall prepare an official ballot which shall include the following question:

"Are you in favor of appropriating the sum of $_____ for the purpose of _____, with said sum to be in addition to any federal, state or private funds made available therefor, and of authorizing the issuance of not more than $_____ of bonds or notes in accordance with the provisions of the municipal finance act, RSA Chapter 33?"

When submitting the question under this section to the voters, there shall be 2 squares printed after the question, one with the word "yes" beside it and another with the word "no" beside it.

(g) If a ⅔ majority of the voters present and voting on the issuance of bonds or notes shall vote in the affirmative, the appropriation and issuance of bonds or notes in the amounts so stated in the question shall be declared to have been adopted.

III. The issuance of tax anticipation notes shall be authorized by a majority vote of the town council.

IV. This section shall not apply to towns which have adopted a charter calling for a budgetary town meeting pursuant to RSA 49–D:3, III. The issuance of bonds or notes in such towns shall be governed by RSA 33:7, 33:8 and 33:8–a.

Source. 1991, 304:2. 1993, 176:5. 1994, 87:1, eff. July 5, 1994.

33:8–e Town Council Authority to Issue Bonds and Notes. Any town which has adopted a charter pursuant to RSA 49–B and which does not have a budgetary town meeting, may choose in its charter to allow the town council to follow the procedures set out in RSA 33:8–d or RSA 33:9 for the issuance of bonds and notes.

Source. 1994, 87:2, eff. July 5, 1994.

33:8–f Procedures to Limit or Rescind Bonding Authority for Bonds or Notes.

I. In any vote to approve bonding authority, a town may limit the length of time the bond authorization remains valid. If, after the expiration of any such period, no bond or note has been issued, the bonding authority shall be considered for all purposes as rescinded.

II. A town may vote at an annual meeting to rescind an authorized but unissued bond or note following the same procedures as would be required to adopt such bond or note, provided that:

(a) A vote to rescind shall not take place less than 5 years after the vote to authorize the bond or note;

(b) The vote to rescind must pass by the same majority required, at the time of the rescission vote, to adopt a bond or note; and

(c) Notwithstanding RSA 33:8–a, II, a warrant article proposing the rescission of a bond or note in excess of $100,000 need not be acted upon prior to other business.

Source. 2009, 229:3, eff. Jan. 1, 2010.

33:9 City Bonds. The issue of bonds or tax anticipation notes by a city shall be authorized by a resolution of the city councils, passed by at least ⅔ of all the members of each branch thereof. All such bonds and notes shall be signed by a mayor and countersigned by the city treasurer, and shall have the city seal affixed thereto. The discretion of fixing the date, maturities, denominations, place of payment, interest rate, or discount rate in the case of notes, the form and other details of said bonds or notes, and of providing for the sale thereof, may be delegated to the city treasurer and shall, to the extent provision therefor shall not have been made in the vote authorizing the same, be deemed to have been delegated to the treasurer with approval of the mayor.

Source. 1895, 43:4. PL 59:11. RL 72:11. 1953, 258:1, par. 9, eff. Jan. 1, 1954.

33:10 County Bonds. County bonds shall be authorized and issued as provided in RSA 25 and 28, provided that a public hearing is held which shall be advertised at least 7 days before said public hearing, in some daily newspaper having a wide circulation in the county, giving the time and place of the hearing; and provided that not more than 14 days after said public hearing the county convention shall approve such bond issue by at least ⅔ of the county convention present and voting and provided further that a majority of the whole convention shall be present.

Source. PL 59:12. RL 72:12. 1953, 258:1, par. 10. RSA 33:10. 1957, 109:1, eff. July 7, 1957.

33:11 Authentication of Bonds. All bonds issued under authority of this chapter shall bear an authenticating certificate signed by an authorized officer of a bank or trust company doing business in the state of New Hampshire or in the commonwealth of Massachusetts, or by the commissioner of revenue administration, or by a notary public or justice of the peace. The authenticating certificate endorsed upon such bond shall identify such bond as being one of the particular issues described therein, shall certify the genuineness of the signatures and the seal, if any, thereto affixed and shall state the name of the attorney or attorneys who rendered an opinion approving the legality of such issue. A signed copy of such

legal opinion shall be furnished to the commissioner of revenue administration within 10 days after the bonds are delivered to the purchaser thereof. The provisions of this section shall not apply to bonds or notes issued to secure a principal sum of $17,000 or less when the bonds or notes are payable over a period not exceeding 5 years from the date of issue.

Source. 1953, 258:1, par. 11. RSA 33:11. 1973, 544:11, II. 1994, 167:1, eff. Jan. 1, 1995.

33:11–a Agreements Relating to Registered Bonds and Notes. In connection with the issuance by a municipality or county of original or replacement bonds or notes in registered form, the treasurer of the municipality or county, with the approval of the officer or officers authorized to sign such bonds or notes, is authorized to contract for and engage the services of any bank, trust company, banking institution or financial institution within or without the state to perform authentication, registration, transfer, exchange, record and paying agent functions, including, without limitation, the preparation, signing and issuance of checks in payment of such bonds or notes, the preparation and maintenance of records, reports and accounts and the performance of such related duties as may be necessary or desirable in connection with such bonds or notes. The treasurer, with such approval, may also enter into agreements with banks, trust companies, banking institutions and financial institutions to act as custodian or financial intermediary in connection with the establishment and maintenance by others of a central depository system for the transfer of interests in such bonds or notes. Any agreement entered into under this section shall include provisions for indemnifying the municipality or county for losses sustained by it on account of the negligence of a designated bank, trust company, banking institution or financial institution or on account of the failure of such designated bank, trust company, banking institution or financial institution to perform faithfully its duties and obligations under the agreement. Such agreement may include additional provisions necessary or desirable to protect the municipality or county and may provide for the limitation of liabilities of the parties, indemnification or payment of liquidated damages.

Source. 1983, 365:1, eff. June 19, 1983.

33:12 Register. The treasurer of every municipal corporation shall keep a register, in such form as may be prescribed by the commissioner of revenue administration, which shall state the denomination, number and date of every bond or note issued by the municipality, the time when and the place where the principal thereof and interest, if any, thereon are payable and such other information as the commissioner of revenue administration may prescribe. The commissioner of revenue administration shall inspect the register provided for herein whenever it shall make any audit of the accounts of a municipal corporation.

Source. 1895, 43:6. PL 59:19. RL 72:19. 1953, 258:1, par. 12. RSA 33:12. 1973, 544:8, eff. Sept. 1, 1973.

33:13 Treasurer's Certificate.

[Repealed 1957, 95:2, eff. Jan. 1, 1958.]

History

Former RSA 33:13, which was derived from 1895, 43:5; PL 59:20; RL 72:20; and 1953, 258:1, par. 13, related to treasurer's certificate of registration.

33:14 Report of Borrowing. The treasurer of any municipal corporation, within 10 days after the delivery of an issue of bonds or notes authorized by this chapter to the purchaser thereof, shall submit to the commissioner of revenue administration a report setting forth the details of the issue in such form as the commissioner may prescribe. Failure to make said report, however, shall not affect the validity of any issue of bonds or notes.

Source. 1953, 258:1, par. 14. RSA 33:14. 1973, 544:8, eff. Sept. 1, 1973.

33:15 Regularity Presumed. All bonds or notes purporting to be issued under authority of this chapter, and executed as hereinbefore provided, shall, in favor of bona fide holders, be conclusively presumed to have been duly and regularly authorized and issued in accordance with the provisions herein contained, and no such holder thereof shall be obliged to see the propriety of the purpose of the issue, to the regularity of any of the proceedings relating thereto, or to the application of the proceeds thereof. Said bonds or notes shall be negotiable in all respects and to the same extent as other securities negotiable by the law merchant except as herein otherwise provided. Any of such bonds or notes, if properly executed by officers of the municipality in office on the date of execution, shall be valid and binding according to their terms notwithstanding that before the delivery thereof and payment therefor such officers shall have ceased to be officers of the municipality.

Source. 1895, 43:7. PL 59:21. RL 72:21. 1953, 258:1, par. 15, eff. Jan. 1, 1954.

33:16 Tax Exemption. All bonds and notes, and the interest thereon, heretofore or hereafter issued by municipal corporations and counties under the provisions of this chapter or of any general or special act, heretofore or hereafter enacted, shall be exempt from taxation in the state of New Hampshire. For the purpose of this section the amount of the discount

on any notes which are sold at discount shall be deemed to be interest paid in advance.

Source. 1953, 258:1, par. 16, eff. Jan. 1, 1954.

33:17 Construction of Other Legislation. Any special act, heretofore or hereafter enacted shall be construed so as not to lessen the amount of indebtedness which the municipality affected would be authorized to incur under the terms of this chapter, unless such act expressly provides for such limitation.

Source. 1931, 115:1. RL 72:22. 1953, 258:1, par. 17, eff. Jan. 1, 1954.

33:18 Saving Clause.

I. Nothing contained herein shall impair the validity of any debt properly issued by a municipality or county under authority of any general or special act so repealed hereby.

II. Chapter 9, Laws of 1953, [RSA ch. 204], shall not be deemed repealed by this act.

Source. 1953, 258:2, eff. Jan. 1, 1954.

33:19 Validity and Enforceability of Certain Obligations and Indebtedness. Any obligation and indebtedness incurred under this chapter prior to January 1, 1999 and any obligation and indebtedness incurred under this chapter on or after January 1, 1999 which mature on or before March 31, 2000 shall be a valid and enforceable obligation and debt of the municipality that approved such obligation and indebtedness in the manner required by this chapter, notwithstanding the fact that all or any portion of the tax revenues that the municipality expects to use to repay such indebtedness or obligation is, or can reasonably be expected, to be derived from tax revenues from levies for the school portion of the municipality's tax rate. No member of any municipal legislative body or governing body, and no officer of any municipality, shall have any official or personal liability as a result of executing and delivering, on behalf of such municipality, any such obligation or debt authorized in said manner.

Source. 1999, 2:1, eff. Feb. 3, 1999.

CHAPTER 33–A

DISPOSITION OF MUNICIPAL RECORDS

33–A:4–a Municipal Records Board.

I. There is hereby established a municipal records board consisting of the following persons or their designees:

(a) The director of the division of archives and records management.

(b) The director of the New Hampshire Historical Society.

(c) The state librarian.

(d) The presidents of the New Hampshire Tax Collectors' Association, the New Hampshire City and Town Clerks' Association and the Association of New Hampshire Assessors.

(e) The registrar of vital records.

(f) The secretary of state.

(g) A municipal treasurer or finance director appointed by the president of the New Hampshire Municipal Association for a 3-year term.

(h) A professional historian appointed by the governor and council for a 3-year term.

(i) A representative of the Association of New Hampshire Historical Societies appointed by its president for a 3-year term.

(j) A representative of the department of revenue administration.

(k) The state records manager.

II. The board shall elect its own chairman and vice-chairman. The board shall meet at the call of the chairman, but not less than once every 2 calendar years. Five members of the board shall constitute a quorum for all purposes. Board members shall serve without compensation. Administrative services for the board shall be provided by the director of the division of archives and records management who shall serve as secretary of the board.

Source. 1977, 358:3. 1985, 102:1. 1991, 197:1, eff. July 27, 1991. 2003, 97:4, eff. Aug. 5, 2003; 319:56, eff. July 1, 2003.

CHAPTER 35

CAPITAL RESERVE FUNDS OF COUNTIES, TOWNS, DISTRICTS, AND WATER DEPARTMENTS

35:1 Establishment of Reserves Authorized. Any town, school district, village district, or county, as provided by RSA 35:3 may raise and appropriate money for the establishment of a capital reserve fund for the financing of all or part of the cost of:

I. The construction, reconstruction or acquisition of a specific capital improvement, or the acquisition of a specific item or specific items of equipment; or

II. The construction, reconstruction, or acquisition of a type of capital improvement or the acquisition of a type of equipment; or

III. A reappraisal by appraisers of the department of revenue administration or such other appraisers, appraisal firms or corporations approved by the commissioner of revenue administration, of the real estate in such town for tax assessment purposes; or

III–a. The acquisition of land; or

IV. The acquisition of a tax map of said town; or

V. Extraordinary legal fees and expenses related to present or foreseeable litigation involving the town or its officers and employees; or

VI. Municipal and regional transportation improvement projects including engineering, right-of-way acquisition and construction costs of transportation facilities, and for operating and capital costs for public transportation.

Source. 1943, 160:1. RSA 35:1. 1973, 51:2. 1983, 42:2. 1985, 285:2, eff. Aug. 10, 1985. 1998, 4:3, eff. May 17, 1998.

35:1–a Reserve Fund in Anticipation of New Fiscal Year. Any county, city or town may establish a reserve fund in anticipation of the optional fiscal year pursuant to RSA 31:94–a through 94–d.

Source. 1973, 96:1, eff. June 23, 1973.

35:1–b Reserve Fund for Education of Persons With Disabilities. Any school district may establish a reserve fund under RSA 35:1 to meet the expenses of educating children with disabilities.

Source. 1983, 106:1. 1990, 140:2, III, X, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008.

35:1–c Non-Capital Reserve Funds Authorized. Any town, school district, county, or village district may establish a reserve fund for the maintenance and operation of a specific public facility or type of facility, a specific item or type of equipment, or for any other distinctly-stated, specific public purpose that is not foreign to its institution or incompatible with the objects of its organization. Such funds shall be subject to all provisions and limitations of this chapter as are applicable to capital reserve funds. The legal validity of such a fund properly established shall not be affected by its designation as a "trust," "reserve," "capital reserve," or any other designation.

Source. 1995, 20:6, eff. June 11, 1995.

35:2 Custody of School District Reserves. Whenever any capital reserve of a school district is established the same shall be held in custody by the trustees of trust funds of the town wherein the school district lies or, in case of school district embracing 2 or more towns, by the trustees of trust funds of that town which the voters of the school district may elect.

Source. 1947, 8:2, eff. Feb. 26, 1947.

35:3 Meetings. Except as provided in RSA 35:7, the authority granted by RSA 35:1 shall be exercised only by a majority vote of the legal voters present and voting at an annual or special meeting in the case of a town, school district, or village district. The warrant for a town, school district, or village district meeting, to consider the establishment or discontinuance of such a reserve, shall include an article distinctly stating the purposes for which such reserve is to be established or was established as appropriate. In the case of a county, the authority granted in RSA 35:1 shall be exercised by a majority vote of the county delegation after a public hearing on the budget as required by RSA 24:23, RSA 24:13–c, IV, or RSA 24:14–a. The public notice of such hearing shall include a statement distinctly stating the purpose for which such reserve is to be established.

Source. 1943, 160:2. RSA 35:3. 1977, 287:2. 1991, 167:1, eff. July 26, 1991.

35:4 Exception. The authority hereby granted shall not be exercised by any city, except as may be necessary in connection with the authority granted by RSA 35:7.

Source. 1943, 160:3, eff. May 5, 1943.

35:5 Payments Into Fund. There may be paid into any such capital reserve fund, except as provided in RSA 35:7, such amounts as may from time to time be raised and appropriated therefor under a special warrant article, from any source other than money given to the town, district, or county for charitable purposes. Such amounts shall be within the limits as provided in RSA 35:8, and any such town, district, or county may also vote to transfer to said fund, under a

special warrant article in the case of a town or district, any of its unencumbered surplus funds remaining on hand at the end of any fiscal year.

Source. 1943, 160:4, eff. May 5, 1943. 2000, 224:4, eff. July 31, 2000. 2017, 127:1, eff. Aug. 15, 2017.

35:6 Funds Received in Eminent Domain Proceedings. Any town, school district, village district or county which may receive funds from the United States or any agency thereof in eminent domain proceedings for the taking of its property or other public facilities or in settlement for such taking or of claims for damages to its property or other public facilities, may vote to use said funds, under a proper article in the warrant in the case of a town, school district or village district or by vote of the county delegation in the case of a county, to establish a capital reserve fund under this chapter. Funds so received shall not be subject to restriction as to investments prescribed in RSA 35:9 and may be invested in the same manner as trust funds under RSA 31:25. Funds so received may, if so voted, be used to retire existing indebtedness as well as for the purposes specified in RSA 35:1. In cases in which the United States or any agency thereof shall acquire a flowage easement in highways or bridges under the jurisdiction of a town, the town, if it votes to establish a capital reserve fund out of the funds received therefor from the United States or any agency thereof, may use such fund not only for capital improvements and capital expenditures as provided in RSA 35:1, but also for the maintenance, repair and reconstruction of the particular highways and bridges in which easements have been acquired or of such highways and bridges as may be provided in substitution therefor.

Source. 1947, 91:1. 1951, 106:1, eff. May 11, 1951.

35:7 Water Departments. Any water works or sewer department of a city or town, organized by general law or special act of the legislature and financed principally by water or sewer rentals, may, by unanimous vote of the body charged with the administration thereof, whether the local governing body, water board, or a board of water or sewer commissioners, establish a capital reserve fund for said department for the purposes as provided in RSA 35:1. Such reserve shall be established only from surplus from water or sewer rentals and no part thereof shall be made from appropriations by said city or town.

Source. 1943, 160:5. 1994, 95:1, eff. July 8, 1994.

35:8 Limitations on Appropriations. No town, school district, or village district shall raise and appropriate in any one year for such reserve an amount in excess of ½ of one percent of the last base valuation for debt limit computed pursuant to RSA 33:4–b of said town or district; no county shall raise and appropriate for such reserve an amount in excess of 1/50 of one percent of the last base valuation for debt limit computed pursuant to RSA 33:4.

Source. 1943, 160:6. 1945, 35:2. RSA 35:8. 1993, 176:6, eff. Aug. 8, 1993. 2016, 114:1, eff. July 19, 2016.

35:9 Investment. Each capital reserve fund shall be maintained separately on the books of the town. The assets of such funds may be pooled in order to invest in a broader range of investments to maximize growth and mitigate risk. Said capital reserve funds shall be invested only in deposits in any federally or state-chartered bank or association authorized to engage in a banking business in this state, or in bonds or notes of this state, in such stocks and bonds as are legal for investment by banks and associations chartered by this state to engage in a banking business, or in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in obligations with principal and interest fully guaranteed by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U.S.C. section 80a–1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations. When so invested the trustees hereinafter named shall not be liable for the loss thereof. Any interest earned or capital gains realized on the moneys so invested shall accrue to and become a part of the individual funds on a pro rata basis. Deposits in federally or state-chartered banks and associations shall be made in the name of the town, district, or county which holds the same as a reserve, and it shall appear upon the books thereof that the same is a capital reserve fund. Any person who directly or indirectly receives any such capital reserve funds for deposit or for investment in securities of any kind shall, prior to acceptance of such funds, make available at the time of such deposit or investment an option to have such funds secured by collateral having a value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the town, school district, village district, or county depositing or investing such funds. Only securities defined by the bank commissioner as provided by rules adopted pursuant to RSA 383–B:3–301(e) shall be eligible to be pledged as collateral. The trustees shall formally adopt an investment policy for all investments made by them or by their agents for

any trust funds in their custody in conformance with the provisions of applicable statutes. The trustees shall review and confirm the investment policy at least annually. A copy of the investment policy shall be filed with the attorney general.

Source. 1943, 160:7. RSA 35:9. 1961, 136:8. 1991, 268:7; 383:4. 1995, 20:7, eff. June 11, 1995. 1996, 209:9, eff. Aug. 9, 1996. 2001, 54:6, eff. Jan. 1, 2002. 2007, 164:3, eff. Aug. 17, 2007. 2010, 52:1, eff. July 17, 2010. 2015, 272:42, eff. Oct. 1, 2015.

35:9–a Professional Banking or Brokerage Assistance.

I. Any trustee or trustees of trust funds having custody of capital reserve funds authorized by this chapter may contract with the trust department or departments of a bank, a brokerage firm, a portfolio management department, or investment advisor in the same manner and for the same purposes as described in RSA 31:38–a, III. They may also place securities in the nominee name of a trust department of a bank, or departments, a brokerage firm, a portfolio management department, or investment advisor, to facilitate transfers for such securities. Capital reserve fund records maintained by any bank, brokerage firm, portfolio management department, or investment advisor shall be available at all times for examination by local auditors, by independent accountants or auditors retained by a municipality, or by the auditors of the department of revenue administration; and such records shall be municipal records and property. In employing such trust departments of banks, brokerage firms, portfolio management departments, or investment advisor, the trustees may enter into contracts or agreements delegating the management of such capital reserve funds to those departments or brokerage firms subject to investment guidelines adopted by the trustees under applicable statutes and subject to at least quarterly review and approval of such management by the trustees. For purposes of this section, the terms "bank," "brokerage firm," "portfolio management department" and "investment advisor" shall have the definitions set forth in RSA 31:38–a.

II. The town meeting may adopt an article authorizing the trustees of trust funds, without further action of the town meeting, to charge any expenses incurred pursuant to paragraph I against the capital reserve funds involved. Such authority shall remain in effect until rescinded by a vote of the town meeting. No vote by the town to rescind such authority shall occur within 5 years of the original adoption of such article. In a town that has a town council, such authority may be granted by the town council and shall remain in effect until rescinded by the town council. No vote by the town council to rescind such authority shall occur within 5 years of the original adoption of such article. Any professional banking and brokerage fees incurred shall be reported in the annual report of the trustees of trust funds as expenditures out of capital reserve funds.

Source. 2014, 32:5, eff. July 26, 2014.

35:10 Trustees of Funds. The trustees of trust funds of a town or city shall have custody of any capital reserve of a town, district or water departments therein, the trustees of trust funds as provided in RSA 35:2 shall have custody of such capital reserve of a school district, and the county treasurer of a county shall have custody of any capital reserve of his county. Said trustees or treasurer shall give bond in such amount and in such form as the commissioner of revenue administration shall prescribe, and any such trustee or treasurer who shall make any payment of income or principal from any such capital reserve fund before the approval of his bond in writing by the commissioner of revenue administration shall be personally liable to the town, district, department or county for any loss resulting from such payment, to be recovered for the town, district, department or county at the suit of any citizen. The expenses of said trustees or treasurer in said capacity and the expense of their bonds shall be charged as incidental town, district, department or county charges.

Source. 1943, 160:8. RSA 35:10. 1973, 544:8, eff. Sept. 1, 1973.

35:11 Payments From Surplus. Whenever any town shall have voted to transfer any accumulated surplus to the capital reserve fund, the town clerk shall forward to the board of selectmen and to the town treasurer, within 10 days of the adoption of such vote, a certified copy of the same. The selectmen shall then draw an order on the town treasurer for the amount of surplus set forth in said vote. The town treasurer shall on receipt of the order immediately transfer to the trustees of trust funds of the town the amount specified in the order, or in the case of an optional fiscal year town, within 10 days of the determination of surplus following the close of the fiscal year.

Source. 1947, 91:2, par. 8a. RSA 35:11. 1993, 176:7, eff. Aug. 8, 1993.

35:12 Appropriation. Whenever the vote of the town is to appropriate any sum for the capital reserve fund pursuant to RSA 35:5, the same duties shall devolve upon the town clerk, selectmen, and town treasurer, as specified in RSA 35:11, except that the order must be drawn, and the sum transferred on or before December 15 following the vote, or, in the case of an optional fiscal year town, after July 1, but no

later than June 15, of the fiscal year for which the sum was appropriated.

Source. 1947, 91:2, par. 8b. RSA 35:12. 1993, 176:8, eff. Aug. 8, 1993. 2000, 224:5, eff. July 31, 2000. 2014, 32:3, eff. July 26, 2014. 2017, 127:2, eff. Aug. 15, 2017.

35:13 School or Village District. When a capital reserve fund is established by a school or village district, the same duties shall devolve upon the clerk of the school or village district, the members of the school board or the commissioners of the village district, the treasurer of the school district or the treasurer of the village district, as are prescribed in RSA 35:11 and 35:12 for the corresponding town officers.

Source. 1947, 91:2, par. 8c, eff. April 15, 1947.

35:14 Penalty. Any of the above officers failing to perform the duties above set forth, shall be guilty of a violation for every week said failure shall continue.

Source. 1947, 91:2, par. 8d. RSA 35:14. 1973, 531:9, eff. Oct. 31, 1973, at 11:59 p.m.

35:15 Expenditures.

I. Persons holding said capital reserve funds in trust, as provided in this chapter, shall hold the same until such time as the town, district or county shall have voted to withdraw funds from such capital reserve fund or shall have named agents of the town, district or county to carry out the objects designated by the town, district or county, in the manner prescribed by RSA 35:3.

II. Expenditures from any fund established for the acquisition of land pursuant to RSA 35:1 shall be made only as authorized:

(a) By a majority vote of the legal voters present and voting at an annual or special meeting, in the case of a town, school district or village district, or by majority vote of the county delegation, in the case of a county, or

(b) By the selectmen, appointed as agents pursuant to RSA 41:14–a, provided that the selectmen shall not have authority to expend any sum in excess of the amount contained in any capital reserve account created for the purchase of land other than any grant moneys which may be received.

III. (a) Notwithstanding the prohibition of debt retirement fund establishment in RSA 33:2, capital reserve funds may be used for multiple payments under a financing agreement for the purpose for which the capital reserve was established. If the financing agreement is a lease/purchase agreement the following shall apply:

(1) The lease/purchase agreement does not contain an "escape clause" or "non-appropriation clause"; and

(2) The lease/purchase agreement has been ratified by the legislative body by a vote by ballot of ⅔ of all the voters present and voting at an annual or special meeting.

(b) If agents have been named according to RSA 35:15, then no further vote is required to disburse funds following the initial vote which ratified the financing agreement.

IV. In the case of a water works or sewer department, as provided in RSA 35:7, the governing body, water board, or the water or sewer commissioners if any, shall determine when expenditures from said reserve shall be made.

V. In all cases, expenditures from a capital reserve fund shall be made only for or in connection with the purposes for which said fund was established or as amended as provided in RSA 35:16.

Source. 1943, 160:9. RSA 35:15. 1985, 285:3. 1991, 167:2. 1994, 95:2, eff. July 8, 1994. 1998, 43:1, eff. July 4, 1998. 2001, 187:1, eff. Sept. 3, 2001. 2007, 178:3, eff. Aug. 17, 2007.

35:16 Change of Purpose. After the purpose for which a capital reserve fund is established has been determined, no change shall be made in the purpose for which said fund may be expended unless and until such change has been authorized by a vote of ⅔ of all the voters present and voting at an annual town or district meeting, in the case of a town or district, or by vote of ⅔ of the entire membership of a county delegation, in case of a county, or by unanimous vote of the water board or commissioners of the water department, in the case of a water works department, as provided in RSA 35:7.

Source. 1943, 160:10, eff. May 5, 1943.

35:16–a Discontinuing Fund. Any town, school district, village district or county which has established a capital reserve fund pursuant to the provisions of this chapter may, as provided by RSA 35:3, vote to discontinue such capital reserve fund. If such fund is discontinued, the trustees of the trust fund holding the account for said fund shall pay all the monies in such fund to the town, district or county treasury as applicable.

Source. 1977, 287:1, eff. Aug. 26, 1977.

35:17 Audit; Records. The accounts of the persons holding capital reserve funds shall be audited annually by the auditor of the town, in the case of a town, district, or water works department, or by the

commissioner of revenue administration, in the case of a county, the securities shall be exhibited to said auditor or commissioner, and said auditor or commissioner shall certify the facts found by the audit and the list of all securities held. Said persons holding said funds shall keep a record of all such capital reserve funds in a record book, which shall be open to the inspection of all persons of their town, district, or county respectively.

Source. 1943, 160:11. RSA 35:17. 1973, 544:8, eff. Sept. 1, 1973.

35:18 Disbursements. No person holding in custody such capital reserve fund shall make any payment of income or principal or authorize the same to be done except in accordance with the provisions hereof. Whoever violates the provisions of this section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1943, 160:12. RSA 35:18. 1973, 529:5, eff. at 11:59 P.M., Oct. 31, 1973.

CHAPTER 35–A

NEW HAMPSHIRE MUNICIPAL BOND BANK

35–A:41 Educational Institution Bonding. The bank shall have the authority to purchase, sell and hold educational institution bonds subject to the terms pursuant to RSA 195–F. Such purchase and sale of educational institution bonds shall be separate from the purchase and sale of municipal bonds under this chapter. All proceeds derived pursuant to RSA 195–F shall be maintained separately from the general fund and bond reserve fund established under this chapter. The bank's authority created under this chapter shall extend, wherever applicable, to the effective implementation of RSA 195–F.

Source. 1982, 5:2, eff. Feb. 19, 1982.

CHAPTER 39

TIME FOR HOLDING TOWN MEETINGS AND WARNING THEREOF

39:3 Articles. Upon the written application of 25 or more registered voters or 2 percent of the registered voters in town, whichever is less, although in no event shall fewer than 10 registered voters be sufficient, presented to the selectmen or one of them not later than the fifth Tuesday before the day prescribed for an annual meeting, the selectmen shall insert in their warrant for such meeting the petitioned article with only such minor textual changes as may be required. For the purposes of this section, the number of registered voters in a town shall be the number of voters registered prior to the last state general election. The right to have an article inserted in the warrant conferred by this section shall not be invalidated by the provisions of RSA 32. In towns with fewer than 10,000 inhabitants upon the written application of 50 or more voters or ¼ of the voters in town, whichever is fewer, and in towns with 10,000 or more inhabitants upon the written application of 5 percent of the registered voters in the town, so presented not less than 60 days before the next annual meeting, the selectmen shall warn a special meeting to act upon any question specified in such application. The checklist for an annual or special town meeting shall be corrected by the supervisors of the checklist as provided in RSA 654:25-31. Those persons qualified to vote whose names are on the corrected checklist shall be entitled to vote at the meeting. The same checklist used at a recessed town meeting shall be used at any reconvened session of the same town meeting. In no event shall a special town meeting be held on the biennial election day.

Source. RS 32:3. CS 34:3. GS 35:3. GL 38:3. PS 41:3. PL 45:3. 1937, 40:1. RL 57:3. 1947, 21:1. RSA 39:3. 1969, 59:1. 1971, 79:1. 1975, 160:1. 1981, 454:1. 1987, 299:1. 1990, 192:1. 1991, 223:1; 370:5. 1994, 197:1, eff. July 23, 1994. 1998, 194:1, eff. Aug. 17, 1998.

39:3–d Placement of Articles on Official Ballot.

I. No article included in a warrant for a town meeting may be considered by placing a question on the official ballot used for election of town officers unless use of the official ballot for that article or type of article is specifically authorized or required by law.

II. For purposes of this section and RSA 40:4–e:

(a) Any law which requires a ballot vote on an article, and which uses the term "official ballot", shall be deemed to require the use of the official ballot for voting on that article, in towns which use the official ballot for the election of officers.

(b) Any law which prescribes the wording of a question, but where the term "official ballot" is not used, shall be deemed to authorize, but not require, the use of the official ballot for that question, unless a contrary intent is specified. If the official ballot is not used for voting on such a question, the prescribed wording shall be placed in the warrant, and may also be placed upon a preprinted ballot to be acted upon in open meeting in the same manner as a secret "yes-no" ballot under RSA 40:4–a.

III. This section shall not prohibit the use of secret written ballots at any town meeting pursuant to RSA 40:4–a or 4–b.

IV. Articles concerning the issuance of bonds or notes shall not be placed on the official ballot, unless the municipality has adopted a charter provision authorizing that votes on the issuance of bonds or notes shall be placed on the official ballot or unless the municipality has adopted the provisions of RSA 40:12-14.

V. Notwithstanding paragraph IV, in the town of Bedford, articles concerning the issuance of bonds or notes shall be in accordance with Bedford's Town Charter, Article 1-5 Finance, Paragraph 1–5–11 Borrowing Procedure.

Source. 1979, 445:1. 1988, 126:1. 1991, 113:1, eff. July 13, 1991. 1996, 156:3, eff. May 29, 1996. 1998, 166:1, eff. Aug. 14, 1998.

39:5 Posting Warrant. The selectmen may address their warrant to the voters of the town, in which case they shall post an attested copy of such warrant at the place of meeting, and a like copy at one other public place in the town, at least 14 days before the day of meeting. The 14 days shall not include the day of posting nor the day of the meeting, but shall include any Saturdays, Sundays, and legal holidays within the said period.

Source. RS 32:4. CS 34:4. GS 35:4. GL 38:4. PS 41:4. PL 45:4. RL 57:4. RSA 39:5. 1967, 90:1. 1975, 11:3, eff. April 25, 1975. 2003, 289:4, eff. Sept. 1, 2003.

CHAPTER 40

GOVERNMENT OF TOWN MEETING

Moderator

40:4 Duties.

I. The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe rules of proceeding; but such rules may be altered by the town.

II. In the event a weather emergency occurs on or before the date of a deliberative session or voting day of a meeting in a town, which the moderator reasonably believes may cause the roads to be hazardous or unsafe, the moderator may, up to 2 hours prior to the scheduled session, postpone and reschedule the deliberative session or voting day of the meeting to another reasonable date, place, and time certain. The date originally scheduled shall continue to be deemed the deliberative session or voting day of the meeting for purposes of satisfying statutory meeting date requirements; provided, that in towns or districts that have adopted RSA 40:13, the postponement shall not delay the deliberative session more than 72 hours. The moderator shall employ whatever means are available to inform citizens of the postponement and the rescheduled deliberative session or voting day.

Source. Const., Art. 32. RS 33:3. 1847, 490:1. CS 35:3. GS 36:3. PS 42:5. PL 46:4. RL 58:4. RSA 40:4. 1998, 278:1, eff. Aug. 25, 1998.

Conduct of Voting

40:4–a Secret Ballot.

I. (a) At any meeting of a town with a population of more than 500, 5 voters who are present may make a request in writing prior to a vote by voice vote or division vote that the vote be taken by secret written ballot. Upon receiving such a request, the moderator shall conduct the vote by secret "yes-no" ballot.

(b) Notwithstanding any other provision of law, on the request of 5 voters who are present, the moderator shall conduct a recount on any vote taken by secret written ballot under subparagraph (a). The recount shall take place immediately following public announcement of the vote taken providing that the vote margin is not more than 10 percent of the total vote cast. There shall be no fee required for a recount under this section.

II. At any meeting of a town of a population 500 or less, 3 voters who are present may request secret balloting or recounting as provided in paragraph I.

Source. 1971, 524:1. 1994, 71:1, eff. July 5, 1994. 2006, 117:1, eff. July 9, 2006.

40:4–b Questioning a Vote. When any vote, other than by ballot, declared by the moderator or other officer presiding shall, immediately and before any other business is begun, be questioned in writing or orally by 7 or more of the voters present, the moderator or other officer presiding shall retake the vote by secret "yes—no" ballot.

Source. 1971, 524:1, eff. July 7, 1971.

40:4–c Recount.

I. If any 10 voters of a town shall, before the expiration of 7 days from the date of an annual meeting or special meeting, apply in writing to the town clerk for a recount of the ballots given in at said meeting on any question, affecting said town only, legally appearing on the official Australian or nonpartisan ballot used at said meeting, said clerk shall appoint a time and place for the recount not earlier than 5 days nor later than 10 days after the receipt of said application. The clerk shall give notice by mail of the recount to the first-named voter who applied for a recount on a question and to any other person who requested notice in writing, at least 3 days prior to the day appointed for the recount of ballots. Notice of the time and place of the recount shall be posted in 2 public places at least 24 hours prior to the recount. The applicants for such recount shall pay to the town clerk a fee of $10 for conducting the recount.

II. The recount shall be held at the time and place appointed, and the ballots shall be recounted by the board of recount in accordance with the procedures for recounts of town elections under RSA 669:30-33.

Source. 1979, 410:23. 1981, 454:2, eff. Aug. 22, 1981. 2015, 159:1, eff. Aug. 25, 2015.

40:4–d Declaration of Results. If, in the case of a recount of votes, it shall appear that the result of the vote on the question was other than as declared by the moderator, the board of recount shall declare the result found by it and shall, after 5 days from such declaration, if no appeal is taken to the superior court, certify such declaration to the town clerk and said declaration shall be final, unless the result is changed upon appeal to the superior court.

Source. 1979, 410:23, eff. July 1, 1979.

40:4–e Use of Ballot for Town Meeting Articles. No question submitted to voters at a town meeting or election pursuant to RSA 39:3–d shall be submitted by use of a question printed on the official ballot unless that form of submission is specifically authorized or required by law.

Source. 1979, 445:2, eff. Aug. 24, 1979.

40:4–f Checklist Update. An updated checklist shall be used for all town meetings and elections as provided in RSA 669:5.

Source. 1981, 571:3, eff. Sept. 4, 1981.

Proceedings

40:6 Penalty for Default of Presiding Officer. Any moderator or other officer presiding who shall wilfully neglect or refuse to follow the procedures for voting established in RSA 40 or who shall wilfully violate or neglect to enforce any rule of proceeding which shall have been established by vote of the town or otherwise, shall be guilty of a misdemeanor.

Source. 1847, 494:1. CS 35:4. GS 36:4. GL 39:4. PS 42:7. PL 46:6. RL 58:6. RSA 40:6. 1971, 524:2. 1973, 528:4, eff. at 11:59 P.M., Oct. 31, 1973.

40:7 Debate. No person shall speak in any meeting without leave of the moderator, nor when any person speaking is in order; and all persons shall be silent at the desire of the moderator, on pain of forfeiting $1 for each offense, for the use of the town.

Source. RS 33:5. CS 35:6. GS 36:6. GL 39:6. PS 42:8. PL 46:7. RL 58:7.

40:8 Disorder. If any person shall behave in a disorderly manner, and, after notice from the moderator, persist in such behavior, or shall in any way disturb the meeting, or willfully violate any rule of proceeding, the moderator may command any constable or police officer, or any legal voter of the town, to remove such disorderly person from the meeting and detain such person until the business is finished.

Source. RS 33:6. CS 35:7. GS 36:7. GL 39:7. PS 42:9. PL 46:8. RL 58:8. RSA 40:8. 1996, 64:4, eff. July 1, 1996.

40:9 Duty of Police. Every constable or police officer shall obey the orders and commands of the moderator for the preservation of order, and may command such assistance as is necessary; and if any constable or police officer neglects to perform any of the duties imposed by this or RSA 39 such constable or police officer shall forfeit $40 for the use of the town.

Source. RS 33:7. CS 35:8. GS 36:8. GL 39:8. PS 42:10. PL 46:9. RL 58:9. RSA 40:9. 1996, 64:5, eff. July 1, 1996.

40:10 Optional Restriction on Reconsideration.

I. A town may, at any time during a meeting, and without notice in the warrant, vote to restrict reconsideration of any one or more votes previously taken at that meeting, or warrant articles previously considered at that meeting. No vote or article which has been restricted under this section, nor the restriction itself, shall be reconsidered during that meeting or any adjourned session of such meeting, except as provided in paragraph II.

II. Upon approval of a motion to reconsider any vote or warrant article subject to such a restriction, actual reconsideration shall take place at an adjourned session of the meeting, held at least 7 days after the date on which the motion to reconsider was approved. Notice of the date, time and place where the adjourned session is to be held shall be given by announcement prior to the close of the session at which the motion to reconsider was approved, and shall also be published in a newspaper of general circulation in the municipality at least 2 days before the reconsideration.

III. A restriction adopted under this section shall continue until final adjournment of the meeting at which it is adopted, or any adjourned session of such meeting.

IV. A restriction adopted under this section shall apply to any subsequent action by the meeting which alters or modifies the result of the restricted vote, or which involves the same subject matter as does the restricted vote or warrant article, regardless of whether or not the term "reconsider" is actually used.

V. This section shall apply to town meetings, village district meetings under RSA 52, cooperative school district meetings under RSA 195, and school district meetings under RSA 197.

Source. 1991, 284:2. 1992, 244:1, eff. July 12, 1992. 1996, 64:1, eff. July 1, 1996.

Optional Form of Meeting—Official Ballot Referenda

40:12 Definition. In this subdivision "local political subdivision" means any local political subdivision of the state whose legislative body raises and appropriates funds through an annual meeting.

Source. 1995, 164:1, eff. July 31, 1995.

40:13 Use of Official Ballot.

I. Notwithstanding RSA 39:3–d, RSA 40:4–e, or any other provision of law, any local political subdivision as defined in RSA 40:12 which has adopted this subdivision shall utilize the official ballot for voting on all issues before the voters.

II. The warrant for any annual meeting shall prescribe the place, day and hour for each of 2 separate sessions of the meeting, and notice shall be given as otherwise provided in this section. Final budgets and ballot questions shall be printed in the annual report made available to the legislative body at least one week before the date of the second session of the annual meeting.

II–a. Notwithstanding any other provision of law, all local political subdivisions which adopt this subdivision, who have not adopted an April or May election date under RSA 40:14, X, shall comply with the following schedule pertaining to notice, petitioned articles, hearings, and warrants for the annual meeting:

(a) The final date for posting notice of budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8–a shall be the second Tuesday in January.

(b) The "budget submission date" as defined in RSA 273–A:1, III and the final date for submission of petitioned articles under RSA 39:3 and RSA 197:6 shall be the second Tuesday in January, provided however, that if a petitioned article proposes a bond governed by RSA 33:8–a, the deadline shall be the preceding Friday.

(c) Budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8–a shall be held on or before the third Tuesday in January. One or more supplemental budget hearings may be held at any time before the first session of the annual meeting, subject to the 7-day notice requirement in RSA 32:5. If the first hearing or any supplemental hearing is recessed to a later date or time, additional notice shall not be required for a supplemental session if the date, time, and place of the supplemental session are made known at the original hearing. In a political subdivision that has adopted a municipal budget committee pursuant to RSA 32:14, the last day for the budget committee to deliver copies of the final budget and recommendations to the governing body pursuant to RSA 32:16, IV shall be the Thursday before the last Monday in January.

(d) Warrants under RSA 39:5 and RSA 197:7 and budgets shall be posted and copies available to the general public on or before the last Monday in January.

II–b. Notwithstanding any other provision of law, all political subdivisions which hold their annual

meetings in April shall comply with the following schedule pertaining to notice, petitioned articles, hearings, and warrants for the annual meeting.

(a) The final date for posting notice of budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8–a shall be the second Tuesday in February.

(b) The "budget submission date" as defined in RSA 273–A:1, III and the final date for submission of petitioned articles under RSA 39:3 and RSA 197:6 shall be the second Tuesday in February, provided however, that if a petitioned article proposes a bond governed by RSA 33:8–a, the deadline shall be the preceding Friday.

(c) Budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8–a shall be held on or before the third Tuesday in February. One or more supplemental budget hearings may be held at any time before the first session of the annual meeting, subject to the 7-day notice requirement in RSA 32:5. If the first hearing or any supplemental hearing is recessed to a later date or time, additional notice shall not be required for a supplemental session if the date, time, and place of the supplemental session are made known at the original hearing. In a political subdivision that has adopted a municipal budget committee pursuant to RSA 32:14, the last day for the budget committee to deliver copies of the final budget and recommendations to the governing body pursuant to RSA 32:16, IV shall be the Thursday before the last Monday in February.

(d) Warrants under RSA 39:5 and RSA 197:7 and budgets shall be posted and copies available to the general public on or before the last Monday in February.

II–c. Notwithstanding any other provision of law, all political subdivisions which hold their annual meetings in May shall comply with the following schedule pertaining to notice, petitioned articles, hearings, and warrants for the annual meeting:

(a) The final date for posting notice of budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8–a shall be the second Tuesday in March.

(b) The "budget submission date" as defined in RSA 273–A:1, III and the final date for submission of petitioned articles under RSA 39:3 and RSA 197:6 shall be the second Tuesday in March, provided however, that if a petitioned article proposes a bond governed by RSA 33:8–a, the deadline shall be the preceding Friday.

(c) Budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8–a shall be held on or before the third Tuesday in March. One or more supplemental budget hearings may be held at any time before the first session of the annual meeting, subject to the 7-day notice requirement in RSA 32:5. If the first hearing or any supplemental hearing is recessed to a later date or time, additional notice shall not be required for a supplemental session if the date, time, and place of the supplemental session are made known at the original hearing. In a political subdivision that has adopted a municipal budget committee pursuant to RSA 32:14, the last day for the budget committee to deliver copies of the final budget and recommendations to the governing body pursuant to RSA 32:16, IV shall be the Thursday before the last Monday in March.

(d) Warrants under RSA 39:5 and RSA 197:7 and budgets shall be posted and copies available to the general public on or before the last Monday in March.

II–d. The voter checklist shall be updated in accordance with RSA 669:5 for each session of the annual meeting.

III. The first session of the annual meeting, which shall be for the transaction of all business other than voting by official ballot, shall be held between the first and second Saturdays following the last Monday in January, inclusive of those Saturdays; between the first and second Saturdays following the last Monday in February, inclusive of those Saturdays; or between the first and second Saturdays following the last Monday in March, inclusive of those Saturdays at a time prescribed by the local political subdivision's governing body.

IV. The first session of the meeting, governed by the provisions of RSA 40:4, 40:4–a, 40:4–b, 40:4–f, and 40:6-40:10, shall consist of explanation, discussion, and debate of each warrant article. A vote to restrict reconsideration shall be deemed to prohibit any further action on the restricted article until the second session, and RSA 40:10, II shall not apply. Warrant articles may be amended at the first session, subject to the following limitations:

(a) Warrant articles whose wording is prescribed by law shall not be amended.

(b) Warrant articles that are amended shall be placed on the official ballot for a final vote on the main motion, as amended.

(c) No warrant article shall be amended to eliminate the subject matter of the article. An amend-

ment that changes the dollar amount of an appropriation in a warrant article shall not be deemed to violate this subparagraph.

V. [Repealed.]

V–a. The legislative body of any town, school district, or village district may vote to require that all votes by an advisory budget committee, a town, school district, or village district budget committee, and the governing body or, in towns, school districts, or village districts without a budget committee, all votes of the governing body relative to budget items or any warrant articles or ballot questions shall be recorded votes and the numerical tally of any such vote shall be printed in the town, school district, or village district warrant next to the affected warrant article or on the ballot next to the affected ballot question. Unless the legislative body has voted otherwise, if a town or school district has not voted to require such tallies to be printed in the town or school district warrant next to the affected warrant article or on the ballot next to the affected ballot question, the governing body may do so on its own initiative.

VI. All warrant articles shall be placed on the official ballot for a final vote, including warrant articles as amended by the first session. All special warrant articles shall be accompanied on the ballot by recommendations as required by RSA 32:5, V, concerning any appropriation or appropriation as amended. For any article that proposes the adoption or amendment of an ordinance, a topical description of the substance of the ordinance or amendment, which shall be neutral in its language, may be placed on the official ballot instead of the full text of the ordinance or amendment, subject to the provisions of paragraphs VII–a and VIII–a. With respect to the adoption or amendment of a zoning ordinance, historic district ordinance, or building code, the provisions of RSA 675:3 shall govern to the extent they are inconsistent with anything contained in this paragraph or in paragraph VII–a or VIII–a.

VII. The second session of the annual meeting, to elect officers of the local political subdivision by official ballot, to vote on questions required by law to be inserted on said official ballot, and to vote on all warrant articles from the first session on official ballot, shall be held on the second Tuesday in March, the second Tuesday in April, or the second Tuesday in May, as applicable. Notwithstanding RSA 669:1, 670:1, or 671:2, the second session shall be deemed the annual election date for purposes of all applicable election statutes including, but not limited to, RSA 669:5, 669:19, 669:30, 670:3, 670:4, 670:11, 671:15, 671:19, and 671:30 through 32; and votes on zoning ordinances, historic district ordinances, and building codes under RSA 675.

VII–a. When a topical description of the substance of a proposed ordinance or amendment to an ordinance is to be placed on the official ballot, an official copy of the proposed ordinance or amendment, including any amendment to the proposal adopted the first session, shall be placed on file and made available to the public at the office of the clerk of the political subdivision not later than one week prior to the date of the second session of the annual meeting. An official copy of the proposed ordinance or amendment shall be on display for the voters at the meeting place on the date of the meeting.

VIII. The clerk of the local political subdivision shall prepare an official ballot, which may be separate from the official ballot used to elect officers, for all warrant articles. Wording shall be substantively the same as the main motion, as it was made or amended at the first session, with only such minor textual changes as may be required to cast the motion in the form of a question to the voters.

VIII–a. A question as to the adoption or amendment of an ordinance shall be in substantially the following form:

"Are you in favor of the adoption of (amendment to) the ordinance as proposed by the selectmen as follows: (here insert text or topical description of proposed ordinance or amendment)?" In the event that there shall be more than a single proposed amendment to an ordinance to be submitted to the voters at any given meeting, the issue as to the several amendments shall be put in the following manner: "Are you in favor of the adoption of Amendment No.___ to the ordinance as proposed by the selectmen as follows: (here insert text or topical description of proposed amendment)?"

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

(b) "Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget. For the purposes of this paragraph, one-time expenditures shall be

appropriations not likely to recur in the succeeding budget, as determined by the governing body, unless the provisions of RSA 40:14–b are adopted, of the local political subdivision.

X. If no operating budget article is adopted, the local political subdivision either shall be deemed to have approved the default budget or the governing body may hold a special meeting pursuant to paragraph XVI to take up the issue of a revised operating budget only; provided that RSA 31:5 and RSA 197:3 shall not apply to such a special meeting. If no operating budget article is adopted the estimated revenues shall nevertheless be deemed to have been approved.

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 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; and

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

(b) This amount shall not be amended by the legislative body. However, this amount may be adjusted by the governing body, unless the provisions of RSA 40:14–b are adopted, acting on relevant new information at any time before the ballots are printed, provided the governing body, unless the provisions of RSA 40:14–b are adopted, completes an amended default budget form.

(c) The wording of the second session ballot question concerning the operating budget shall be as follows:

"Shall the (local political subdivision) raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling $ _____? Should this article be defeated, the default budget shall be $ _____, which is the same as last year, with certain adjustments required by previous action of the (local political subdivision) or by law; or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only."

XI–a. If a political subdivision maintains a separate fund for the revenues and expenditures related to the operation, maintenance, and improvement of a water or sewer system, and if any appropriation for such fund is to be raised through user fees or charges and is included in a warrant article separate from the operating budget, the warrant article may include a default amount for such appropriation, which shall be deemed to have been approved if the proposed appropriation is not approved. The default amount shall be determined by the governing body, or by the budget committee if the political subdivision has adopted the provisions of RSA 40:14–b, and shall equal the amount of the same appropriation for the preceding fiscal 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 previous year's appropriation. The warrant article shall state the default amount for the appropriation and shall state that if the appropriation proposed in the article is not approved, the default amount shall be deemed to have been approved.

XII. Voting at the second session shall conform to the procedures for the nonpartisan ballot system as set forth in RSA 669:19-29, RSA 670:5-7 and RSA 671:20-30, including all requirements pertaining to absentee voting, polling place, and polling hours.

XIII. Approval of all warrant articles shall be by simple majority except for questions which require a ⅔ vote by law, contract, or written agreement.

XIV. Votes taken at the second session shall be subject to recount under RSA 669:30-33 and RSA 40:4–c.

XV. Votes taken at the second session shall not be reconsidered.

XVI. The warrant for any special meeting shall prescribe the date, place and hour for both a first and second session. The second session shall be warned for a date not fewer than 28 days nor more than 60 days following the first session. The first and second sessions shall conform to the provisions of this subdivision pertaining to the first and second sessions of annual meetings. Special meetings shall be subject to RSA 31:5, 39:3, 195:13, 197:2, and 197:3, provided that no more than one special meeting may be held to raise and appropriate money for the same question or issue in any one calendar year or fiscal year, whichever applies, and further provided that any special

meeting held pursuant to paragraphs X and XI shall not be subject to RSA 31:5 and RSA 197:3 and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.

XVII. Notwithstanding any other provision of law, if the sole purpose of a special meeting is to consider the adoption, amendment, or repeal of a zoning ordinance, historic district ordinance, or building code pursuant to RSA 675, including the adoption of an emergency zoning and planning ordinance pursuant to RSA 675:4–a, the meeting shall consist of only one session, which shall be for voting by official ballot on the proposed ordinance, code, amendment, or repeal. The warrant for the meeting shall be posted in accordance with RSA 39:5.

Source. 1995, 164:1, eff. July 31, 1995. 1996, 276:1, 2, eff. June 10, 1996. 1997, 318:4, 5, 12, eff. Aug. 22, 1997. 1999, 86:1–3, eff. Aug. 2, 1999. 2000, 16:2, 3, 4, 5, eff. April 30, 2000. 2001, 71:5–7, eff. July 1, 2001. 2004, 219:1, eff. Aug. 10, 2004. 2007, 305:2, eff. Sept. 11, 2007. 2009, 2:2, eff. Feb. 20, 2009. 2010, 69:1, eff. July 18, 2010; 90:2–4, eff. July 24, 2010. 2011, 1:1, eff. Feb. 4, 2011; 57:1, eff. May 9, 2011. 2012, 217:2, eff. July 1, 2013. 2013, 116:1–3 eff. Aug. 24, 2013; 191:2, eff. Aug. 31, 2013. 2014, 7:1–4, eff. July 5, 2014; 190:1–3, 8–10, eff. Sept. 9, 2014.

40:14 Method of Adopting Official Ballot Referendum Form of Meeting.

I. This subdivision may be adopted by any local political subdivision as defined in RSA 40:12. A ⅗ majority of those voting on the question shall be required to adopt this subdivision. Only votes in the affirmative or negative shall be included in the calculation of the ⅗ majority.

II. Adoption of this subdivision shall be deemed to constitute a vote to conduct the election of town officers by official ballot under RSA 669:14.

III. The local political subdivision shall place the question on the warrant of the annual meeting under the procedures set out in RSA 39:3 or RSA 197:6, and the question shall be voted on by official ballot in accordance with the procedures established in RSA 669:19-29, RSA 670:5-7, and RSA 671:20-30, including all requirements pertaining to absentee voting, polling places, and polling hours.

IV. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

V. The wording of the question shall be: "Shall we adopt the provisions of RSA 40:13 (known as SB 2) to allow official ballot voting on all issues before the (local political subdivision) on the second Tuesday of (month)?"

VI. If a ⅗ majority of those voting on the question vote "yes," RSA 40:13 shall apply within the local political subdivision at the annual or special meeting next following. Only votes in the affirmative or negative shall be included in the calculation of the ⅗ majority.

VII. Any local political subdivision which has adopted RSA 40:13 may consider rescinding its action in the manner described in paragraphs III–VI. The wording of the question shall be: "Shall we rescind the provisions of RSA 40:13 (known as SB 2), as adopted by the (local political subdivision) on (date of adoption), so that the official ballot will no longer be used for voting on all questions, but only for the election of officers and certain other questions for which the official ballot is required by state law?" A ⅗ majority of those voting on the question shall be required to rescind the provisions of this subdivision, except in the case of repeal by charter enactment under RSA 49–D. Only votes in the affirmative or negative shall be included in the calculation of the ⅗ majority.

VIII. For any town which has adopted a charter under RSA 49–D:3, the method of adoption shall be the manner of amending the charter as provided under RSA 49–B.

IX. In the event that an alternative method for the adoption of official ballot voting exists under the laws of this state, then once the requirements are met for inclusion of the question on the warrant for annual meeting of whether to adopt this subdivision, neither the governing body nor the legislative body shall commence action to adopt official ballot voting through such alternative method until a final vote is taken on the warrant article. If procedures have been initiated to adopt official ballot voting under an alternative law of this state, then neither the governing body nor the legislative body shall commence action to adopt this subdivision until such alternative procedures are exhausted.

X. In a local political subdivision which has not adopted RSA 40:13 and in which the adoption of RSA 40:13 is to be voted on, the question shall specifically state whether the date for local elections and the second session shall be the second Tuesday in March,

the second Tuesday in April, or the second Tuesday in May.

XI. A local political subdivision which has adopted the provisions of RSA 40:13 may change the date for local elections and the second session as follows:

(a) The question may be inserted on the warrant for either an annual or special meeting, either by the local governing body or by petition under RSA 39:3 or RSA 197:6.

(b) A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town, or in at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

(c) The wording of the question shall be substantially similar to the following: "Shall we change the date for elections and the second session from the second Tuesday in _____ to the second Tuesday in _____, which would change the date for the first session to a date between the first and second Saturdays after the last Monday in _____, inclusive?"

(d) A simple majority in the affirmative of those voting on the question shall be required to change the date; provided, however, that if the question appears on the ballot for a multi-town school district, the vote in each town or city comprising the district shall be tallied separately, and this section shall not be deemed adopted by the district unless it receives a majority vote from each and every such town and city, tallied separately. Only votes in the affirmative or negative shall be included in the calculation of the majority.

(e) A vote to change the dates of the meeting shall apply to the annual meeting next following the vote.

Source. 1995, 164:1, eff. July 31, 1995. 1997, 318:6, 7, 8, eff. Aug. 22, 1997. 1999, 34:1, 2, eff. July 10, 1999. 2000, 16:6, 7, eff. April 30, 2000. 2010, 262:6, eff. Sept. 4, 2010.

40:14–a Coordinating Certain Town and School District Elections. To facilitate voting for future annual meetings, to reduce costs, and to best accommodate the voters of the town, the legislative body of a town, which has not adopted the official ballot referendum form of meeting, although the school district has adopted the official ballot referendum form of meeting, may authorize coordination of future town elections with the school district elections. The joint elections shall be held at a time and place determined by, and shall be supervised by, the election officials of the town, as provided in RSA 671:26. The town and the school board shall allocate the costs of the joint elections in the same manner as in previous years, or as mutually agreed upon by the governing body of the town and the school board.

Source. 1997, 330:3, eff. June 23, 1997.

40:14–b Default Budget Determined by Budget Committee.

I. A local political subdivision which has adopted the official ballot referenda form of meeting pursuant to RSA 40:14 and has also adopted a municipal budget committee pursuant to RSA 32:14 may delegate the determination of the default budget to the budget committee instead of the governing body.

II. A vote under this section may be taken simultaneously with the adoption of RSA 40:13 or any time after the adoption of RSA 40:13.

(a) If the vote is taken simultaneously with the adoption of RSA 40:13, a separate question shall be placed on the warrant for the annual meeting following the procedures in RSA 40:14.

(b) If the vote is taken after the adoption of RSA 40:13, the question shall be placed on the warrant of the annual meeting by the governing body or by petition under the procedures set out in RSA 39:3 or RSA 197:6 and shall not be amended. A public hearing on the question shall be held by the local governing body following the procedures in RSA 40:14, IV. A vote to adopt the question shall conform with RSA 40:14, VI.

(c) The wording of the question shall be: "Shall we adopt the provisions of RSA 40:14–b to delegate the determination of the default budget to the municipal budget committee which has been adopted under RSA 32:14?"

III. The provisions of this section may be rescinded following the procedures set out in RSA 40:14, VII, except that the wording of the question, which shall not be amended, shall be: "Shall we rescind the provisions of RSA 40:14–b, as adopted by the (local political subdivision) on (date of adoption), so that the default budget will be determined by the governing body instead of the budget committee?"

Source. 2004, 219:3, eff. Aug. 10, 2004.

40:15 Additional Polling Place for Second Session Voting.

I. Any multi-town school district adopting the provisions of RSA 40:13 may vote to use additional polling places for the second session of the annual meeting. The additional polling places shall be the regular polling places for town or city elections in each member town and city of the district. The school district moderator shall supervise the election process and appoint an assistant moderator for each additional polling place. The school district clerk shall appoint an assistant clerk for each additional polling place. Each assistant moderator and assistant clerk shall be domiciled in the town covered by the additional polling place served by such assistant moderator or assistant clerk. The powers and duties of the assistant moderator and the assistant clerk shall be the same as those of the moderator and the clerk at the central polling place except as otherwise provided in the election laws. The inspectors of elections appointed as provided in RSA 658:2 shall be sworn in by the assistant moderator before entering upon their duties. All additional costs resulting from the establishment of additional polling places shall be borne by the school district.

II. Paragraph I of this section may be adopted by any multi-town school district simultaneously with adoption of RSA 40:13 or any time after the adoption of RSA 40:13.

III. The school district shall place the question on the warrant of the annual meeting under the procedures set out in RSA 197:6, and the question shall be voted on by official ballot in accordance with the procedures established in RSA 671:20-30, including all requirements pertaining to absentee voting, polling places, and polling hours.

IV. A public hearing shall be held by the school board on the question at least 15 days, but not more than 30 days, before the question is to be voted on. The public hearing shall be held in each town or city embraced by the district. Notice of the hearing shall be posted in at least 2 public places in each town or city of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

V. The wording of the question shall be: "Shall we adopt the provisions of RSA 40:15 to allow voting at additional polling places for the second session of the annual meeting?"

VI. If a majority of those voting on the question vote "yes," and RSA 40:13 has also been adopted then RSA 40:15 shall apply within the district at the annual or special meeting next following. Only votes in the affirmative or negative shall be included in the calculation of the majority.

VII. Any multi-town school district which has adopted RSA 40:15 may consider rescinding its action in the manner described in RSA 40:15, III-VI. The wording of the question shall be: "Shall the provisions for additional polling places for the second session of the annual meeting under RSA 40:15 be rescinded so that the voting shall be held at a central location?" A majority of those voting on the question shall be required to rescind the provisions of this section. Only votes in the affirmative or negative shall be included in the calculation of the majority.

Source. 1997, 318:9, eff. Aug. 22, 1997.

Procedural Defects in Official Ballot Voting

40:16 Legalization of Meetings. When irregularities or procedural defects in the actions of a local political subdivision are discovered in a local political subdivision using the official ballot, the local political subdivision may, on the authority of the governing body, call a special meeting for the exclusive purpose of curing such defect according to RSA 31:5–b with a single session for deliberating and voting to cure such defect.

Source. 1999, 86:4, eff. Aug. 2, 1999.

TITLE V

TAXATION

CHAPTER 72

PERSONS AND PROPERTY LIABLE TO TAXATION

Property Taxes

Property Taxes

72:23–n Voluntary Payments in Lieu of Taxes. The governing body of any municipality may enter into negotiations for a voluntary payment in lieu of taxes from otherwise fully or partially tax exempt properties, and may accept from such properties a voluntary payment in lieu of taxes.

Source. 1996, 208:1, eff. June 10, 1996.

CHAPTER 76

APPORTIONMENT, ASSESSMENT AND ABATEMENT OF TAXES

Assessment

Assessment

76:3 Education Tax. Beginning July 1, 2005, and every fiscal year thereafter, the commissioner of the department of revenue administration shall set the education tax rate at a level sufficient to generate revenue of $363,000,000 when imposed on all persons and property taxable pursuant to RSA 76:8, except property subject to tax under RSA 82 and RSA 83–F. The education property tax rate shall be effective for the following fiscal year. The rate shall be set to the nearest ½ cent necessary to generate the revenue required in this section.

Source. 1878, 23:5. GL 13:2. PS 14:2. PL 13:2. RL 20:2. 1999, 17:14; 338:2. 2001, 158:18. 2003, 241:2. 2004, 195:2, 3. 2005, 257:2. 2008, 173:15, eff. July 1, 2009.

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the commissioner of revenue administration and county treasurers respectively; all taxes duly voted in their towns; and all school and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33 and RSA 21–J:9–c. Any assessments report issued by the commissioner pursuant to RSA 21–J:11–a shall not affect the authority of the selectmen to assess taxes.

Source. RS 43:3. CS 45:3. GS 53:3. GL 57:3. PS 59:2. PL 64:2. RL 77:2. RSA 76:5. 1993, 350:4. 1999, 17:15; 338:3. 2001, 158:62; 297:18. 2003, 307:12, eff. July 1, 2003.

76:8 Commissioner's Warrant.

I. (a) The commissioner shall annually determine a municipality's tax base for the education tax by subtracting from the total equalized valuation of all property, as determined under RSA 21–J:3, XIII for the preceding year, property that was then taxable under RSA 82 and RSA 83–F. In determining the tax base, the value of any utility property that is included in the total equalized valuation upon which the statewide education property tax is computed, and is also taxable under RSA 83–F for that year, shall also be subtracted from the tax base, provided the sum value of the utility property represents at least 5 percent of the total equalized value of all property, except property taxable under RSA 82 or RSA 83–F in the preceding year.

(b) The commissioner shall calculate the portion of the education tax to be raised by each municipality by multiplying the uniform education property tax rate by the municipality's tax base.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality by December 15 directing them to assess such sum and pay it to the municipality for the use of the school district or districts. Such sums shall be assessed at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

II–a. At the time the warrant is issued pursuant to paragraph II, the commissioner shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education, a statement of the education tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

III. Municipalities are authorized to assess local property taxes necessary to fund school district appropriations not funded by the education tax, by distributions from the education trust fund under RSA 198:39, or by other revenue sources.

Source. RS 10:2. CS 10:3. GS 12:2. GL 13:3. PS 14:3. PL 13:3. RL 20:3. 1999, 17:16; 338:4. 2000, 239:6. 2004, 195:1. 2005, 96:1. 2006, 6:4. 2008, 173:2, 15. 2011, 258:7, eff. July 1, 2011. 2016, 85:1, eff. July 18, 2016.

76:9 Commissioner's Report.

[Repealed 2016, 85:10, I, eff. July 18, 2016.]

History

Former RSA 76:9, which was derived from RS 10:3; CS 10:4; GS 12:3; GL 13:4; PS 14:4; PL 13:4; RL 20:4; 1999, 17:17, 338:5; and 2008, 173:15, related to a commissioner's report.

76:11–a Information.

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, local education, state education, and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

II. The tax bill shall also contain a statement informing the taxpayer of the types of tax relief for which the taxpayer has the right to apply. The following statement shall be considered adequate:

"If you are elderly, disabled, blind, a veteran, or veteran's spouse, or are unable to pay taxes due to poverty or other good cause, you may be eligible for a tax exemption, credit, abatement, or deferral. For details and application information, contact (insert title of local assessing officials or office to which application should be made)."

This statement shall be prominent and legible, and may either be printed on the tax bill itself, or on a separate sheet of paper enclosed with the tax bill. A municipality may in its discretion choose to include more detailed information about the eligibility criteria for different forms of tax relief, provided, however, that the information in the above statement shall be considered a minimum.

III. A town or city may, by majority vote of its governing body, include information additional to that required under paragraphs I and II on the tax bill as a means of further educating the public relative to the laws regarding property taxes.

Source. 1959, 15:1. 1973, 544:8. 1975, 84:1. 1981, 254:2. 1990, 49:3. 1994, 45:2; 377:2. 1995, 265:14. 1999, 17:18; 338:6, eff. Nov. 3, 1999.

CHAPTER 77–G

EDUCATION TAX CREDIT

77–G:1 Definitions. The following definitions shall apply in this chapter:

I. "Adequacy cost" means the total cost of the opportunity for an adequate education as defined in RSA 198:40–a.

II. "Adequacy grant" means the grant calculated under RSA 198:41, or for a chartered public school, the amount calculated under RSA 194–B:11.

III. "Business organization" shall be as defined in RSA 77–A:1, I.

IV. "Business enterprise" shall be as defined in RSA 77–E:1, III.

V. "Donation receipt" means a document submitted by a scholarship organization that contains at a minimum:

(a) The business organization's or business enterprise's name, address, and federal taxpayer identification number.

(b) The scholarship organization's name and address.

(c) The donation amount and date received.

VI. "Educational expenses" means the tuition cost of an eligible student to attend a public or nonpublic school, excluding students who were placed into a nonpublic school by their school district, the cost of college or university, accredited tutor or tutoring facility, or distance education program. Educational expenses shall not include fees or expenses related to participation in athletic programs, transportation expenses, or the cost of a parent's time expended in the home schooling of his or her child.

VII. "Education tax credit application" means a document developed by the department of revenue administration and submitted by a business organization or business enterprise that contains at a minimum:

(a) The business organization's or business enterprise's name, address, and federal taxpayer identification number.

(b) A contact person's name, title, and phone number.

(c) The requested donation amount.

(d) A signed statement certifying that the business organization or business enterprise agrees to make donations in accordance with the requirements established in this chapter.

VIII. "Eligible student" means a New Hampshire resident who is at least 5 years of age and no more than 20 years of age, who has not graduated from high school, and

(a)(1) Who is currently attending a New Hampshire public school, including a chartered public school, and for whom the adequacy grant in the next school year would be reduced if the student were removed from the average daily membership calculation; or

(2) Who received a scholarship under subparagraph (1) or this subparagraph in the prior program year; or

(3) Who does not qualify under subparagraph (1) or (2); and

(b) Whose annual household income is less than or equal to 300 percent of the federal poverty guidelines as updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. section 9902(2). The scholarship organization shall verify eligibility under this subparagraph.

IX. "Nonpublic school" shall be as defined in RSA 193:1, I(a) and (d).

X. "Owner or operator" means an owner, president, officer, or director of an eligible nonprofit scholarship organization or a person with equivalent decision making authority over an eligible nonprofit scholarship organization.

XI. "Parent" means the natural or adoptive parent or legal guardian of a child.

XII. "Program year" means the year beginning January 1 and ending December 31.

XIII. "Receipt" means a document developed by the department of revenue administration that is issued by the receiving school, or parent in the case of a home educated student, to the scholarship organization which makes payment for educational expenses on behalf of an eligible student and that contains, at a minimum and where applicable:

(a) The name and address of the school if a school is attended or, in the case of a home educated student, the name and address of a parent.

(b) The name and address of the eligible student for whom the expense has been paid.

(c) The name of the payer and the date and amount of the expense paid.

(d) Receipts for all specific, reimbursed educational expenses.

XIV. "Receiving school" means a public or nonpublic school which the eligible student seeks to attend.

XV. "Release of information form" means a document developed by a receiving school, signed by the parent or guardian of an eligible student, and which acknowledges the consent of the parent or guardian to release of information contained in the receipt.

XVI. "Scholarship impact survey" means a document developed by the department of education and given to the parents of students who have exited a public school under the provisions of RSA 77–G:8. The survey shall solicit the reasons for seeking the scholarship, and any suggested improvements desired in the public school they are leaving.

XVII. "Scholarship organization" means a charitable organization incorporated or qualified to do business in this state that:

(a) Is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code;

(b) Complies with applicable state and federal antidiscrimination and privacy laws;

(c) Is registered with the director of charitable trusts; and

(d) Has been approved by the department of revenue administration for the purpose of issuing scholarships as provided in this chapter.

XVIII. "Scholarship organization application" means a document developed by the department of revenue administration and submitted by a scholarship organization that contains at a minimum:

(a) The scholarship organization's name, address, and federal taxpayer identification number.

(b) A contact person's name, title, and phone number.

(c) A signed statement that the scholarship organization has met the eligibility requirements of paragraph XVII, and will comply with the provisions of this chapter.

XIX. "Scholarship organization report" means a document developed by the department of revenue administration and submitted by a scholarship organization to the department of revenue administration that shall be a public record, notwithstanding RSA 21–J:14, and contains at a minimum:

(a) The number of scholarships granted under subparagraph VIII(a)(1), and the percentage of

these students who were eligible for the federal free and reduced-price meal program in the final year they were in public school.

(b) The number of scholarships granted under subparagraph VIII(a)(2), and the percentage of these students who were eligible for the federal free and reduced-price meal program in the final year they were in public school.

(c) The number of scholarships granted under subparagraph VIII(a)(3), and the percentage of these students who were eligible for the federal free and reduced-price meal program in the prior year.

(d) The total dollar amount of all scholarships granted.

(e) The total dollar amount of donations spent on administrative expenses pursuant to RSA 77–G:5, I(f).

(f) The total dollar amount to be carried forward pursuant to RSA 77–G:5, I(g).

(g) The total dollar amount of donations used and not used for scholarships.

(h) The number of scholarships granted.

(i) The number of scholarships distributed by the organization, per school, and the dollar range of those scholarships. All home educated students shall be totaled together as a single school.

(j) An analysis, broken down by zip code, of the place of residence for each student receiving a scholarship under this program.

(k)(1) The aggregated results from a survey, designed by the department of revenue administration, and administered by the scholarship organization, which shall solicit and receive information from at least 90 percent of the parents or legal guardians of participating students, broken down by the number of years in the program. In each case, the respondent shall be asked to gauge their level of agreement with the statement as follows: "strongly agree," "agree," "no change," "disagree," "strongly disagree." The following statements shall be included in the survey:

(A) I am satisfied with the school my child is attending as compared to the school my child attended prior to the availability of the education tax credit program.

(B) My child has seen a measurable improvement in academic achievement.

(C) My child would have been unable to attend the school of his or her choice without the education tax credit program.

(2) The survey shall include the following question to the parent or legal guardian of a participating student: "Excluding the education tax credit scholarship, how much did you pay out of pocket for your child to attend school this year?"

(*l*) The aggregated results from a survey, designed by the department of education, and administered by the scholarship organization, which shall solicit and receive information from the parents or legal guardians of participating students who graduated or stopped attending 2 years prior. A parent's or legal guardian's response to the survey shall be optional. Results shall be aggregated by the scholarship organization and published by the department of education. The survey shall solicit the following information:

(1) Whether the student is attending a private, public, community, or vocational college, or otherwise employed or unemployed.

(2) Whether the student graduated or not.

(m) The number of participating students who graduated from high school in the previous year, and the number that dropped out of school.

(n) A signed statement that the scholarship organization acknowledges compliance with the provisions of this chapter.

(*o*) An explanation of information omitted from the report because it would reveal private data about an individual student.

(p) The name of any other scholarship organizations who have agreed to combine their data with the scholarship organization for the purposes set forth in RSA 77–G:2, II. The agreement shall only be considered valid if each scholarship organization lists the other scholarship organizations in the agreement.

XX. "Scholarship receipt" means a document developed by the department of revenue administration and submitted by a scholarship organization to the business organization or business enterprise and that contains at a minimum:

(a) The business organization's or business enterprise's name, address, and federal taxpayer identification number.

(b) The amount of the donations used or carried forward and the amount not used.

Source. 2012, 287:4, eff. June 27, 2012. 2016, 8:9, eff. Mar. 16, 2016. 2017, 63:1, 2, eff. Aug. 1, 2017.

77–G:2 Scholarships.

I. (a) An eligible student may receive a scholarship to attend (1) a nonpublic school, except when the student has been placed by the local school district through the special education process; (2) a public school located outside of the school district in which the student resides and for which the public school is not eligible to receive an adequate education grant payment for the student in the current fiscal year, in an amount not to exceed the tuition cost of the public or nonpublic school; or (3) the cost of college or university, accredited tutor or tutoring facility, or distance education program. A home education student may also receive a scholarship to cover educational expenses. A student shall not receive a scholarship from more than one scholarship organization.

(b) The average value of all scholarships awarded by a scholarship organization, excluding eligible students who received scholarships for educational expenses related to home education only, shall not exceed $2,500. Beginning in the second year of the program, the commissioner of the department of revenue administration shall annually adjust this amount based on the average change in the Consumer Price Index for All Urban Consumers, Northeast Region, using the "services less medical care services" special aggregate index, as published by the Bureau of Labor Statistics, United States Department of Labor. The average change shall be calculated using the calendar year ending 12 months prior to the beginning of program year. In each of the first and second program years, a scholarship organization shall award a minimum of 70 percent of all scholarships issued to eligible students as defined in RSA 77–G:1, VIII(a)(1) and (2) and, notwithstanding RSA 193–E:5, shall notify the department of education of the unique pupil identifier and date of birth for each of these students granted a scholarship by July 15. The required minimum percentage of all scholarships issued by a scholarship organization to eligible students as defined in RSA 77–G:1, VIII(a)(1) and (2) shall be reduced by 5 percent each program year for years 3 through 15 of the program, and, at the beginning of the sixteenth program year and every program year thereafter, there shall be no required minimum percentage of scholarships.

(c) The minimum value of a scholarship granted to a student receiving special education programs or services pursuant to RSA 186–C shall be 175 percent of the maximum average scholarship size as defined in subparagraph (b).

(d) At least 40 percent of the scholarships awarded by the scholarship organization to eligible students as defined in RSA 77–G:1, VIII(a)(1) and (2) shall be awarded to students who qualified for the federal free and reduced-price meal program in the final year they were in public school.

(e) A student shall reapply each year for a scholarship.

II. Scholarship organizations may meet the percentage requirements of subparagraphs I(b) and (d) if, pursuant to a mutual agreement, the organizations aggregate their scholarship data and the aggregated data shows compliance with the percentage requirements.

Source. 2012, 287:4, eff. June 27, 2012. 2017, 63:3, eff. Aug. 1, 2017.

77–G:3 Contributions to Scholarship Organizations. For each contribution made to a scholarship organization, a business organization or business enterprise may claim a credit equal to 85 percent of the contribution against the business profits tax due pursuant to RSA 77–A, or against the business enterprise tax due pursuant to RSA 77–E, or apportioned against both provided the total credit granted against both shall not exceed the maximum education tax credit allowed. Credits provided under this chapter shall not be deemed taxes paid for the purposes of RSA 77–A:5, X. The department of revenue administration shall not grant the credit without a scholarship receipt. No business organization or business enterprise shall direct, assign, or restrict any contribution to a scholarship organization for the use of a particular student or nonpublic school. No business organization or business enterprise shall receive more than 10 percent of the aggregate amount of tax credits permitted in RSA 77–G:4.

Source. 2012, 287:4, eff. June 27, 2012.

77–G:4 Tax Credits.

I. The aggregate of tax credits issued by the commissioner of the department of revenue administration to all taxpayers claiming the credit shall not exceed $3,400,000 for the first program year and $5,100,000 for the second program year, subject to the provisions of paragraph III. In subsequent years, the aggregate of tax credits shall not exceed the amount allowed for the prior year, unless adjusted pursuant to paragraph II.

II. Beginning with the second program year, if the amount of the total donations used for scholarships exceeds 80 percent of the current program

year's tax credits allowed, the aggregate of tax credits allowed for the next program year shall increase by 25 percent, subject to the provisions of paragraph III.

III. [Repealed.]

Source. 2012, 287:4, eff. June 27, 2012. 2017, 63:9, I, eff. Aug. 1, 2017.

77–G:5 Scholarship Organizations.

I. A scholarship organization shall:

(a) Provide scholarships from eligible contributions to eligible students to defray educational expenses.

(b) Not restrict or reserve scholarships for use at a single nonpublic school and not restrict or reserve a scholarship for a specific student or a specific person.

(c) Verify a student's eligibility to apply for and receive a scholarship through transcripts and attendance records.

(d) Not have an owner or operator who also owns or operates a nonpublic school that participates in the education tax credit program.

(e) Not have an owner or operator who in the last 7 years has filed for personal bankruptcy or corporate bankruptcy in a business organization or business enterprise of which he or she owned more than 20 percent.

(f) Not use more than 10 percent of eligible contributions used during the program year in which the contributions are collected, and for which scholarship receipts were issued for tax credit purposes, for administrative expenses. Administrative expenses shall be reasonable and necessary for the organization's management and distribution of eligible contributions pursuant to this chapter.

(g) In the first program year, there shall be no carry forward of unused eligible contributions. In each program year thereafter, not more than 10 percent of eligible contributions may be carried forward to the following program year.

(h) Maintain separate accounts for scholarship funds, non-tax credit donations, and operating funds.

(i)(1) Not award a scholarship to any lineal descendent or equivalent step-person of any officer, director, or employee of any scholarship organization; and

(2) Not award a scholarship to any lineal descendant or equivalent step-person of any proprietor, partner, or member of any business organization or business enterprise making a contribution to a scholarship organization and claiming a credit against the business profits tax or business enterprise tax, nor any lineal descendant or equivalent step-person of any officer, director, or owner of more than a 5 percent interest in any business organization or business enterprise making a contribution to a scholarship organization and claiming a credit against the business profits tax or business enterprise tax, nor any employee who is among the highest-paid 20 percent of paid employees in any business organization or business enterprise making a contribution to a scholarship organization and claiming a credit against the business profits tax or business enterprise tax.

(j) Provide to each school district which receives a stabilization grant pursuant to RSA 77–G:8 a copy of the aggregated results of the scholarship impact survey, including total number of students who received scholarships from that school district under RSA 77–G:1, VIII(a)(1).

II. (a) An organization seeking approval as a scholarship organization under this chapter shall submit an application to the department of revenue administration each program year no later than June 15. The department of revenue administration shall approve or deny the application within 30 days of receipt. The department shall deny any application that fails to meet the statutory requirements and shall notify the scholarship organization of the reasons for denial.

(b) A business organization or business enterprise shall submit an education tax credit application to the department of revenue administration no earlier than January 1 and no later than November 15. The department shall approve these applications within 30 days on a first come-first served basis, up to the aggregate tax credit amount allowed under RSA 77–G:4. If multiple education tax credit applications are received on the same day, they shall be processed at random. No business organization or business enterprise shall be granted an education tax credit for more than 10 percent of the aggregate tax credit amount permitted in RSA 77–G:4. The department of revenue administration may approve only a portion of a request if required to prevent exceeding the aggregate tax credit amount allowed under RSA 77–G:4. The approval shall include the amount allowed and the date of approval.

(c) Once an education tax credit application is approved, the business organization or business enterprise shall donate within 60 days of the date

of approval, but no later than December 15, or the request shall expire. Donations may be made to multiple scholarship organizations provided the total amount donated by the business organization or business enterprise does not exceed the amount approved.

(d) Upon receiving a donation, the scholarship organization shall send a scholarship receipt to the department of revenue administration and to the business organization or business enterprise within 15 days. The department of revenue administration shall notify the scholarship organization and the business organization or business enterprise within 15 days if the donations made by a business organization or business enterprise exceed the amount approved. If a business organization or business enterprise fails to donate the total amount approved within the time permitted, the department of revenue administration may grant credit requests in the order specified in subparagraph (b).

(e) Notwithstanding RSA 193–E:5, on or before July 15, a scholarship organization shall furnish the unique pupil identifier and date of birth for each student eligible pursuant to RSA 77–G:1, VIII(a)(1) and (2) who is receiving a scholarship, and the subparagraph under which he or she was eligible, to the department of education. The department of education shall notify the scholarship organization within 30 days of any students who are ineligible under RSA 77–G:1, VIII(a)(1). The scholarship organization shall notify the department of education within 30 days if any student eligible under RSA 77–G:1, VIII(a)(1) or (2) is not awarded a scholarship or is awarded a scholarship yet subsequently returns to public school. The department of education shall return such student to the calculation of the average daily membership in residence, as defined in RSA 189:1–d, IV, for the student's school district of residence, and add the amount calculated under RSA 198:40–a to the adequate education grant amount to the student's school district of residence, and include such amount in the next adequate education grant payment made under RSA 198:42.

(f) [Repealed.]

(g) On or prior to December 1, the scholarship organization shall submit a scholarship organization report to the department of revenue administration. The scholarship organization shall also include a scholarship organization application if it intends to issue scholarships under this chapter in the next program year. The department of revenue administration shall review the scholarship organization report and the scholarship receipts to ensure that the administrative expenses requirement set forth in subparagraph I(f) is not exceeded, that the number of scholarships issued under RSA 77–G:1, VIII(a)(1)and (2) meets the requirements of this chapter, and the average scholarship size does not exceed the amount allowed. If any of these requirements are not met, the department of revenue administration may deny a scholarship organization application for subsequent program years and shall notify the scholarship organization of the reasons for denial.

(h) A business organization or business enterprise may file for the tax credit after receiving the scholarship receipt, and may file a tax credit request for the subsequent program year up to the amount donated in the current program year.

(i) The provisions of this chapter regarding nonpublic schools and their relation to scholarship organizations shall apply only to nonpublic schools that choose to accept scholarship students.

Source. 2012, 287:4, eff. June 27, 2012. 2016, 8:10, eff. Mar. 16, 2016. 2017, 63:4, 5, 9, II, eff. Aug. 1, 2017.

77–G:6 Department of Revenue Administration; Requirements.

I. The department of revenue administration shall:

(a) Develop, and annually verify and update, by February 1, a list of eligible nonprofit scholarship funding organizations that meet the requirements of this chapter. The department shall post this list on the department's Internet website and update the list monthly. The department shall forward the list and any updates to the commissioner of the department of education who shall post the list on the department of education's Internet website.

(b) Conduct or require audits in response to any reasonable complaints made. The cost of an independent audit shall be paid by the scholarship organization, but this cost shall be excluded from the administrative expenses requirement set forth in RSA 77–G:5, I(f).

(c) Establish a process by which individuals may notify the department of revenue administration of any violation by a parent, business organization, business enterprise, scholarship organization, or nonpublic school of state laws relating to program participation. The department of revenue administration shall conduct an inquiry of any written complaint of a violation of this chapter, or make a referral to the appropriate agency for an investigation, if the complaint is signed by the complainant

and is legally sufficient. A complaint is legally sufficient if it contains facts demonstrating a violation of this chapter or any rule adopted pursuant to this chapter. In order to determine legal sufficiency, the department of revenue administration may require supporting information or documentation from the complainant.

(d) Create, maintain, and post online the relevant forms and reports, and submit scholarship organization reports to the members of the house and senate education committees and to the department of education.

(e) Post to the department's website an up-to-date total of the amount of credits available.

(f) No later than January 1, 2013, adopt rules pursuant to RSA 541–A, relative to:

(1) The application procedure for a scholarship organization applying to accept scholarship donations under this chapter.

(2) The application procedure for a business organization or business enterprise applying for a tax credit under this chapter.

(3) Complaint procedures, including the filing of a complaint and investigations of complaints.

(4) The design and content of the forms and applications required to be filed with, or issued by, the department of revenue administration under this chapter.

Source. 2012, 287:4, eff. June 27, 2012. 2017, 63:6, eff. Aug. 1, 2017.

77–G:7 Department of Education; Requirements.

I. The department of education shall determine the number of students receiving a scholarship under RSA 77–G:1, VIII(a)(1) and (2) who were counted in the calculation of the average daily membership in attendance, as defined in RSA 198:38, I, for schools, other than chartered public schools, for the student's school district of residence and for each such student, shall deduct the amount calculated under RSA 198:40–a from the total education grant amount disbursed to the student's school district of residence calculated pursuant to RSA 198:40–a. This adjustment shall be completed prior to September 1 of the program year in which the scholarships are granted.

II. The department of education shall verify a student's eligibility under RSA 77–G:1, VIII(a)(1) upon request of a scholarship organization. The department of education shall assist the department of revenue administration, upon request, in the investigation of student eligibility complaints.

III. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to forms necessary for any surveys required and the procedures for determining and disbursing stabilization grants.

Source. 2012, 287:4, eff. June 27, 2012. 2016, 8:11, eff. Mar. 16, 2016.

77–G:8 Scholarship Stabilization Grant.

I. For each school district, the department of education shall calculate the combined amount of reductions in adequacy cost pursuant to RSA 77–G:7 from students receiving scholarships under RSA 77–G:1, VIII(a)(1) and who were in attendance in that district in the year prior to receiving the scholarships. If this combined amount is greater than ¼ of one percent of a school district's total voted appropriations for the year prior to the scholarship year, the commissioner of the department of education shall disburse a scholarship stabilization grant for the current and next 3 fiscal years to each such school district equal to the amount of the reductions in excess of ¼ of one percent. This scholarship stabilization grant shall be included in the September 1 disbursement required pursuant to RSA 198:42.

II. The department of education shall order any scholarship organizations that provided scholarships to students from districts that were awarded stabilization grants pursuant to paragraph I to conduct a scholarship impact survey. The organization shall forward the results of this survey to the department of education and the school board of each district. The department of education shall post the results of this survey online.

Source. 2012, 287:4, eff. June 27, 2012.

77–G:9 Exceptions.

I. A receiving nonpublic school or home education program that accepts students benefiting from scholarships, grants, or tax credits shall not be considered an agent of the state or federal government as a result of participating in the program established in this chapter.

II. Except as provided in this chapter, or otherwise provided in law, no state department, agency, or board shall regulate the educational program of a receiving nonpublic school or home education program that accepts students pursuant to this chapter.

III. Donations made by a business organization or business enterprise to a scholarship organization that are not for the purpose of obtaining a tax credit under this chapter shall not be subject to the requirements in this chapter.

Source. 2012, 287:4, eff. June 27, 2012.

77–G:10 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Source. 2012, 287:4, eff. June 27, 2012.

CHAPTER 78

TOBACCO TAX

78:12–b Sale and Distribution of Tobacco Products to Persons Under 18 Years of Age Prohibited.

[Repealed 1997, 338:9, I, eff. Jan. 1, 1998.]

History

Former RSA 78:12–b, which was derived from 1986, 162:2; 1991, 292:9; and 1995, 259:2, 3, related to prohibition of the sale and distribution of tobacco products to persons under 18 years of age.

78:12–c Possession of Tobacco by Persons Under 18 Years of Age and Misrepresentation of Age for the Purpose of Procuring Tobacco Products.

[Repealed 1997, 338:9, II, eff. Jan. 1, 1998.]

History

Former RSA 78:12–c, which was derived from 1986, 162:2 and 1995, 259:4, related to possession of tobacco by persons under 18 years of age and misrepresentation of age for the purpose of procuring tobacco products.

78:12–d Vending Machines.

[Repealed 2008, 341:19, II, eff. Jan. 1, 2009.]

History

Former RSA 78:12–d, which was derived from 1995, 259:5; 1997, 338:7; 2000, 303:4; and 2001, 280:4, related to vending machines used to sell tobacco products.

CHAPTER 79–H

TAXATION OF CERTAIN CHARTERED PUBLIC SCHOOL FACILITIES

79–H:1 Declaration of Public Interest. The general court hereby finds it to be in the public interest to authorize municipalities to allow a chartered public school to be able to rent or lease its building or facilities from a property owner which is not exempt from property taxes, and not have the property taxes attributable to the chartered public school facilities be taxed to the owner at the full market value of the facilities.

Source. 2015, 266:1, eff. July 20, 2015.

79–H:2 Adoption of this Chapter. A town or city may adopt the provisions of this chapter by vote of its legislative body using the following procedures:

I. In a town, other than a town that has adopted a charter pursuant to RSA 49–D, the question shall be placed on the warrant of the annual town meeting by the governing body or by petition under RSA 39:3.

II. In a city or town that has adopted a charter under RSA 49–C or RSA 49–D, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation.

III. If a majority of those voting on the question vote "yes," the provisions of this chapter shall take effect within the town or city on the date set by the legislative body, or in the tax year beginning April 1 following its adoption, whichever shall occur first.

IV. A town or city may rescind the provisions of this chapter in the manner described in paragraphs I–III.

Source. 2015, 266:1, eff. July 20, 2015.

79–H:3 Definitions. In this chapter:

I. "Assessing official" means the assessing authority of any town, city, or place.

II. "Board of tax and land appeals" means the board of tax and land appeals established pursuant to the provisions of RSA 71–B:1.

III. "Commissioner" means the commissioner of the department of revenue administration.

IV. "Qualifying chartered public school facility" means the building, or portion thereof, and the land appurtenant thereto, which, pursuant to a rental or lease agreement, is used exclusively as a chartered public school, established and operating under RSA 194–B, and which is rented or leased from an owner who is not exempt from property taxation under RSA 72.

Source. 2015, 266:1, eff. July 20, 2015.

79–H:4 Appraisal of Qualifying Chartered Public School Facilities.

I. The assessing officials in any municipality adopting the provisions of this chapter shall appraise qualifying chartered public school facility property at no more than 10 percent of its market value.

II. No owner of land and buildings renting or leasing to a qualifying chartered public school facility shall be entitled to have the property appraised for any tax year under the provisions of this chapter unless the owner applies to the assessing officials on or before April 15 of said year, on a form approved and provided by the commissioner, to have the property so appraised. Such application shall include a verified copy of the rental or lease agreement containing terms and provisions identifying the specific real property exclusively used by the chartered public school for the purposes of RSA 194–B and payment terms under the rental or lease agreement which assign the tax exemption under this chapter to the benefit of the chartered public school. If any owner satisfies the assessing officials that it was prevented by accident, mistake, or misfortune from filing such application on or before April 15, the assessing officials may receive the application at a later date and appraise the property under this chapter; but no such application shall be received after the local tax rate has been approved by the commissioner for that year.

III. The assessing officials shall notify the applicant on a form provided by the commissioner no later than July 1, or within 15 days if the application is filed after July 1, of their decision to classify or refuse to classify the property under the provisions of this chapter by delivery of such notification to the owner in person or by mailing such notification to the owner's last and usual place of abode.

IV. A list of all qualifying chartered public school facilities assessed under this chapter and their owners in each town or city shall be filed by the respective assessing officials each year. Such list shall be part of the record and subject to inspection as provided in RSA 76:7.

V. The commissioner shall include on the inventory blank, required under RSA 74:4, a question concerning whether any changes have been made in the use of a qualifying chartered public school facility. The question shall be written to enable the assessing officials to locate qualifying facilities which may require a change in assessment and to fit the context of the blank.

Source. 2015, 266:1, eff. July 20, 2015.

79–H:5 Appeal to Board of Tax and Land Appeals.

I. If the assessing officials deny in whole or in part any application for assessment of certain property as a qualifying chartered public school facility, the applicant, having complied with the requirements of RSA 79–H:4, II may, on or before 6 months after any such action by the assessing officials, in writing and upon a payment of a $65 filing fee, apply to such board for a review of the action of the assessing officials.

II. The board of tax and land appeals shall investigate the matter and shall hold a hearing if requested as provided in this section. The board shall make such order thereon as justice requires, and such order shall be enforceable as provided hereafter.

III. Upon receipt of an application under the provisions of paragraph I, the board of tax and land appeals shall give notice in writing to the affected town or city of the receipt of the application by mailing such notice to the town or city clerk thereof by certified mail. Such town or city may request in writing a hearing on such application within 30 days after the mailing of such notice. If a hearing is requested by a town or city, the board shall, not less than 30 days prior to the date of hearing upon such application, give notice of the time and place of such hearing to the applicant and the town or city in writing. Nothing contained herein shall be construed to limit the rights of taxpayers to a hearing before the board of tax and land appeals.

IV. The applicant and the town or city shall be entitled to appear by counsel, may present evidence to the board of tax and land appeals, and may subpoena witnesses. Either party may request that a stenographic record be kept of the hearing. Any investigative report filed by the staff of the board shall be made a part of such record.

V. In such hearing, the board of tax and land appeals shall not be bound by the technical rules of evidence.

VI. Either party aggrieved by the decision of the board of tax and land appeals may appeal pursuant to the provisions of RSA 71–B:12. For the purposes of such appeal, the findings of fact by said board shall be final. Any such appeal shall be limited to questions of law. An election by an applicant to appeal in accordance with this paragraph shall be deemed a waiver of any right to petition the superior court in accordance with RSA 79–H:6.

VII. A copy of an order by the board of tax and land appeals, attested as such by the chairman of the board, if no appeal is taken hereunder, may be filed in the superior court for the county or in the Merrimack county superior court at the option of said board; and, thereafter, such order may be enforced as a final judgment of the superior court.

Source. 2015, 266:1, eff. July 20, 2015.

79–H:6 Appeal to Superior Court. If the assessing officials deny in whole or in part any application for assessment of the property or portion thereof as a qualifying chartered public school facility, the applicant, having complied with the requirements of RSA 79–H:4, II may, within 6 months after notice of denial, apply by petition to the superior court of the county, which shall make such order thereon as justice requires. Any appeal to the superior court under this section shall be in lieu of an appeal to the board of tax and land appeals pursuant to RSA 79–H:5.

Source. 2015, 266:1, eff. July 20, 2015.

79–H:7 Enforcement. All taxes levied pursuant to assessments under this chapter which are not paid when due shall be collected in the same manner as provided in RSA 80.

Source. 2015, 266:1, eff. July 20, 2015.

79–H:8 Disposition of Revenues. All money received by the tax collector pursuant to the provisions of this chapter shall be for the use of the town or city.

Source. 2015, 266:1, eff. July 20, 2015.

CHAPTER 85

EXTENTS

Issuance, Levy, Sale, Etc.

Issuance, Levy, Sale, Etc.

85:1 Who may Issue. The state treasurer or the commissioner of revenue administration, and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

Source. RS 48:1. CS 51:1. GS 59:1. GL 66:1. PS 66:1. PL 71:1. RL 86:1. 1999, 17:36; 338:7, eff. Nov. 3, 1999.

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91–A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

91–A:1 Preamble. Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

Source. 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.

91–A:1–a Definitions. In this chapter:

I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

II. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

III. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

IV. "Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.

V. "Public agency" means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.

VI. "Public body" means any of the following:

(a) The general court including executive sessions of committees; and including any advisory committee established by the general court.

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council.

(c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities.

(d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.

(e) Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

Source. 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4. 2001, 223:1. 2008, 278:3, eff. July 1, 2008 at 12:01 a.m.; 303:3, eff. July 1, 2008; 303:8, eff. Sept. 5, 2008 at 12:01 a.m.; 354:1, eff. Sept. 5, 2008.

91–A:2 Meetings Open to Public.

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91–A:1–a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91–A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

(a) Strategy or negotiations with respect to collective bargaining;

(b) Consultation with legal counsel;

(c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or

(d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91–A to such documents or related communications.

II. Subject to the provisions of RSA 91–A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. Subject to the provisions of RSA 91–A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91–A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

II–a. If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91–A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91–A:3, II, that was the basis for the discussion.

II–b. (a) If a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.

(b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91–A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

Source. 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008. 2016, 29:1, eff. Jan. 1, 2017. 2017, 165:1, eff. Jan. 1, 2018; 234:1, eff. Jan. 1, 2018.

91–A:2–a Communications Outside Meetings.

I. Unless exempted from the definition of "meeting" under RSA 91–A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91–A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91–A:1.

Source. 2008, 303:4, eff. July 1, 2008.

91–A:2–b Meetings of the Economic Strategic Commission to Study the Relationship Between New Hampshire Businesses and State Government by Open Blogging Permitted.

[Repealed 2012, 232:14, eff. Dec. 1, 2012.]

History

Former RSA 91–A:2–b, which was derived from 2012, 232:13, related to a legislative economic strategy commission which met by open blogging rather than in person to study the relationship between New Hampshire businesses and state government.

91–A:3 Nonpublic Sessions.

I. (a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under para-

graph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

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

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

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

(f) Consideration of applications by the adult parole board under RSA 651–A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county or state correctional facilities by county correctional superintendents or the commissioner of the department of corrections, or their designees.

(h) Consideration of applications by the business finance authority under RSA 162–A:7–10 and 162–A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

(j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91–A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541–A.

(k) Consideration by a school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195–A, which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general public or the school district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. A contract negotiated by a school board shall be made public prior to its consideration for approval by a school district, together with minutes of all meetings held in nonpublic session, any proposals or records related to the contract, and any proposal or records involving a school district that did not become a party to the contract, shall be made public. Approval of a contract by a school district shall occur only at a meeting open to the public at which, or after which, the public has had an opportunity to participate.

(*l*) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of ⅔ of the members present taken in public session, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the

carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

Source. 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1; 335:16. 2002, 222:2, 3. 2004, 42:1. 2008, 303:4. 2010, 206:1, eff. June 22, 2010. 2015, 19:1; 49:1; 105:1, eff. Jan. 1, 2016; 270:2, eff. Sept. 1, 2015. 2016, 30:1, eff. Jan. 1, 2017; 280:1, eff. June 21, 2016.

91–A:4 Minutes and Records Available for Public Inspection.

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.

I–a. Records of any payment made to an employee of any public body or agency listed in RSA 91–A:1–a, VI(a)–(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91–A:3.

II. After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91–A:5.

III. Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the governmental records pertaining to such public body or agency shall be kept in an office of the political subdivision in which such public body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.

III–a. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91–A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.

III–b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted. For purposes of this paragraph, a record in electronic form shall be considered to have been deleted only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a readily accessible "deleted items" folder or similar location on a computer shall not constitute deletion of the record.

IV. Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release. If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. No fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee

is established for the copy, no additional costs or fees shall be charged.

V. In the same manner as set forth in RSA 91–A:4, IV, any public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy governmental records requested to electronic media using standard or common file formats in a manner that does not reveal information which is confidential under this chapter or any other law. If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body or agency may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91–A:1. Access to work papers, personnel data, and other confidential information under RSA 91–A:5, IV shall not be provided.

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

VII. Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency.

Source. 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2. 2001, 223:2. 2004, 246:2. 2008, 303:4. 2009, 299:1, eff. Sept. 29, 2009. 2016, 283:1, eff. June 21, 2016.

91–A:5 Exemptions. The following governmental records are exempted from the provisions of this chapter:

I. Records of grand and petit juries.

I–a. The master jury list as defined in RSA 500–A:1, IV.

II. Records of parole and pardon boards.

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193–E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.

X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105–D except where such recordings depict any of the following:

(a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

Source. 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013. 2016, 322:3, eff. Jan. 1, 2017.

91–A:5–a Limited Purpose Release. Records from non-public sessions under RSA 91–A:3, II(i) or that are exempt under RSA 91–A:5, VI may be

released to local or state safety officials. Records released under this section shall be marked "limited purpose release" and shall not be redisclosed by the recipient.

Source. 2002, 222:5, eff. Jan. 1, 2003.

91–A:6 Employment Security. This chapter shall apply to RSA 282–A, relative to employment security; however, in addition to the exemptions under RSA 91–A:5, the provisions of RSA 282–A:117–123 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–A:117–123 together with all records and data developed from RSA 282–A:117–123.

Source. 1967, 251:1. 1981, 576:5, eff. July 1, 1981.

91–A:7 Violation. Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

Source. 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008.

91–A:8 Remedies.

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.

II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than $250 and not more than $2,000. Upon such finding, such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the state, the penalty shall be payable to the political subdivision.

V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

Source. 1973, 113:1. 1977, 540:6. 1986, 83:7. 2001, 289:3. 2008, 303:6. 2012, 206:1, eff. Jan. 1, 2013.

91–A:8–a Commission to Study Processes to Resolve Right-to-Know Complaints.

[Repealed 2017, 126:2, eff. Nov. 1, 2017.]

History

Former RSA 91–A:8–a, which was derived from 2017, 126:1, related to the commission to study processes to resolve right-to-know complaints.

91–A:9 Destruction of Certain Information Prohibited. A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91–A:7–8 is pending.

Source. 2002, 175:1, eff. Jan. 1, 2003.

Procedure for Release of Personal Information for Research Purposes

91–A:10 Release of Statistical Tables and Limited Data Sets for Research.

I. In this subdivision:

(a) "Agency" means each state board, commission, department, institution, officer or other state official or group.

(b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.

(c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.

(d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.

(e) "Direct identifiers" means:

(1) Names.

(2) Postal address information other than town or city, state, and zip code.

(3) Telephone and fax numbers.

(4) Electronic mail addresses.

(5) Social security numbers.

(6) Certificate and license numbers.

(7) Vehicle identifiers and serial numbers, including license plate numbers.

(8) Personal Internet IP addresses and URLs.

(9) Biometric identifiers, including finger and voice prints.

(10) Personal photographic images.

(f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.

(g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.

(h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:

(1) Contains direct identifiers.

(2) Is under the control of the state.

(i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.

(j) "Public record" means records available to any person without restriction.

(k) "State" means the state of New Hampshire, its agencies or instrumentalities.

(*l*) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

(a) The requestor submits a written application that contains:

(1) The following information about the principal investigator in charge of the research:

(A) name, address, and phone number;

(B) organizational affiliation;

(C) professional qualification; and

(D) name and phone number of principal investigator's contact person, if any.

(2) The names and qualifications of additional research staff, if any, who will have access to the data.

(3) A research protocol which shall contain:

(A) a summary of background, purposes, and origin of the research;

(B) a statement of the general problem or issue to be addressed by the research;

(C) the research design and methodology including either the topics of exploratory research or the specific research hypotheses to be tested;

(D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and

(E) the intended research completion date.

(4) The following information about the data or statistical tables being requested:

(A) general types of information;

(B) time period of the data or statistical tables;

(C) specific data items or fields of information required, if applicable;

(D) medium in which the data or statistical tables are to be supplied; and

(E) any special format or layout of data requested by the principal investigator.

(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:

(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.

(2) Agreement not to use or further disclose the information as otherwise required by law.

(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.

(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:

(A) otherwise provided by law; or

(B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.

(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

(a) The application submitted is complete.

(b) Adequate measures to ensure the confidentiality of any person are documented.

(c) The investigator and research staff are qualified as indicated by:

(1) Documentation of training and previous research, including prior publications; and

(2) Affiliation with a university, private research organization, medical center, state agency, or other institution which will provide sufficient research resources.

(d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request. Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

Source. 2003, 292:2, eff. July 18, 2003.

Right-to-Know Oversight Commission

91–A:11 to 91–A:15 Repealed.

[Repealed 2005, 3:2, eff. Nov. 1, 2010.]

History

Former RSA 91–A:11, which was derived from 2005, 3:1, related to the establishment of an oversight commission to study the right-to-know law.

Former RSA 91–A:12, which was derived from 2005, 3:1, related to the membership and compensation of the oversight commission.

Former RSA 91–A:13, which was derived from 2005, 3:1, related to the duties of the oversight commission.

Former RSA 91–A:14, which was derived from 2005, 3:1, related to electing a chairperson from members of the oversight commission.

Former RSA 91–A:15, which was derived from 2005, 3:1, related to an annual report published by the oversight commission.

TITLE VII

SHERIFFS, CONSTABLES, AND POLICE OFFICERS

CHAPTER 106–L

POLICE STANDARDS AND TRAINING COUNCIL

106–L:1 Findings and Policy. The legislature finds that the administration of criminal justice is of statewide concern; that police and corrections work are important to the health, safety, and welfare of the people of this state; that police and corrections work are of such a nature as to require education and training of a professional character; and that it is in the public interest that such education and training be made available to persons who seek to become police and corrections officers, persons who are serving as police and corrections officers in a temporary or probationary capacity, and persons already in regular service.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:2 Definitions. In this chapter:

I. "Police officer" means any appointed or elected employee of a police department or any appointed employee of a sheriff's department, the fish and game department, the department of safety, or any special agent appointed by the state liquor commission which is administered by the state or any of its political subdivisions and who is responsible for the prevention, detection or prosecution of crime or the enforcement of the penal, traffic, highway, boating, liquor, or bingo and lucky 7 laws of this state or any of its political subdivisions.

II. "Council" means the police standards and training council.

III. "Director" means the director of the police standards and training council.

IV. "State corrections officer" means any sworn classified employee of the New Hampshire department of corrections who is responsible for the physical custody and security of inmates at a state correctional institution and is authorized by law to use force to prevent escapes from such institution.

V. "State probation-parole officer" means any sworn employee of the New Hampshire department of corrections who is responsible for the supervision of probationers and parolees, who has an assigned caseload, and who has the authority to arrest for violations of the rules of probation or parole.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:3 Police Standards and Training Council.

I. There is established a police standards and training council. It shall consist of the following members:

(a) Two members shall be chiefs of police in towns;

(b) Two members shall be chiefs of police in cities;

(c) Two members shall be county sheriffs;

(d) Two members shall be judges of courts with criminal jurisdiction;

(e) The chancellor of the community college system of New Hampshire, or designee;

(f) The director of the division of state police, or designee;

(g) The attorney general, or designee;

(h) The commissioner of the department of corrections, or designee; and

(i) Two public members, neither of whom shall be a certified police officer, lawyer, or judge, and neither of whom shall have a spouse, sibling, or parent, by birth, adoption, or marriage, who is a certified police officer, lawyer, or judge.

II. Except for the members appointed pursuant to subparagraphs I(e)–(h) who shall serve during their continuance in office, members of the council shall be appointed by the governor for terms of 2 years. No member shall serve beyond the time that the office or employment which qualified such member for appointment. Any vacancy on the council shall be filled for the unexpired term in the same manner as the original appointment is held. Persons filling vacancies shall be appointed to serve out the

unexpired term and shall have the same qualifications for office as the member whose vacancy they are filling.

III. The governor shall designate a member to be the chairperson of the council, and the council shall elect annually its vice chairperson from among the members of the council.

IV. Notwithstanding the provisions of any statute, ordinance, local law, or charter provision to the contrary and except as otherwise provided in subparagraph I(i) regarding qualification of public members, membership on the council shall not disqualify any member from holding any other public office or employment, or cause the forfeiture of any office or employment.

V. Members of the council shall serve without compensation, but shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service.

VI. The council shall hold no fewer than 4 regular meetings a year. The chairperson shall fix the times and places of meetings, either on the chairperson's own motion or upon written request of any 5 members of the council.

VII. The council shall report annually to the governor and executive council on its activities, and may make such other reports as it deems desirable.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:4 Executive Branch Jurisdiction. The police standards and training council is an executive branch council. The council, the director, and employees hired by the director performing the functions required by this chapter shall be subject to RSA 7:8, RSA 541–B, and RSA 99–D, and contracts by them shall be subject to attorney general review and review and approval by the governor and executive council.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:5 Powers. In addition to other powers given to the council by this chapter, it may:

I. Adopt rules for the administration of this chapter in accordance with the provisions of RSA 541–A.

II. Require submission of reports and information from law enforcement and corrections agencies within this state that may be pertinent to the effective functioning of the council.

III. For the purposes of a disciplinary hearing, subpoena and examine witnesses under oath, take oaths or affirmations, and reduce to writing testimony given at any hearing. Any person whose rights or privileges may be affected at such a disciplinary hearing may appear with witnesses and be represented by counsel.

IV. Establish minimum educational and training standards for employment as a police officer, state corrections officer, or state probation-parole officer either in permanent positions or in temporary or probationary status.

V. Certify persons as being qualified under the provisions of this chapter to be police officers, state corrections officers, state probation-parole officers, or certified border patrol agents for the purposes of RSA 594:26, and establish rules under RSA 541–A for the suspension or revocation of the certification of such persons in the case of egregious misconduct or failure to comply with council standards.

VI. Establish entrance, student conduct, and curriculum requirements for preparatory, in-service, and advanced courses and programs for schools operated by or for the state or its political subdivisions for the specific purpose of training police, state corrections, or state probation-parole recruits or officers or tuition students at such programs.

VII. Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of police and corrections training schools and programs or courses of instruction, and the development of standards and methodology for the voluntary accreditation of police departments in the state.

VIII. Offer the educational material and, as appropriate, training relative to the human immunodeficiency virus and related issues prepared and developed pursuant to RSA 141–F:3, II.

IX. Establish, maintain, certify, or approve institutions and facilities for training police officers, state corrections officers, or state probation-parole officers, and recruits for such positions.

X. Make or cause to be made studies of any aspect of police or corrections education and training or recruitment.

XI. Prepare and make available, upon request, model policies and procedures to assist law enforcement agencies in preparation of written policies.

XII. Establish and maintain a voluntary certification program for police canines and canine handlers.

XIII. Make recommendations concerning any matter within its purview pursuant to this chapter.

XIV. Make such investigations as may be necessary to determine whether governmental units are complying with the provisions of this chapter.

XV. Adopt and amend bylaws, consistent with law, for its internal management and control.

XVI. Enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this chapter.

XVII. Accept in the name of the state any and all donations or grants, both real and personal, from any governmental unit or public agency, or from any institution, person, firm, or corporation. The council shall receive, utilize, and dispose of all donations and grants subject to budgetary provisions and according to the rules of the council and consistent with the purposes or conditions of the donation or grant. The receipt of a donation or grant shall be noted in the annual report of the council. The report shall identify the donor, the nature of the donation or grant, and the condition of the donation or grant, if any. Any moneys received by the council pursuant to this paragraph shall be deposited in the state treasury to the account of the council and shall not lapse.

XVIII. Nominate and appoint a director of police standards and training for a term of 4 years who shall report to the police standards and training council, and who shall be an unclassified employee, and whose salary shall be established by RSA 94:1–a. All other employees shall be hired by the director and shall be classified employees. The director shall have practical and academic knowledge in the field of law enforcement, including substantial administrative experience and a degree or degrees in criminology, police administration, or other similar field or any equivalent combination of education and experience.

XIX. The council may delegate to the director of police standards and training any powers and duties enumerated in this chapter.

XX. The director may grant authority to any certified full-time police officer employed by the council as assistant director or law enforcement training specialist, to enforce the provisions of this chapter and any rules adopted under this chapter, and cooperate and exchange information with any local, state, or federal law enforcement agency relative to the qualification and moral fitness of applicants for employment or continued employment as police officers or corrections officers.

XXI. The council may appoint, after consultation with the commissioner of corrections, a corrections advisory committee from a list of nominees submitted by the director. The members shall serve without compensation at the pleasure of the council and shall consist of one representative of the management of each adult correctional facility operated by the department of corrections, one representative each from prison industries, the secure psychiatric unit, and probation-parole, one medical professional from within the correctional system, one state corrections officer chosen by the New Hampshire state employees' association, and one representative of a county correctional institution chosen by the New Hampshire Association of Counties. The committee shall meet not less than twice in each fiscal year at the call of the director, and shall advise the council as requested on issues coming before it concerning corrections standards and training.

XXII. Adopt rules and establish fees to implement the provisions of the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. section 926C(d)(2)(B) in accordance with RSA 541–A.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:6 Education and Training Required.

I. The council shall provide by rule that after one year from the effective date of the rule no person shall be appointed as a police officer, state corrections officer, or state probation-parole officer, except on a temporary or probationary basis, unless such person has satisfactorily completed a preparatory program of police, corrections, or probation-parole training appropriate to such person's position at a school approved by the council. No such officer who lacks the educational and training qualifications required by this section may have the temporary or probationary employment extended beyond 2 years.

II. Every elected police officer shall be required to satisfactorily complete a preparatory program of police training at a school approved by the council. Any elected officer who has not complied with the educational and training requirements of this paragraph within 6 months after election shall be removed from office by the governing body of the governmental unit by which such officer was elected; provided, however, that the council may, for such reasons as it may specify in its rules, grant an extension of this time limit not to exceed an additional 6 months. A governing body which has removed an elected police officer from office under the provisions of this paragraph shall appoint a police officer to fill the vacant office. The appointed police officer shall continue to hold office until the elected officer who was removed has complied with the educational and training requirements of this paragraph or until an election is

held, whichever occurs first. If any police officer who has failed to comply with the educational and training requirements of this paragraph is reelected, such officer shall not take office without permission of the council. If a noncomplying police officer who has not obtained the permission of the council to take office is reelected, the governing body of the governmental unit by which such officer was elected shall appoint a police officer to fill the vacant office. The appointed police officer shall continue to hold office until the elected officer has complied with the educational and training requirements of this paragraph or until an election is held, whichever occurs first.

III. The council, by rules adopted under RSA 541–A, shall establish the standards for physical and mental fitness under paragraphs IV–XI and shall fix other qualifications for the appointment of police officers, state corrections officers, and probation-parole officers, including minimum age, physical and mental standards, citizenship, good moral character, experience, and other such matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of their offices. The council shall prescribe the means for presenting evidence of the fulfillment of these requirements.

IV. The council shall require that all uncertified part-time and full-time police officers, state corrections officers, and probation-parole officers, prior to assuming their duties, successfully pass a medical examination including a drug screening administered under the direction of a licensed physician according to protocols adopted by the council. Such examination, when conducted, shall be valid for a period of one year for purposes of application for employment.

V. The council shall require that all uncertified part-time and full-time police officers, state corrections officers, and probation-parole officers, as a condition of admission to a basic or reciprocal certification training program successfully pass a physical fitness performance test administered according to standards adopted by the council.

VI. The council shall require that all uncertified part-time and full-time police officers, state corrections officers, and probation-parole officers, prior to assuming their duties, successfully pass a psychological screening test battery administered under the direction of a licensed psychologist or psychiatrist according to protocols adopted by the council and designed to detect behavioral traits that could adversely affect the person's ability to perform the essential functions of a law enforcement officer. Such an examination shall be valid for a period of one year from the date of administration for purposes of application for such employment.

VII. Beginning January 1, 2001, the police standards and training council shall require that all certified police officers, state corrections officers, and probation-parole officers, hired after that date, as a condition of continued certification and employment furnish the council every 3 years with a certificate from a licensed physician, physician's assistant, or registered nurse practitioner who has conducted a medical examination of the officer according to protocols adopted by the council, certifying that in the opinion of the examiner the officer is physically capable of participating in the council's physical fitness test.

VIII. Any officer who is unable to meet the medical requirements of paragraph VII may request an additional medical examination by a physician chosen by the council. If the officer is still unable to meet the standards, such officer's certification shall be placed in a probationary status for a period of up to 2 years, during which time the officer may request re-examination at any time. If following the 2-year period the officer is still unable to meet the standards, the officer's certification shall be suspended until such time as such officer obtains the medical certification required in paragraph VII.

IX. Beginning January 1, 2001, the police standards and training council shall require that all certified police officers, state corrections officers, and probation-parole officers, hired after that date, as a condition of continued certification and employment every 3 years pass a physical fitness performance test administered by the hiring authority or the council, according to protocols adopted by the council.

X. Any officer who is unable to meet the physical fitness performance requirements of paragraph IX may request an additional physical fitness performance test administered by the council. If the officer is still unable to meet the standards, such officer's certification shall be placed in a probationary status for a period of up to 2 years, during which time the officer may request re-examination at any time. If, following the 2-year period, the officer is still unable to meet the standards, the officer's certification shall be suspended until such time as such officer is able to pass the physical performance test.

XI. In any case where the council has reasonable grounds to doubt that the medical examination performed as required in paragraph VII was performed in accordance with the appropriate protocols, the council may require the officer to submit to a sepa-

rate examination by a physician selected by the council, at the council's expense.

XII. A licensed physician, psychiatrist, psychologist, or person acting under the licensee's supervision, whose examination administered under this chapter results in an employment decision adverse to a police, corrections, or probation-parole officer shall be immune from suit resulting from such examination or decision, providing such examination is conducted in good faith, not in a wanton or reckless manner.

XIII. To the extent required to comply with federal or state law, the council may grant a waiver, with respect to employment at a specific agency, to an officer who cannot meet the standards in paragraphs VII–X.

XIV. Nothing in this section shall prevent individual hiring agencies from adopting physical fitness programs for their officers that are more stringent or frequent than those required in this section.

XV. Except as provided in paragraph XI and notwithstanding other provisions of law to the contrary, a hiring authority may assess a testing fee to cover all or part of the cost of any medical or psychological examination in cases where the person has been given a conditional offer of employment. A hiring authority may also make repayment of a testing fee part of any training or hiring contract that establishes a minimum term of employment for such an officer.

XVI. The council shall issue a certificate evidencing satisfaction of the requirements of paragraphs I, II, and III to any applicant who presents such evidence as may be required by its rules of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the council for approved police, corrections, or probation-parole, as appropriate, education and training programs in this state.

XVII. Any special agent of the state liquor commission who has the power to enforce the criminal laws under RSA title XIII and rules of the state liquor commission and who was serving under a permanent appointment prior to August 13, 1985, shall not be required to meet the requirements of paragraphs I and III; however, any special agent referred to in this paragraph shall complete such limited programs as may be prescribed by rule adopted under RSA 541–A by the police standards and training council under this section within one year of the date the programs are required. Should any special agent exempted from the requirements of paragraphs I and III of this section by this paragraph terminate employment with the state liquor commission and be hired as a police officer by another police department of the state or a political subdivision thereof, the special agent's certification shall lapse and may be reinstated upon completion of such necessary additional training courses as the police standards and training council may prescribe by rule adopted under RSA 541–A.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:7 Additional Training of Peace Officers. The director of the police standards and training council shall develop appropriate training programs and methods to instruct peace officers in the proper techniques for dealing with intoxicated and incapacitated persons and to encourage the maximum utilization by peace officers of detoxification facilities, alcohol counselors, and licensed general hospitals for such purposes.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:8 Alzheimer's Disease and Other Related Dementia Training. The director of the police standards and training council shall provide education and training to the law enforcement community on Alzheimer's disease and other related dementia. The director may use the educational program developed in conjunction with the department of health and human services under RSA 126–A:5, XXVII and may include such additional components as may be appropriate to effectively assist law enforcement officers in responding to incidents involving persons with Alzheimer's disease and other related dementia.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:9 Reimbursement of Expenses. The council may reimburse political subdivisions or the state for, or may pay for a portion of, the expenses incurred by the officers in attendance at police training programs conducted or approved by the council.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:10 Penalty Assessment; Waiver of Penalty.

I. Every court shall levy a penalty assessment of $2 or 24 percent, whichever is greater, on each fine or penalty imposed by the court for a criminal offense, including any fine or penalty for a violation of RSA title XXI or any municipal ordinance, except for a violation of a municipal ordinance relating to motor vehicles unlawfully left or parked. Notwithstanding any law or rule to the contrary, the penalty assessment shall be levied in addition to the amount of the fine or penalty imposed by the court.

II. If multiple offenses are involved, the penalty assessment shall be imposed on the total fine.

III. If a fine is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.

IV. The clerk of each court shall collect all penalty assessments and shall transmit the amount collected under paragraphs I–III to the state treasurer for deposit in the following funds. The state treasurer shall deposit 66.66 percent of the amount collected in the state general fund, 16.67 percent of the amount collected in the victims' assistance fund, and 16.67 percent of the amount collected in the judicial branch information technology fund.

V. If it is determined by a court that the payment of all or any part of a penalty assessment would work a hardship on the person convicted or on such person's immediate family, the court may suspend the payment of all or any part of the assessment.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:11 Attendance by Persons Other Than Police Officers. Persons who are not police officers as defined in RSA 106–L:2 may attend courses given by the police standards and training council under such conditions and for such tuition as may be established by the council. Certain courses may be closed to persons who are not police officers on recommendation of the director and approval by the council.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:12 Tuition Students.

I. The council may set tuition, selection procedures, and fees for acceptance of tuition students at its programs and for the use of its facilities. Such fees shall be credited, with the approval of the department of administrative services, to the operating accounts of the council to offset additional expenditures necessitated by the acceptance of the additional students.

II. Tuition students at police and corrections academy programs shall be required to comply with background investigation requirements no less stringent than for persons hired as police or corrections officers by units of government.

III. Certain courses may be closed to persons who are not police or corrections officers on recommendation by the director and approval by the council.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:13 Volunteers; Liability Limited.

I. Any volunteer of a nonprofit organization or government entity assisting the council in its training programs shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury to any person if:

(a) The volunteer had prior written approval from the organization to act on behalf of the organization; and

(b) The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties with the organization; and

(c) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the volunteer.

II. In this section:

(a) "Damage or injury" includes physical, nonphysical, economic, and noneconomic damage.

(b) "Nonprofit organization" shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation, and an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1986 organized or incorporated in this state or having a principal place of business in this state.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:14 Firearms Instructors; Liability Limited. Members of the council, council employees, or persons currently certified as firearms instructors by the council pursuant to Pol 404.05, having certified a person as being proficient with their weapons and meeting the standards established in Pol 404.03 to qualify under the provisions of 18 U.S.C. section 926C(d)(2)(B), shall be immune from liability for any action taken by such person subsequent to their certification, unless the employee or firearms instructor knew that the person certified was not qualified under 18 U.S.C. section 926C(d)(2)(B) to have received such certification.

Source. 2017, 206:1, eff. Sept. 8, 2017.

106–L:15 Prior Certification. Any police officer previously certified by the police standards and training council prior to the effective date of this chapter shall be considered certified under this chapter and shall continue to be subject to the jurisdiction of the police standards and training council.

Source. 2017, 206:1, eff. Sept. 8, 2017.

TITLE VIII

PUBLIC DEFENSE AND VETERANS' AFFAIRS

CHAPTER 110–D

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

110–D:1 Compact. The interstate compact on educational opportunity for military children, hereinafter called "the compact", is hereby enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows in this chapter.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE I

110–D:2 Purpose. It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

I. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or districts or variations in entrance/age requirements.

II. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

III. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

IV. Facilitating the on-time graduation of children of military families.

V. Providing for the adoption and enforcement of administrative rules implementing the provisions of this compact.

VI. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

VII. Promoting coordination between this compact and other compacts affecting military children.

VIII. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE II

110–D:3 Definitions. As used in this compact, unless the context clearly requires a different construction:

I. "Accredited school" means a school that has completed the accreditation process from a regional accrediting association, such as the New England Association of Schools and Colleges, that validates the establishment of high standards for all levels of education.

II. "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. sections 1209 and 1211.

III. "Children of military families" means a school-aged child or school-aged children, enrolled in kindergarten through grade 12, in the household of an active duty member.

IV. "Cocurricular" shall include those activities which are designed to supplement and enrich regular academic programs of study, provide opportunities for social development, and encourage participation in clubs, athletics, performing groups, and services to school and community, as defined in RSA 193:1–c.

V. "Compact commissioner" means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

VI. "Deployment" means the period one month prior to the service members' departure from their home station on military orders through 6 months after return to their home station.

VII. "Education records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

VIII. "Interstate Commission on Educational Opportunity for Military Children" means the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

IX. "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through grade 12 public educational institutions.

X. "Member state" means a state that has enacted this compact.

XI. "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

XII. "Non-member state" means a state that has not enacted this compact.

XIII. "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

XIV. "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

XV. "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

XVI. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

XVII. "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through grade 12.

XVIII. "Transition" means:

(a) The formal and physical process of transferring from school to school; or

(b) The period of time in which a student moves from one school in the sending state to another school in the receiving state.

XIX. "Uniformed service" or "uniformed services" means the Army, Navy, Air Force, Marine

Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

XX. "Veteran" means a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE III

110–D:4 Applicability.

I. Except as otherwise provided in paragraph II, this compact shall apply to the children of:

(a) Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. section 1209 and 1211;

(b) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(c) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

II. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

III. The provisions of this compact shall not apply to the children of:

(a) Inactive members of the national guard and military reserves;

(b) Members of the uniformed services now retired, except as provided in paragraph I;

(c) Veterans of the uniformed services, except as provided in paragraph I; and

(d) Other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE IV

110–D:5 Educational Records and Enrollment.

I. Unofficial or "hand-carried" education records. In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

II. Official education records/transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within 10 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

III. Immunizations. The state of New Hampshire may give 30 days from the date of enrollment, or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any required immunization or immunizations in accordance with RSA 141–C:20–a. For a series of immunizations, initial vaccinations shall be obtained within 30 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

IV. Kindergarten and first grade entrance age. Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE V

110–D:6 Placement and Attendance.

I. Course placement. When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course

placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course or courses.

II. Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to, gifted and talented programs, remedial services, and English Language Learner (ELL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student. The school placement process should promote and measure knowledge and skills that lead students to meet learning competencies across content domains.

III. Special education services. (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and (2) In compliance with the requirements of section 504 of the Rehabilitation Act, 29 U.S.C.A. section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. sections 12131–12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

IV. Placement flexibility. Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

V. Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE VI

110–D:7 Eligibility.

I. Eligibility for enrollment.

(a) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(b) A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(c) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent.

II. Eligibility for cocurricular participation. State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in cocurricular activities, regardless of application deadlines, to the extent they are otherwise qualified and eligible.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE VII

110–D:8 Graduation. In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

I. Waiver requirements. Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

II. Exit exams. States shall accept: (1) exit or end-of-course exams required for graduation from the sending state; or (2) national norm-referenced achievement tests; or (3) alternative testing, in lieu of testing requirements for graduation in the receiving state. If none of these alternatives can be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of paragraph III shall apply.

III. Transfers during senior year. Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with paragraphs I and II.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE VIII

110–D:9 State Coordination.

I. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own state council, its membership shall include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, one representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

II. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

III. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the governor or as otherwise determined by each member state.

IV. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE IX

110–D:10 Interstate Commission on Educational Opportunity For Military Children. The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

I. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

II. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

(a) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(b) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(c) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.

(d) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

III. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Edu-

cational Personnel, and other interstate compacts affecting the education of children of military members.

IV. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

V. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense, shall serve as an ex-officio, nonvoting member of the executive committee.

VI. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

VII. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by ⅔ vote that an open meeting would be likely to:

(a) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(b) Disclose matters specifically exempted from disclosure by federal and state statute;

(c) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(d) Involve accusing a person of a crime, or formally censuring a person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigative records compiled for law enforcement purposes; or

(g) Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

VIII. Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

IX. Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

X. Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE X

110–D:11 Powers and Duties of the Interstate Commission. The Interstate Commission shall have the following powers:

I. To provide for dispute resolution among member states.

II. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be

binding in the compact states to the extent and in the manner provided in this compact.

III. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

IV. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

V. To establish and maintain offices which shall be located within one or more of the member states.

VI. To purchase and maintain insurance and bonds.

VII. To borrow, accept, hire, or contract for services of personnel.

VIII. To establish and appoint committees including, but not limited to, an executive committee as required by RSA 110–D:10, V, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

IX. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

X. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

XI. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

XII. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

XIII. To establish a budget and make expenditures.

XIV. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

XV. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

XVI. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

XVII. To establish uniform standards for the reporting, collecting, and exchanging of data.

XVIII. To maintain corporate books and records in accordance with the bylaws.

XIX. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

XX. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XI

110–D:12 Organization and Operation of the Interstate Commission.

I. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) Establishing the fiscal year of the Interstate Commission.

(b) Establishing an executive committee, and such other committees as may be necessary.

(c) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission.

(d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting.

(e) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission.

(f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

(g) Providing "start up" rules for initial administration of the compact.

II. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a

treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

III. (a) The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(1) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(2) Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(3) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

(b) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

IV. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(a) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this section shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(b) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(c) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XII

110–D:13 Rulemaking Functions of The Interstate Commission.

I. The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently

achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

II. Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

III. Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

IV. If a majority of the legislatures of the compacting states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XIII

110–D:14 Oversight, Enforcement, and Dispute Resolution.

I. Oversight.

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

(c) The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

II. Default, technical assistance, suspension, and termination. If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(a) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

(b) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(f) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(g) The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Colum-

bia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

III. Dispute resolution.

(a) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

(b) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

IV. Enforcement.

(a) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) The Interstate Commission, may by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XIV

110–D:15 Financing of the Interstate Commission.

I. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

II. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

III. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

IV. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall by audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XV

110–D:16 Member States, Effective Date and Amendment.

I. Any state is eligible to become a member state.

II. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 10 of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

III. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XVI

110–D:17 Withdrawal and Dissolution.

I. Withdrawal.

(a) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may

withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(b) Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

II. Dissolution of compact.

(a) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XVII

110–D:18 Severability and Construction.

I. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

II. The provisions of this compact shall be liberally construed to effectuate its purposes.

III. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Source. 2014, 308:1, eff. Sept. 30, 2014.

ARTICLE XVIII

110–D:19 Binding Effect of Compact and Other Laws.

I. Other laws.

(a) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(b) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

II. Binding effect of the compact.

(a) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(b) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(c) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Source. 2014, 308:1, eff. Sept. 30, 2014.

TITLE X

PUBLIC HEALTH

CHAPTER 126–H

HEALTHY KIDS CORPORATION

126–H:1 Definitions. In this chapter:

I. "Board" means the healthy kids board established in RSA 126–H:3.

II. "Corporation" means the healthy kids corporation established in this chapter.

Source. 1993, 312:2, eff. Aug. 22, 1993.

126–H:2 Corporation Established.

[RSA 126–H:2 effective until notice is received of the transfer of the state children's health insurance program as provided by 2011, 224:313; see also RSA 126–H:2 set out below.]

There is hereby created a body politic and corporate having a distinct legal existence separate from the state and not constituting a department of state government, to be known as the New Hampshire healthy kids corporation to carry out the provisions of this chapter. The corporation is hereby deemed to be a public instrumentality and the exercise by the authority of the powers conferred by this chapter shall be deemed and held to be the performance of public and essential governmental functions of the state. The corporation shall be the program administrator for the state children's health insurance program under Title XXI of the Social Security Act. The corporation shall be a private nonprofit corporation and shall have all the powers necessary to carry out the purposes of this chapter, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source, contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this chapter. Notwithstanding any other provision of law, any payments made by the corporation for insurance coverage under this chapter, either directly or indirectly, shall be exempt from the premium tax under RSA 400–A:32.

Source. 1993, 312:2. 1996, 119:1. 2001, 295:17. 2007, 167:1. 2009, 224:1, eff. Sept. 14, 2009.

126–H:2 Corporation Established.

[RSA 126–H:2 effective upon receipt of notice of the transfer of the state children's health insurance program as provided by 2011, 224:313; see also RSA 126–H:2 set out above.]

There is hereby created a body politic and corporate having a distinct legal existence separate from the state and not constituting a department of state government, to be known as the New Hampshire healthy kids corporation to carry out the provisions of this chapter. The corporation is hereby deemed to be a public instrumentality. The corporation shall be a private nonprofit corporation and shall have all the powers necessary to carry out the purposes of this chapter, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source, contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this chapter.

Source. 1993, 312:2. 1996, 119:1. 2001, 295:17. 2007, 167:1. 2009, 224:1. 2011, 224:308, eff. as provided by 2011, 224:313.

126–H:3 Healthy Kids Board.

I. The powers of the corporation shall be vested in 12 members for 3-year terms of office as follows:

(a) A public member, appointed by the governor.

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

(c) A member of the senate, appointed by the president of the senate.

(d) The commissioner of the department of education, or designee.

(e) The commissioner of the insurance department, or designee.

(f) [Repealed.]

(g) One member appointed by the New Hampshire Hospital Association.

(h) One member appointed by the New Hampshire Pediatric Society.

(i) One member appointed by the New Hampshire Academy of Family Practice.

(j) One member appointed by the New Hampshire School Nurses Association.

(k) One member appointed by the New Hampshire Alliance for Children and Youth.

(*l*) One member appointed by the New Hampshire Child Care Association.

(m) One member appointed by the New Hampshire School Boards Association.

(n) Four members-at-large, appointed by the healthy kids board of directors.

II. The terms of office shall be as follows: the members in subparagraphs I(a), (g), and (j) shall serve for 2 years; the members in subparagraphs I(b), (h), (k), and (m) shall serve for 3 years; and the members in subparagraphs I(c), (i), and (*l*) shall serve for 4 years. The members in subparagraphs I(d) and (e) shall serve terms which are coterminous with their terms in office. Two of the 4 members in subparagraph I(n) shall serve for 3 years, one shall serve for 2 years, and one shall serve for 4 years.

III. The members shall elect annually from among their number a chairperson and such officers as they may determine. A member shall hold office until a successor has been appointed and qualified. Members shall receive no salary for the performance of their duties under this chapter, but each member shall be reimbursed for reasonable expenses incurred in carrying out duties under this chapter. Any such expenses by board members shall have prior approval by 7 members of the board of directors before reimbursement. A member of the board of directors may be removed for cause by the official who appointed that member.

IV. There shall be no liability on the part of, and no cause of action shall arise against, any member of the board of directors, or its employees or agents, for any action they take in the performance of their powers and duties under this chapter.

V. The corporation shall not be deemed an insurer. The officers, directors, and employees of the corporation shall not be deemed to be the agents of an insurer. Neither the corporation nor any officer, director, or employee of the corporation shall be subject to the licensing requirements of the insurance code or the rules of the department of insurance. However, the department of insurance may require that any marketing representative utilized and compensated by the corporation be appointed as a representative of the insurers or health service providers with which the corporation contracts.

VI. The board shall have complete fiscal control over the corporation and shall be responsible for all corporate operations.

Source. 1993, 312:2. 1995, 258:1, 2. 2011, 224:310, 311, 312, I, eff. July 1, 2011.

126–H:4 Meetings of Board. Meetings shall be held at the call of the chairperson or when 5 members so request. Seven members of the board shall constitute a quorum and the affirmative vote of 7 members shall be necessary for any action taken by the authority. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the corporation.

Source. 1993, 312:2, eff. Aug. 22, 1993.

126–H:5 Powers and Duties.

I. The corporation shall:

(a) Organize school children groups to facilitate the provision of preventive health care services to children at no more than 5 geographic pilot sites and to provide comprehensive health insurance coverage to children.

(b) Arrange for the collection of any premium, in an amount to be determined by the board of directors, from all participants to provide for payment for preventive health care services or premiums for comprehensive health insurance coverage and for the actual or estimated administrative expenses incurred during the period for which payments are made.

(c) Consult appropriate professional organizations and establish standards for preventive health care services and providers and comprehensive insurance benefits appropriate to children.

(d) Establish participation criteria and, if appropriate, contract with an authorized insurer, health maintenance organization, or insurance administrator to provide administrative services to the corporation.

(e) Contract with authorized insurers or any provider of health care services, in accordance with standards established by the corporation, to provide comprehensive insurance coverage and preventive health care services to participants.

(f) Develop and implement a plan to publicize the New Hampshire healthy kids corporation, the eligibility requirements of the program, and the procedures for enrollment in the program and to maintain public awareness of the corporation and the program.

[Paragraph I(g) effective until notice is received of transfer of the state children's health insurance program as provided by 2011, 224:313; see also paragraph I(g) set out below.]

(g) Secure staff necessary to properly administer the corporation. Staff costs shall be funded from state funds appropriated by the legislature and such other private or public funds as become available. The board of directors shall determine the number of staff members necessary to administer the corporation.

[Paragraph I(g) effective upon receipt of notice of transfer of the state children's health insurance program as provided by 2011, 224:313; see also paragraph I(g) set out above.]

(g) Secure staff necessary to properly administer the corporation. Staff costs shall be funded from available private funds. The board of directors shall determine the number of staff members necessary to administer the corporation.

(h) Enter into contracts or agreements with local school boards or other agencies which choose to provide on-site information, enrollment, and other services necessary to the operation of the corporation.

(i) Provide an annual interim report, the first on or before January 1, 1994, to the governor, insurance commissioner, commissioner of health and human services, commissioner of education, senate president, and speaker of the house of representatives on the development of the program.

I–a. The corporation may establish a young adult buy-in program, with appropriate safeguards to prevent adverse risk selection, by which individuals under 26 years of age, who cannot be included in their family's insurance plan, and whose incomes are at or below 400 percent of the federal poverty level, may purchase health insurance through the healthy kids corporation. The corporation shall not implement a young adult buy-in program until the insurance commissioner has reviewed a description of the proposed benefit structure, marketing plan, underwriting standards, enrollment procedures and eligibility criteria and has determined that the program is not likely to have an adverse impact on the commercial health insurance market. The commissioner shall make the determination within 30 days from the submission of the plan design. Within 2 years of the initiation of this buy-in option, the corporation shall submit a report to the governor, the president of the senate, the speaker of the house of representatives, and the standing committees of the house of representatives and senate responsible for health insurance policy on the status of the program, including summary information on enrollment, claims experience, pricing, trends, and any other information relevant to the goals of the program.

II. Coverage under the corporation's program shall be secondary to any other available private coverage held by the participant child or family member. The corporation may establish procedures for coordinating benefits under this program with benefits under other public and private coverage.

Source. 1993, 312:2. 2009, 224:2. 2011, 224:309, eff. as provided by 2011, 224:313.

126–H:6 Rulemaking Authority. The corporation may adopt rules, pursuant to its own procedures, relative to:

I. The conduct of its business, including the administrative and accounting procedures for operation of the corporation.

II. The eligibility criteria which children and their family members must meet in order to participate in the program.

III. The procedures under which applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the board of directors of the corporation.

IV. Application procedures.

V. Schedules of fees and other charges to be made by the corporation and the insurer in renewing, acting upon, or accepting applications under this chapter and any other matters related to such applications as the corporation may deem necessary.

VI. Criteria for the selection of a possible 5 geographic pilot sites for the operation of the program.

VII. Confidentiality of medical records obtained under this chapter.

VIII. Such other matters as are necessary to carry out the powers and duties of the corporation.

Source. 1993, 312:2, eff. Aug. 22, 1993.

126–H:6–a Healthy Kids Subcommittee Established.

[Repealed 2011, 224:312, II, eff. July 1, 2011.]

History

Former RSA 126–H:6–a, which was derived from 2001, 295:16, related to the establishment of the healthy kids subcommittee.

126–H:7 Healthy Kids Fund.

[Repealed 2017, 195:6, eff. Sept. 3, 2017.]

126–H:7 Repealed

History

Former RSA 126–H:7, which was derived from 1993, 312:2 and 1995, 258:3, related to the healthy kids fund.

126–H:8 Confidentiality. Notwithstanding any provision of law to the contrary, the corporation shall have access to the medical records of a child upon receipt of permission from a parent or guardian of the child. Such medical records may be maintained by state and local agencies. Any confidential information obtained by the corporation pursuant to this section shall remain confidential and shall not be subject to RSA 91–A.

Source. 1993, 312:2, eff. Aug. 22, 1993.

126–H:9 Legislative Oversight Committee.

[Repealed 2010, 368:1(11), eff. Dec. 31, 2010.]

History

Former RSA 126–H:9, which was derived from 2005, 177:121, related to the legislative oversight committee.

126–H:10 Temporary Commission Relative to Children's Health Insurance.

[Repealed 2010, 351:3, eff. Dec. 31, 2011.]

History

Former RSA 126–H:10, which was derived from 2010, 351:1, related to a temporary commission relative to children's health insurance.

CHAPTER 126–J

COUNCIL FOR YOUTHS WITH CHRONIC CONDITIONS

126–J:1 Council Established; Membership; Terms.

I. There is established the council for youths with chronic conditions and their families which shall consist of the following members:

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

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

(c) One representative of the department of health and human services, appointed by the commissioner.

(d) One representative of the department of education, appointed by the commissioner.

(e) One representative of the insurance department, appointed by the commissioner.

(f) A director from a community-based agency which has been charged by the council with providing support and services to youths with chronic conditions and their families.

(g) Up to 6 representatives of professional and community organizations, which shall represent a cross-section of disciplines and constituencies such as, but not limited to, physicians, nurses, and educators, appointed by the council in accordance with its bylaws.

(h) Up to 13 members who are the parent or guardian of a youth with a chronic condition, appointed by the council in accordance with its bylaws.

(i) One parent or guardian of a youth with a chronic condition, appointed by the governor.

(j) One member, who is less than 30 years of age and who has a chronic condition, appointed by the chairperson of the council.

II. Terms of office shall be for 3 years, except that legislative members shall serve the terms of their office. No member shall serve more than 2 full consecutive terms. One third of the total members' terms shall expire annually as established in the bylaws.

III. Members shall elect annually from among their number a chairperson and such other officers as they may determine.

IV. Legislative members shall receive mileage at the legislative rate.

Source. 1997, 293:2. 2013, 113:2, 3, eff. Aug. 24, 2013.

126–J:2 Committees. The council may establish such standing committees, ad hoc committees, or task forces as it deems appropriate to carry out the mission of the council.

Source. 1997, 293:2, eff. Aug. 19, 1997.

126–J:3 Duties. The council shall:

I. Promote the organized assessment of the needs of youths with chronic conditions and their families.

II. Serve in an advisory capacity to the department of health and human services, department of education, and insurance department for policy and program development.

III. Collaborate with the department of health and human services, the department of education, and other public and private organizations statewide to enhance community-based family supports that

meet the unique needs of youths with chronic conditions and their families.

IV. Increase awareness in the public and private sector of the medical, social, and educational issues which impact youths with chronic conditions and their families.

Source. 1997, 293:2. 2013, 113:4, eff. Aug. 24, 2013.

126–J:4 Technical Assistance. The department of health and human services, department of education, and the insurance department shall provide to the council available data, consistent with confidentiality requirements, relevant to the needs of this population.

Source. 1997, 293:2, eff. Aug. 19, 1997.

126–J:5 Report. The council shall report annually on or before December 1 to the governor and the general court regarding the progress being made to provide services and support to youths with chronic conditions and their families in regular educational and medical environments allowing them to remain in or near their own homes and communities.

Source. 1997, 293:2. 2013, 113:5, eff. Aug. 24, 2013.

126–J:6 Funding. The council may solicit, expend, and disburse funds from the state and federal government, as well as private grants and funds, for the purposes of this chapter. It may also enter into contracts as necessary to carry out its purpose.

Source. 1997, 293:2, eff. Aug. 19, 1997.

CHAPTER 126–K

YOUTH ACCESS TO AND USE OF TOBACCO PRODUCTS

126–K:1 Purpose. The purpose of this chapter is to protect the children of New Hampshire from the possibility of addiction, disability, and death resulting from the use of tobacco products by ensuring that tobacco products will not be supplied to minors.

Source. 1997, 338:8, eff. Jan. 1, 1998.

126–K:2 Definitions. In this chapter:

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

II. "Commission" means the liquor commission.

II–a. "E-cigarette" means any electronic smoking device composed of a mouthpiece, a heating element, a battery, and electronic circuits that provides a vapor of pure nicotine mixed with propylene glycol to the user as the user simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, or e-pipes, or under any other product name.

III. "Licensee" means the person in whose name a license issued pursuant to RSA 78:2 was granted.

III–a. "Liquid nicotine" means any liquid product composed either in whole or in part of pure nicotine and propylene glycol and manufactured for use with e-cigarettes.

IV. "Manufacturer" means any person engaged in the business of importing, exporting, producing, or manufacturing tobacco products who sells the product only to licensed wholesalers.

V. "Minor" means a person under the age of 18.

VI. "Person" means any individual, firm, fiduciary partnership, corporation, trust, or association, however formed.

VII. "Public educational facility" means any enclosed place or portion of such place, which is supported by public funds and which is used for the instruction of students enrolled in preschool programs and in grades kindergarten through 12. This definition shall include all administrative buildings and offices and areas within facilities supportive of instruction and subject to educational administration including, but not limited to, lounge areas, passageways, rest rooms, laboratories, study areas, cafete-

rias, gymnasiums, libraries, maintenance rooms, and storage areas.

VIII. "Retailer" means any person who sells tobacco products to consumers.

VIII–a. "Rolling paper" means any paper product that is designed to encase or wrap tobacco or similar products and marketed for the purpose of smoking or manufacturing hand-rolled cigarettes.

IX. "Sampler" means any person who distributes free tobacco products to consumers for promotional purposes.

X. "Sub-jobber" means any person doing business in this state who buys stamped tobacco products from a licensed wholesaler and who sells all the sub-jobber's tobacco products to other licensed sub-jobbers, vending machine operators, and retailers.

XI. "Tobacco product" means any product containing tobacco including, but not limited to, cigarettes, smoking tobacco, cigars, chewing tobacco, snuff, pipe tobacco, smokeless tobacco, and smokeless cigarettes.

XII. "Vending machine" means any self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco, cigarettes, or any other tobacco product.

XIII. "Vending machine operator" means any person operating one or more tobacco product vending machines on property or premises other than the operator's own.

XIV. "Wholesaler" means any person doing business in this state who shall purchase all the wholesaler's unstamped tobacco products directly from a licensed manufacturer and who shall sell all of the wholesaler's products to licensed wholesalers, sub-jobbers, vending machine operators, retailers, samplers, and those persons exempted from the tobacco tax under RSA 78:7–b.

Source. 1997, 338:8. 2001, 171:1. 2010, 113:1, 2, eff. July 31, 2010.

126–K:3 Proof of Age of Purchaser.

I. For the purposes of this chapter, any person responsible for monitoring sales from a tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or liquid nicotine which vending machine or other sale is to be made to any person who does not appear to be at least 18 years of age, shall require the purchaser to furnish any of the following documentation that such person is 18 years of age or over:

(a) A motor vehicle driver's license issued by the state of New Hampshire, or a valid driver's license issued by another state, the District of Columbia, a United States territory, or a province of Canada, which bears the date of birth, name, address, and picture of the individual.

(b) An identification card issued by the director of motor vehicles under the provisions of RSA 260:21, RSA 260:21–a, or RSA 260:21–b, or any picture identification card issued by another state which bears the date of birth, name, and address of the individual.

(c) An armed services identification card.

(d) A valid passport from a country with whom the United States maintains diplomatic relations.

II. Photographic identification presented under this section shall be consistent with the appearance of the person, and shall be correct and free of alteration, erasure, blemish, or other impairment.

III. The establishment of all of the following facts by a person responsible for monitoring sales from a vending machine or a person or sampler making a sale or distribution of tobacco products, e-cigarettes, or liquid nicotine to a person under 18 years of age shall constitute prima facie evidence of innocence and a defense to any prosecution for such sale:

(a) That the person falsely represented in writing and supported by some official documents that the person was 18 years of age or older;

(b) That the appearance of the person was such that an ordinary and prudent person would believe such person to be at least 18 years of age or older; and

(c) That the sale was made in good faith relying on such written representation and appearance in the reasonable belief that the person was actually 18 years of age or over.

Source. 1997, 338:8. 2010, 113:3, 4, eff. July 31, 2010. 2015, 179:2, eff. June 26, 2015. 2016, 71:2, eff. May 10, 2016.

126–K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or Liquid Nicotine to Minors Prohibited.

I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or furnished tobacco products, e-cigarettes, or liquid nicotine to a minor. The prohibition established by this paragraph shall not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending machine operator, sampler, or retailer from performing the necessary handling of tobacco prod-

ucts, e-cigarettes, or liquid nicotine during the duration of their employment.

II. Violations of this section shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for violations of this section shall not exceed $250 for the first offense and $500 for the second offense. For the third offense, the commission shall issue a letter of warning detailing necessary corrective actions and an administrative fine ranging from $500 to $1500. In addition, the license to sell tobacco products of the manufacturer, wholesaler, sub-jobber, vending machine operator, or retailer where the offense occurred shall be suspended for a period of 10 consecutive days and not exceeding 30 consecutive days. For the fourth offense, the commission shall issue either an administrative fine and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days, or a suspension. The administrative fine shall range from $750 to $3,000 while any suspension without a fine shall be 40 consecutive days. For any violation beyond the fourth, the commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principal thereof for a period of one year from the date of revocation. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within 3 years of the date of the violation being considered.

III. In addition to the civil penalty described in paragraph II, a person who violates this section shall be guilty of a violation for a first offense and a misdemeanor for each subsequent offense.

Source. 1997, 338:8. 2000, 303:1. 2001, 280:1. 2010, 113:5, eff. July 31, 2010.

126–K:4–a Rolling Papers.

I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this paragraph shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for violations of this paragraph shall not exceed $250 for the first offense, $500 for the second offense, and $750 for the third and subsequent offenses.

II. No person under 18 years of age shall purchase, attempt to purchase, possess, or use any rolling paper. Any minor who violates this section shall be guilty of a violation and shall be punished by a fine not to exceed $100 for each offense.

Source. 2001, 171:2, eff. Jan. 1, 2002.

126–K:5 Distribution of Free Samples.

I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes, or liquid nicotine in a public place. This prohibition shall not apply to sampling:

(a) In an area to which minors are denied access.

(b) In a store to which a retailer's license has been issued.

(c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport facilities in areas to which minors are denied access.

II. The commission shall adopt rules, pursuant to RSA 541–A, concerning the distribution of free samples of tobacco products, e-cigarettes, or liquid nicotine to prevent their distribution to minors.

III. Violations of this section shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for the violations of this section shall not exceed $250 for the first offense and $500 for the second offense. For the third offense, the commission shall issue a letter of warning detailing necessary corrective actions and an administrative fine ranging from $500 to $1,500. In addition, the sampler's license shall be suspended for a period of 10 consecutive days and not exceeding 30 consecutive days. For the fourth offense, the commission shall issue either an administrative fine and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days, or a suspension. The administrative fine shall range from $750 to $3,000 while any suspension without a fine shall be 40 consecutive days. For any violation beyond the fourth, the commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principal thereof for a period of one year from the date of revocation. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within 3 years of the date of the violation being considered.

Source. 1997, 338:8. 2000, 303:2. 2001, 280:2. 2010, 113:6, eff. July 31, 2010.

126–K:6 Possession and Use of Tobacco Products, E-cigarettes, or Liquid Nicotine by Minors.

I. No person under 18 years of age shall purchase, attempt to purchase, possess, or use any tobacco product, e-cigarette, or liquid nicotine.

II. The prohibition on possession of tobacco products, e-cigarettes, or liquid nicotine shall not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending machine opera-

tor, sampler, or retailer from performing the necessary handling of tobacco products, e-cigarettes, or liquid nicotine during the duration of their employment.

III. A minor shall not misrepresent his or her age for the purpose of purchasing tobacco products.

IV. Notwithstanding RSA 169–B and RSA 169–D, a person 12 years of age and older who violates this section shall not be considered a delinquent or a child in need of services.

V. Any minor who violates this section shall be guilty of a violation and shall be punished by a fine not to exceed $100 for each offense or shall be required to complete up to 20 hours of community service for each offense, or both. Where available, punishment may also include participation in an education program.

Source. 1997, 338:8. 2010, 113:7, eff. July 31, 2010.

126–K:7 Use of Tobacco Products, E-cigarettes, or Liquid Nicotine on Public Educational Facility Grounds Prohibited.

I. No person shall use any tobacco product, e-cigarette, or liquid nicotine in any public educational facility or on the grounds of any public educational facility.

II. Any person who violates this section shall be guilty of a violation and, notwithstanding RSA 651:2, shall be punished by a fine not to exceed $100 for each offense.

Source. 1997, 338:8. 2010, 113:8, eff. July 31, 2010.

126–K:8 Special Provisions.

I. No person shall sell, give, or furnish tobacco products, e-cigarettes, or liquid nicotine to a minor who has a note from an adult requesting such sale, gift, or delivery.

II. All tobacco products shall be sold in their original packaging bearing the Surgeon General's warning.

III. The sale of single cigarettes is prohibited.

IV. Violations of this section shall be civil infractions punishable by administrative action of the commission against the licensee. The fines for violations of this section shall not exceed $250 for the first offense and $500 for the second offense. For the third offense, the commission shall issue a letter of warning detailing necessary corrective actions and an administrative fine ranging from $500 to $1,500. In addition, the license to sell tobacco products of the manufacturer, wholesaler, sub-jobber, vending machine operator, or retailer where the offense occurred shall be suspended for a period of 10 consecutive days and not exceeding 30 consecutive days. For the fourth offense, the commission shall issue either an administrative fine and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days, or a suspension. The administrative fine shall range from $750 to $3,000 while any suspension without a fine shall be 40 consecutive days. For any violation beyond the fourth, the commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principal thereof for a period of one year from the date of revocation. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within 3 years of the date of the violation being considered.

V. In addition to the civil penalty described in paragraph IV, a person who violates this section shall be guilty of a violation for the first offense and a misdemeanor for each subsequent offense.

Source. 1997, 338:8. 2000, 303:3. 2001, 280:3. 2010, 113:9, eff. July 31, 2010.

126–K:9 Enforcement Authority. The commission shall have the primary responsibility for enforcing this chapter. Local, county, and state law enforcement officers shall also have jurisdiction to enforce this chapter. Such authority may be delegated to agents working under their authority.

Source. 1997, 338:8, eff. Jan. 1, 1998.

126–K:10 Rulemaking. The commission shall adopt rules, pursuant to RSA 541–A, relative to the hearings and appeals process and relative to the proper administration of this chapter.

Source. 1997, 338:8, eff. Jan. 1, 1998.

126–K:11 Fines.

I. All fines imposed by any court and collected for the violation of the provisions of this chapter shall be paid to the state, county, or town, the officials of which instituted the prosecution.

II. All fines imposed by the commission shall be deposited into the general fund.

Source. 1997, 338:8, eff. Jan. 1, 1998.

126–K:12 Penalties.

I. Violations of this chapter may be prosecuted by local, county, or state law enforcement officials.

II. The commission may issue administrative warnings and assess fines and may order the commissioner of revenue administration to suspend or revoke

a license issued pursuant to RSA 78 for a specified period of time for violations of this chapter.

III. The commission may issue administrative warnings, assess fines, and suspend or revoke a license issued pursuant to RSA 178 for a specified period of time for violations of this chapter.

Source. 1997, 338:8. 2008, 341:18, eff. Jan. 1, 2009.

126–K:13 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

Source. 1997, 338:8, eff. Jan. 1, 1998.

126–K:14 Preemption. Nothing in this chapter shall be construed to restrict the power of any county, city, town, village, or other subdivision of the state to adopt local laws, ordinances, and regulations that are more stringent than this chapter and RSA 78.

Source. 1997, 338:8, eff. Jan. 1, 1998.

Tobacco Use Prevention and Cessation Program

126–K:15 Tobacco Use Prevention and Cessation Program. There is hereby established in the department of health and human services the tobacco use prevention and cessation program, which shall be administered with funds appropriated to the department for such purpose, and which shall include but not be limited to:

I. Tobacco use prevention community programs and grants.

II. Tobacco use prevention school programs and grants.

III. Tobacco use prevention state-wide programs and grants.

IV. Tobacco use cessation programs.

V. Tobacco use prevention and cessation counter marketing.

VI. Evaluation of tobacco control initiatives.

VII. Administration and enforcement.

Source. 1999, 183:3. 2000, 62:2. 2007, 263:113, eff. June 30, 2007.

126–K:16 Definitions. In this subdivision:

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

II. "Department" means the department of health and human services.

III. [Repealed.]

Source. 2000, 62:3. 2007, 263:116, II, eff. June 30, 2007.

126–K:17 Purpose of Grants; Grants Process. Grants shall be available in accordance with the following procedures:

I. Requests for funding consideration in any given year shall be forwarded to the commissioner by January 1 to be reviewed for a grant beginning in the following fiscal year.

II. The commissioner shall review all requests and recommend awards, including amounts and duration. The commissioner shall submit recommendations to the governor and executive council for approval.

III. Additional requests may be considered throughout the year if funds are available. The commissioner shall forward recommendations to the governor and council for approval.

Source. 2000, 62:3, eff. June 16, 2000.

126–K:18 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541–A, necessary for the administration of this subdivision.

Source. 2000, 62:3, eff. June 16, 2000.

126–K:19 Advisory Committee.

[Repealed 2008, 144:1, II, eff. Aug. 5, 2008.]

History

Former RSA 126–K:19, which was derived from 2000, 62:3 and 2007, 263:14, related to the tobacco use advisory committee.

CHAPTER 126–U

LIMITING THE USE OF CHILD RESTRAINT PRACTICES IN SCHOOLS AND TREATMENT FACILITIES

126–U:1 Definitions. In this chapter:

I. "Child" means a person who has not reached the age of 18 years and who is not under adult criminal prosecution or sentence of actual incarceration resulting therefrom, either due to having reached the age of 17 years or due to the completion of proceedings for transfer to the adult criminal justice system under RSA 169–B:24, RSA 169–B:25, or RSA 169–B:26. "Child" also includes a person in actual attendance at a school who is less than 22 years of age and who has not received a high school diploma.

II. "Director" refers to the program director, school principal, or other official highest in rank and with authority over the activities of a school or facility.

III. "Facility" includes any of the following when used for the placement, custody, or treatment of children:

(a) The youth services center maintained by the department of health and human services, or any other setting established for the commitment or detention of children pursuant to RSA 169–B, RSA 169–C, or RSA 169–D.

(b) Child care agencies regulated by RSA 170–E.

(c) Any foster home, group home, crisis home, or shelter care setting used for the placement of children at any stage of proceedings under RSA 169–B, RSA 169–C, or RSA 169–D or following disposition under those chapters.

(d) Any hospital, building, or other place, whether public or private, which is part of the state services systems established under RSA 135–C:3 and RSA 171–A:4, including but not limited to:

(1) The Anna Philbrook center.

(2) The acute psychiatric services building.

(3) Any designated receiving facility.

(4) A community mental health center as defined in RSA 135–C:7, or any of its subdivisions or contractors.

(5) An area agency as defined in RSA 171–A:2, or any of its subdivisions or contractors.

(e) Any residence, treatment center, or other place used for the voluntary or involuntary custody, treatment or care of children with developmental, intellectual, or other disabilities under RSA 171–A or 171–B.

(f) Community living facilities for persons with developmental disabilities or mental illness as authorized by RSA 126–A:19, when used for the placement of children.

IV. "Restraint" means bodily physical restriction, mechanical devices, or any device that immobilizes a person or restricts the freedom of movement of the torso, head, arms, or legs. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication. It is limited to actions taken by persons who are school or facility staff members, contractors, or otherwise under the control or direction of a school or facility.

(a) "Medication restraint" occurs when a child is given medication involuntarily for the purpose of immediate control of the child's behavior.

(b) "Mechanical restraint" occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body.

(c) "Physical restraint" occurs when a manual method is used to restrict a child's freedom of movement or normal access to his or her body.

(d) Restraint shall not include:

(1) Brief touching or holding to calm, comfort, encourage, or guide a child, so long as limitation of freedom of movement of the child does not occur.

(2) The temporary holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a child to stand, if necessary, and then walk to a safe location, so long as the child is in an upright position and moving toward a safe location.

(3) Physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, and supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for orthopedic, surgical, and other similar medical treatment purposes, or when used to provide support for the achievement of functional body position or proper balance or to protect a person from falling out of bed, or to permit a child to participate in activities without the risk of physical harm.

(4) The use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.

(5) The use of force by a person to defend himself or herself or a third person from what the actor reasonably believes to be the imminent use of unlawful force by a child, when the actor uses a degree of such force which he or she reasonably believes to be necessary for such purpose and the actor does not immobilize a child or restrict the freedom of movement of the torso, head, arms, or legs of any child.

V. "School" means:

(a) A school operated by a school district.

(b) A chartered public school governed by RSA 194–B.

(c) A public academy as defined in RSA 194:23, II.

(d) A nonpublic school subject to the approval authority of the state board of education under RSA 186:11, XXIX.

(e) A private or public provider of any component of a child's individualized education program under RSA 186–C.

V–a. "Seclusion" means the involuntary placement of a child alone in a place where no other person is present and from which the particular child is unable to exit, either due to physical manipulation by a person, a lock, or other mechanical device or barrier. The term shall not include the voluntary separation of a child from a stressful environment for the purpose of allowing the child to regain self-control, when such separation is to an area which a child is able to leave. Seclusion does not include circumstances in which there is no physical barrier between the child and any other person or the child is physically able to leave the place. A circumstance may be considered seclusion even if a window or other device for visual observation is present, if the other elements of this definition are satisfied.

VI. "Serious injury" means any harm to the body which requires hospitalization or results in the fracture of any bone, non-superficial lacerations, injury to any internal organ, second- or third-degree burns, or any severe, permanent, or protracted loss of or impairment to the health or function of any part of the body.

Source. 2010, 375:2. 2014, 324:1–3, eff. Sept. 30, 2014.

126–U:2 Written Policies Required. Each facility and school shall have a written policy and procedures for managing the behavior of children. Such policy shall describe how and under what circumstances seclusion or restraint is used and shall be provided to the parent, guardian, or legal representative of each child at such facility or school.

Source. 2010, 375:2. 2014, 324:4, eff. Sept. 30, 2014.

126–U:3 Post Admission Planning in Facilities.

I. As soon as possible after admission to a facility, the treatment staff of the facility, the child, and the child's parent or guardian shall develop a plan to:

(a) Identify the child's history of physical, sexual, or emotional trauma, if any.

(b) Identify effective responses to potential behavior or situations which will avoid the use of seclusion and restraint.

(c) Identify health conditions which may make the child vulnerable to injury while at the facility.

II. The plan described in this section is not required if the child is expected to be at the facility for fewer than 72 hours and, after conducting a reasonable inquiry, the staff of the facility is not informed of any history of the use of seclusion or restraint of the child.

Source. 2010, 375:2. 2014, 324:4, eff. Sept. 30, 2014.

126–U:4 Prohibition of Dangerous Restraint Techniques. No school or facility shall use or threaten to use any of the following restraint and behavior control techniques:

I. Any physical restraint or containment technique that:

(a) Obstructs a child's respiratory airway or impairs the child's breathing or respiratory capacity or restricts the movement required for normal breathing;

(b) Places pressure or weight on, or causes the compression of, the chest, lungs, sternum, diaphragm, back, or abdomen of a child;

(c) Obstructs the circulation of blood;

(d) Involves pushing on or into the child's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything, including soft objects such as pillows, blankets, or washcloths; or

(e) Endangers a child's life or significantly exacerbates a child's medical condition.

II. The intentional infliction of pain, including the use of pain inducement to obtain compliance.

III. The intentional release of noxious, toxic, caustic, or otherwise unpleasant substances near a child for the purpose of controlling or modifying the behavior of or punishing the child.

IV. Any technique that unnecessarily subjects the child to ridicule, humiliation, or emotional trauma.

Source. 2010, 375:2, eff. Sept. 1, 2010.

126–U:5 Limitation of the Use of Restraint to Emergencies Only.

I. Restraint shall only be used in a school or facility to ensure the immediate physical safety of persons when there is a substantial and imminent risk of serious bodily harm to the child or others. The determination of whether the use of restraint is justified under this section may be made with consideration of all relevant circumstances, including whether continued acts of violence by a child to inflict damage to property will create a substantial risk of serious bodily harm to the child or others. Restraint shall be used only by trained personnel using extreme caution when all other interventions have failed or have been deemed inappropriate.

II. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a child.

Source. 2010, 375:2. 2014, 324:5, eff. Sept. 30, 2014.

126–U:5–a Limitation on the Use of Seclusion.

I. Seclusion may not be used as a form of punishment or discipline. It may only be used when a child's behavior poses a substantial and imminent risk of physical harm to the child or to others, and may only continue until that danger has dissipated.

II. Seclusion shall only be used by trained personnel after other approaches to the control of behavior have been attempted and been unsuccessful, or are reasonably concluded to be unlikely to succeed based on the history of actual attempts to control the behavior of a particular child.

III. Seclusion shall not be used in a manner that that unnecessarily subjects the child to the risk of ridicule, humiliation, or emotional or physical harm.

Source. 2014, 324:6, eff. Sept. 30, 2014.

126–U:5–b Conditions of Seclusion.

I. When permitted by this chapter, seclusion may only be imposed in rooms which:

(a) Are of a size which is appropriate for the chronological and developmental age, size, and behavior of the children placed in them.

(b) Have a ceiling height that is comparable to the ceiling height of the other rooms in the building in which they are located.

(c) Are equipped with heating, cooling, ventilation, and lighting systems that are comparable to the systems that are in use in the other rooms of the building in which they are located.

(d) Are free of any object that poses a danger to the children being placed in the rooms.

(e) Have doors which are either not equipped with locks, or are equipped with devices that automatically disengage the lock in case of an emergency. For the purposes of this subparagraph, an "emergency" includes, but is not limited to:

(1) The need to provide direct and immediate medical attention to a child;

(2) Fire;

(3) The need to remove a child to a safe location during a building lockdown; or

(4) Other critical situations that may require immediate removal of a child from seclusion to a safe location.

(f) Are equipped with unbreakable observation windows or equivalent devices to allow the safe, direct, and uninterrupted observation of every part of the room.

II. Each use of seclusion shall be directly and continuously visually and auditorially monitored by a person trained in the safe use of seclusion.

Source. 2014, 324:6, eff. Sept. 30, 2014.

126–U:5–c Room Confinement at the Youth Development Center. Notwithstanding any other provision of this chapter, the youth development center may confine children in their rooms when such confinement is part of a routine practice applicable to substantial portions of the population at the center and not imposed as a consequence in response to the behavior of one or more children. Such confinement is not subject to the notice and reporting requirements of RSA 126–U:7.

Source. 2014, 324:6, eff. Sept. 30, 2014.

126–U:6 Schools Limited to Physical Restraint. Use of restraint in schools shall be limited to physical restraint as permitted by this chapter. Schools shall not use medication restraint and shall not use mechanical restraint except as otherwise permitted in the transportation of children pursuant to RSA 126–U:12.

Source. 2010, 375:2, eff. Sept. 1, 2010.

126–U:7 Notice and Record-Keeping Requirements.

I. Unless prohibited by court order, the facility or school shall, make reasonable efforts to verbally notify the child's parent or guardian and guardian ad litem whenever seclusion or restraint has been used on the child. Such notification shall be made as soon as practicable and in no event later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier. Notification shall be made in a manner calculated to

give the parent or guardian actual notice of the incident at the earliest practicable time.

II. A facility employee or school employee who uses seclusion or restraint, or if the facility employee or school employee is unavailable, a supervisor of such employee, shall, within 5 business days after the occurrence, submit a written notification containing the following information to the director or his or her designee:

(a) The date, time, and duration of the use of seclusion or restraint.

(b) A description of the actions of the child before, during, and after the occurrence.

(c) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint.

(d) The names of the persons involved in the occurrence.

(e) A description of the actions of the facility or school employees involved before, during, and after the occurrence.

(f) A description of any interventions used prior to the use of the seclusion or restraint.

(g) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary.

(h) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the use of seclusion or restraint.

(i) A description of any property damage associated with the occurrence.

(j) A description of actions taken to address the emotional needs of the child during and following the incident.

(k) A description of future actions to be taken to control the child's problem behaviors.

(*l*) The name and position of the employee completing the notification.

(m) The anticipated date of the final report.

III. Unless prohibited by court order, the director or his or her designee shall, within 2 business days of receipt of the notification required in paragraph II, send or transmit by first class mail or electronic transmission to the child's parent or guardian and the guardian ad litem the information contained in the notification. Each notification prepared under this section shall be retained by the school or facility for review in accordance with rules adopted under RSA 541–A by the state board of education and the department of health and human services.

IV. Whenever a facility or school employee has intentional physical contact with a child which is in response to a child's aggression, misconduct, or disruptive behavior, a representative of the school or facility shall make reasonable efforts to promptly notify the child's parent or guardian. Such notification shall be made no later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier. Notification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

V. In any case requiring notification under paragraph IV, the school or facility shall, within 5 business days of the occurrence, prepare a written description of the incident. Such description shall include at least the following information:

(a) The date and time of the incident.

(b) A brief description of the actions of the child before, during, and after the occurrence.

(c) The names of the persons involved in the occurrence.

(d) A brief description of the actions of the facility or school employees involved before, during, and after the occurrence.

(e) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the incident.

VI. The notification and record-keeping requirements of paragraphs IV and V shall not apply in the following circumstances:

(a) When a child is escorted from an area by way of holding of the hand, wrist, arm, shoulder, or back to induce the child to walk to a safe location. However, if the child is actively combative, assaultive, or self-injurious while being escorted, the requirements of paragraphs IV and V shall apply.

(b) When actions are taken such as separating children from each other, inducing a child to stand, or otherwise physically preparing a child to be escorted.

(c) When the contact with the child is incidental or minor, such as for the purpose of gaining a misbehaving child's attention. However, blocking of a blow, forcible release from a grasp, or other significant and intentional physical contact with a disruptive or assaultive child shall be subject to the requirements.

(d) When an incident is subject to the requirements of paragraphs I–III.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

126–U:7–a Notice and Record-Keeping Requirements for Foster Family Homes. Notwithstanding RSA 126–U:7, foster family homes, as defined in RSA 170–E:25, shall keep records and provide notice of incidents involving seclusion or restraint, according to rules adopted pursuant to RSA 541–A by the commissioner of the department of human services. The rules shall provide for timely notice to parents or guardians, which may be provided through the department. In cases involving serious injury or death to a child subject to seclusion or restraint in a foster home, the rules shall provide for timely notification to the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities.

Source. 2014, 324:7, eff. Sept. 30, 2014.

126–U:8 Review of Restraint Records by Department of Education.

I. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) Periodic, regular review by the department of education of records maintained by schools relative to the use of seclusion and restraint.

(b) A process for the department of education's receipt of complaints and its conduct of investigations of improper use of seclusion and restraint in schools. The process shall provide for:

(1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.

(2) Investigation by persons not affiliated with the school district which is the subject of the complaint.

(3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.

(4) Protection of children before and after completion of the investigation.

(5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the state board of education shall provide an annual report to the chairpersons of the education committees of the senate and house of representatives regarding the use of seclusion and restraint in schools. The annual report shall be prepared from the periodic, regular review of such records, and shall include the number and location of reported incidents and the status of any outstanding investigations.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

126–U:9 Review of Restraint Records by Department of Health and Human Services.

I. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541–A, relative to:

(a) Periodic, regular review by the department of health and human services of records maintained by facilities regarding the use of seclusion and restraint.

(b) A process for the department's receipt of complaints and its conduct of investigations of reports of improper use of seclusion and restraint in facilities, which may be through the department of health and human services, office of the ombudsman, or otherwise. The process shall provide for:

(1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.

(2) Investigation by persons not affiliated with the facility which is the subject of the complaint.

(3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.

(4) Protection of children before and after completion of the investigation.

(5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the commissioner of the department of health and human services shall provide an annual report to the committees of the house of representatives and the senate with jurisdiction over health and human services and over children and family law, regarding the use of seclusion and restraint in facilities. The annual report shall be based on the periodic, regular review of such records and shall include the number and location of reported incidents and the status of any outstanding investigations.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

126–U:10 Injury or Death During Incidents of Restraint or Seclusion.

I. In cases involving serious injury or death to a child subject to restraint or seclusion in a facility, the facility shall, in addition to the provisions of RSA 126–U:7, notify the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the notification required in RSA 126–U:7, II. The department of health and human services shall annually notify facilities of their responsibilities under this section and provide contact information for the persons to be notified.

II. In cases involving serious injury or death to a child subject to restraint or seclusion in a school, the school shall, in addition to the provisions of RSA 126–U:7, notify the commissioner of the department of education, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the written notification required in RSA 126–U:7, II. The department of education shall annually notify schools of their responsibilities under this section and provide contact information for the persons to be notified.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

126–U:11 Authorization and Monitoring of Extended Restraint. In a school or facility:

I. Restraint shall not be imposed for longer than is necessary to protect the child or others from the substantial and imminent risk of serious bodily harm.

II. Children in restraint shall be the subject of continuous direct observation by personnel trained in the safe use of restraint.

III. No period of restraint of a child may exceed 15 minutes without the approval of the director or a supervisory employee designated by the director to provide such approval.

IV. No period of restraint of a child may exceed 30 minutes unless a face-to-face assessment of the mental, emotional, and physical well-being of the child is conducted by the facility or school director or by a supervisory employee designated by the director who is trained to conduct such assessments. The assessment shall also include a determination of whether the restraint is being conducted safely and for a purpose authorized by this chapter. Such assessments shall be repeated at least every 30 minutes during the period of restraint. Each such assessment shall be documented in writing and such records shall be retained by the facility or school as part of the written notification required in RSA 126–U:7, II.

Source. 2010, 375:2, eff. Sept. 1, 2010.

126–U:12 Restriction of the Use of Mechanical Restraint During the Transport of Children.

I. A school or facility shall not use mechanical restraints during the transportation of children unless case-specific circumstances dictate that such methods are necessary.

II. Whenever a child is transported to a location outside a school or facility, the director shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort the child in a manner which:

(a) Prevents physical and psychological trauma;

(b) Respects the privacy of the child; and

(c) Represents the least restrictive means necessary for the safety of the child.

III. Whenever a child is transported using mechanical restraints, the director shall document in writing the reasons for the use of mechanical restraints. Such documentation shall be treated as a notification of restraint under RSA 126–U:7.

Source. 2010, 375:2, eff. Sept. 1, 2010.

126–U:13 Restriction of the Use of Mechanical Restraint in Courtrooms. At any hearing under RSA 169–B, RSA 169–C, or RSA 169–D, the judge may subject a child to mechanical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the child's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the child and the child's attorney an opportunity to be heard to contest the use of mechanical restraint before the judge orders its use. If mechanical restraint is ordered, the judge shall make written findings of fact in support of the order.

Source. 2010, 375:2, eff. Sept. 1, 2010.

126–U:14 School Review Following the Use of Restraint or Seclusion. Upon information that restraint or seclusion has been used for the first time upon a child with a disability as defined in RSA 186–C:2, I or a child who is receiving services under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 701, and its implementing regulations, the school shall review the individual educational program and/or Section 504 plan and make such adjustments as are indicated to eliminate or reduce the future use of restraint or seclusion. A parent or

guardian of a child with a disability may request such a review at any time following an instance of restraint or seclusion and such request shall be granted if there have been multiple instances of restraint or seclusion since the last review.

Source. 2014, 324:9, eff. Sept. 30, 2014.

CHAPTER 141–C

COMMUNICABLE DISEASE

141–C:20 Education. The commissioner or his designee shall prepare and distribute such current public information materials relative to the cause, prevention, and treatment of the various communicable diseases and relative to rules adopted under this chapter as may best instruct health care providers and the public in methods of prevention and control of communicable diseases, including proper treatment methods.

Source. 1986, 198:21. 1995, 310:183, eff. Nov. 1, 1995.

141–C:20–a Immunization.

I. All parents or legal guardians shall have their children who are residing in this state immunized against certain diseases. These diseases shall include, but not be limited to, diphtheria, mumps, pertussis, poliomyelitis, rubella, rubeola, and tetanus. The commissioner shall adopt rules under RSA 541–A relative to other diseases which require immunization.

II. No child shall be admitted or enrolled in any school or child care agency, public or private, unless the following is demonstrated:

(a) Immunization under paragraph I;

(b) Partial immunization relative to the age of the child as specified in rules adopted by the commissioner; or

(c) Exemption under RSA 141–C:20–c.

III. Nothing in this section shall require an immunization/vaccination requirement for diseases that are noncommunicable. Noncommunicable disease means a disease that is not infectious or transmissible from person-to-person.

Source. 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995. 2017, 137:1, eff. Aug. 15, 2017.

141–C:20–b Records.

I. Any person who immunizes a child shall complete a form to be supplied by the commissioner and shall give the completed form to the parent or legal guardian.

II. Schools and child care agencies shall keep immunization records for all enrolled children. Such records shall be available for inspection during reasonable hours upon request by the commissioner or his designee.

Source. 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995.

141–C:20–c Exemptions. A child shall be exempt from immunization if:

I. A physician licensed under RSA 329, or a physician exempted under RSA 329:21, III, certifies that immunization against a particular disease may be detrimental to the child's health. The exemption shall exist only for the length of time, in the opinion of the physician, such immunization would be detrimental to the child. An exemption from immunization for one disease shall not affect other required immunizations.

II. A parent or legal guardian objects to immunization because of religious beliefs. The parent or legal guardian shall sign a notarized form stating that the child has not been immunized because of religious beliefs.

Source. 1987, 193:7. 2001, 18:1, eff. Jan. 1, 2002.

141–C:20–d Exclusion During Outbreak of Disease. During an outbreak of a communicable disease for which immunization is required under RSA 141–C:20–a, children exempted under RSA 141–C:20–c shall not attend the school or child care agency threatened by the communicable disease. The commissioner shall prepare a written order as required under RSA 141–C:12, I.

Source. 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995.

141–C:20–e Immunization Reports. Schools and child care agencies, whether public or private, shall make an annual report to the commissioner relative to the status of immunization of all enrolled children.

Source. 1987, 193:7. 1995, 310:183, eff. Nov. 1, 1995.

141–C:20–f Immunization Registry.

I. The department shall establish and maintain a state immunization registry. The registry shall be a single repository of accurate, complete and current immunization records to aid, coordinate, and promote effective and cost-efficient disease prevention and control efforts.

II. No patient, or the patient's parent or guardian if the patient is a minor, shall be required to participate in the immunization registry.

III. Physicians, nurses, and other health care providers may report an immunization to the immunization registry unless the patient, or the patient's parent or guardian if the patient is a minor, refuses to allow reporting of this information.

IV. Access to the information in the registry shall be limited to primary care physicians, nurses, other appropriate health care providers as determined by the commissioner, schools, child care agencies, and government health agencies or researchers demonstrating a legitimate need for such information as determined by the commissioner.

V. The information contained in the registry shall be used for the following purposes:

(a) To ensure that registrants receive all recommended immunizations in a timely manner by providing access to the registrant's immunization record.

(b) To improve immunization rates by facilitating notice to registrants of overdue or upcoming immunizations.

(c) To control communicable diseases by assisting in the identification of individuals who require immediate immunization in the event of a disease outbreak.

VI. The commissioner shall adopt rules under RSA 541–A concerning the following:

(a) The establishment and maintenance of the immunization registry.

(b) The methods for submitting and content of reports of immunizations.

(c) Procedures for the patient, or the patient's parent or guardian if the patient is a minor, to decline to participate in the registry.

(d) Procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to review and correct information contained in the registry.

(e) Procedures for the registrant, or the registrant's parent or guardian if the registrant is a minor, to withdraw consent for participation at any time and to remove information from the registry.

(f) Limits on and methods of access to the registry by those authorized to gain access under paragraph IV of this section.

(g) Procedures for managed care organizations to obtain summary statistics of immunization information on managed care organization members from the immunization registry.

VII. Any person reporting, receiving, or disclosing information to or from the immunization registry as authorized by this section or by any rule adopted pursuant to this section shall not be liable for civil damages of any kind connected with such submission or disclosure of immunization information.

VIII. Nothing in this section is intended to affect the obligations of persons under RSA 141–C:20–a to have their children properly immunized.

IX. Nothing in this section shall preclude the right of the patient, or the patient's parent or guardian if the patient is a minor, to claim exemption from immunization as defined in RSA 141–C:20–c; nor shall anything in this section require such patient to be included in the registry if the patient, or the patient's parent or guardian if the patient is a minor, objects thereto on any grounds, including but not limited to, that such registry conflicts with the religious beliefs of the patient, or the patient's parent or guardian if the patient is a minor.

X. No health care provider shall discriminate in any way against a person solely because that person elects not to participate in the immunization registry.

Source. 1998, 183:3, eff. Aug. 14, 1998.

141–C:21 Penalty. Any person who shall violate, disobey, refuse, omit or neglect to comply with any of the provisions of RSA 141–C, or of the rules adopted pursuant to it, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1986, 198:21, eff. Aug. 2, 1986.

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 155

FACTORIES, TENEMENTS, SCHOOLHOUSES, AND PLACES OF PUBLIC ACCOMMODATION, RESORT OR ASSEMBLY

Bylaws and Inspection

155:1 Bylaws. Town and village districts may make bylaws requiring factories, hotels, tenement houses, public buildings, schoolhouses, places of assembly as defined in RSA 155:17, I, and other buildings used as places of public resort in their towns, to be so erected as not to endanger the health and safety of persons who may occupy them; however, any bylaw relative to safety from fire in buildings and structures adopted by a town or village district of the state shall conform to the life safety code, which is in effect at the time the bylaw is adopted and as promulgated by the state fire marshal; such bylaw may provide for local inspections and enforcement and shall include assistance of the state fire marshal where required.

Source. 1883, 94:1. PS 116:1. 1925, 151:1. PL 147:1. RL 176:1. RSA 155:1. 1973, 107:1, eff. July 7, 1973.

155:2 Regulations. In the absence of such bylaws the selectmen shall make regulations for the purposes named in the preceding section.

Source. 1883, 94:1. PS 116:2. PL 147:2. RL 176:2.

155:2–a Double Door Safety. In addition to any bylaws or regulations adopted pursuant to this chapter, the town or village district or selectmen shall require that no double door in any building open to the public, where 2 doors are in one doorway, be locked, bolted or otherwise fastened so that both doors cannot be opened from the inside by the use of

the ordinary door knob or by pressure on the door or on a panic release device.

Source. 1977, 159:1, eff. Aug. 6, 1977.

155:3 Inspection. The firewards and engineers, if any, otherwise the selectmen of the town or the commissioners of the village district, as the case may be, shall constitute a board for the inspection of the buildings and halls mentioned in RSA 155:1, and shall inspect the same from time to time.

Source. 1883, 94:4. PS 116:3. PL 147:3. RL 176:3.

Requiring Alterations

155:4 Procedure; Orders. They shall notify and hear all parties interested, and may thereupon direct such alterations as may be necessary in any building or hall in accordance with such bylaws or regulations, and may order such building or hall to be closed until the alterations are made. The proceedings of such hearing shall be recorded in the records of the town or district.

Source. 1883, 94:2. PS 116:4. PL 147:4. RL 176:4.

155:5 Appeal From Orders. Every person aggrieved by any decision of such inspectors may appeal therefrom to the superior court. The court, upon reasonable notice, may inquire into the facts by a committee or otherwise and affirm or overrule the order appealed from, and may make such further orders as justice may require.

Source. 1883, 94:6. PS 116:5. PL 147:5. RL 176:5. RSA 155:5. 1967, 132:8, eff. July 18, 1967.

155:6 Penalty for Violation of Orders. Every person who shall let or use any building for the purposes specified in this subdivision, after such building shall have been ordered to be closed or altered as provided in the preceding sections until the order has been complied with or reversed, shall be fined not more than $100, for the use of the town or district where the building is situated.

Source. 1883, 94:3. PS 116:6. PL 147:6. RL 176:6.

Hallways and Stairways

155:7, 155:8 Repealed.

[Repealed 1973, 107:2, I, eff. July 7, 1973.]

History

Former RSA 155:7 and 155:8, which were derived from 1949, 276:1, pars. 22 and 23, related to covering of flammable surfaces in common or public hallways and stairways.

Building Standards

155:8–a, 155:8–b Repealed.

[Repealed 1977, 269:2, eff. Aug. 21, 1977.]

History

Former RSA 155:8–a and 155:8–b, which were derived from 1965, 326:1, related to construction of buildings with access ramps and facilities for the physically handicapped. See now RSA 275–C:10 et seq.

Fire Escapes; Exits

155:9 to 155:16 Repealed.

[Repealed 1973, 107:2, I, eff. July 7, 1973.]

History

Former RSA 155:9, which was derived from 1907, 137:1; 1909, 164:1; 1911, 43:1; 1913, 215:1; 1915, 123:1; 1925, 150:1; PL 147:9; 1937, 71:1; and RL 176:9, related to where fire escapes were required and kinds of fire escapes to be provided.

Former RSA 155:10, which was derived from 1907, 137:2; 1909, 164:2; 1915, 123:2; PL 147:13; and RL 176:15, related to distance of fire escapes to the ground and lights designating fire escapes.

Former RSA 155:11, which was derived from 1937, 71:2 and RL 176:10, related to exceptions to RSA 155:9.

Former RSA 155:12, which was derived from 1937, 71:2; RL 176:11; and 1950, 5, part 10:3, related to standards for egress during fires.

Former RSA 155:13, which was derived from 1907, 137:1; 1909, 164:1; 1911, 43:1; 1913, 215:1; 1915, 123:1; 1925, 150:1; PL 147:10; RL 176:12; and 1950, 5, part 10:4, related to approval of fire escapes.

Former RSA 155:14, which was derived from 1907, 137:1; 1909, 164:1; 1911, 43:1; 1913, 215:1; 1915, 123:1; PL 147:11; and RL 176:13, related to additional fire escapes.

Former RSA 155:15, which was derived from 1913, 215:1; 1915, 123:1; PL 147:12; and RL 176:14, related to exits in buildings where laborers were employed.

Former RSA 155:16, which was derived from 1907, 137:3; 1909, 164:3; 1915, 123:3; PL 147:15; and RL 176:16, related to penalties.

Places of Assembly

155:17 Definitions. Terms used in this subdivision shall be construed as follows unless a different meaning is clearly apparent from the language or content:

I. "Places of assembly" shall mean a room or space in which provision is made for the congregation or assembly of 100 or more persons for religious, recreational, educational, political, social or amusement purposes or for the consumption of food or drink. For the purpose of this definition such room or space shall include any occupied connecting rooms, space or area on the same level or in the same story, or in a story or stories above or below, where entrance is common to the rooms, space or areas, and it shall mean a tent or area covered by canvas, in which provision is made for the congregation or assembly of 50 or more persons for religious, recreational, educational, political, social, or amusement purposes or for the consumption of food or drink. For the purpose of this definition of such tent and area covered by canvas it shall include connected tents, spaces or areas covered by canvas where entrance is common to the tents or canvas-covered areas.

II. "Licensing agency" shall mean the chief of the fire department, the firewards or engineers, if any, otherwise the selectmen of the town or the commissioners of village district as the case may be.

III–VI. [Repealed.]

VII. "Approved" shall mean approved by the licensing agency.

VIII. "Fire resistive" or "flameproof" materials or construction shall mean materials or construction which will satisfactorily resist the efforts of severe fire.

IX–XII. [Repealed.]

XIII. "Placard indicating capacity" shall mean a sign of suitable size and form to indicate authorized capacity of each room in number of occupants other than employees.

XIV. "Enforcement agency" shall mean the normal law enforcing authorities of the state, county, city or town in which the place of assembly is located.

XV. [Repealed.]

Source. 1943, 153:1. 1953, 217:1. RSA 155:17. 1973, 107:2, II, eff. July 7, 1973. 2015, 39:1, eff. July 6, 2015. 2017, 156:117, eff. July 1, 2017.

155:18 License Required. No person shall own or operate a place of assembly within this state unless licensed so to do by the licensing agency of the city, town, or village district where said place of assembly is located, including assemblies occurring on state waters or ice formed on state waters, in accordance with the regulations herein promulgated. In the application of this act to existing places of assembly the licensing agency may modify such of its provisions as would require structural changes if in his or her opinion adequate safety may be obtained otherwise and provided that a permanent record is kept of such modifications and the reasons therefor.

Source. 1943, 153:2, eff. May 5, 1943. 2015, 39:2, eff. July 6, 2015. 2017, 156:118, eff. July 1, 2017.

155:19 Application; Issuance; Revocation. A permit shall be obtained from the licensing agency by the owner or operator of any place of assembly. Such permit shall be issued without charge for one year from date of issue and shall be revocable for cause. Application for permit shall be made to the licensing agency who may require building plans, showing type of construction, exits, aisles and seating arrangements and details of decorations. No permit shall be issued by the licensing agency until the provisions of this chapter have been complied with.

Source. 1943, 153:3, eff. May 5, 1943.

155:20 Flameproof Canvas and Tents. No permit under RSA 155:19 shall be issued to an owner or operator of any circus, carnival or any other place of assembly covered by canvas until such applicant shall furnish to the licensing agency a certificate of flameproofing of such tent or canvas.

Source. 1953, 217:2, eff. June 10, 1953.

155:21 to 155:33 Repealed.

[Repealed 1973, 107:2, III, eff. July 7, 1973.]

History

Former RSA 155:21 to 155:33, which were derived from 1943, 153:4 to 16 and 1953, 217:3, related to flameproofing of decorative materials, aisles, exits, stairs, ashtrays and fire extinguisher placement.

155:34 Inspection by Licensing Agency. The licensing agency shall inspect, or cause to be inspected, each place of assembly. Such inspection shall be at least semi-annually and at such times, including time of occupancy and use, as to assure compliance with these regulations and such orders as may be issued in connection with the maintenance of aisle space, the prevention of overcrowding, the use of decorations, the maintenance of exits, collapse of revolving doors, and the maintenance of fire appliances. Where conditions are unsatisfactory, written orders for immediate correction shall be given.

Source. 1943, 153:17, eff. May 5, 1943.

155:35, 155:36 Repealed.

[Repealed 1973, 107:2, III, eff. July 7, 1973.]

History

Former RSA 155:35 and 155:36, which were derived from 1943, 153:18 and 19, related to appeal from decision of inspectors or licensing agency and placards indicating room capacity.

155:37 Enforcement. The law enforcing authorities of the state, counties or any city or town, are authorized to prosecute any violations of this act.

Source. 1943, 153:20, eff. May 5, 1943.

155:38 Conflict. When, in any specific case, different provisions of this chapter shall conflict with other state or municipal regulations, the most restrictive requirements shall govern.

Source. 1943, 153:21, eff. May 5, 1943.

155:39 Penalty. Every person who shall let or use any building for the purposes specified in RSA 155 after required permit has been denied or rescinded, or any person violating any provisions of this chapter, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1943, 153:22. RSA 155:39. 1973, 528:73, eff. Oct. 31, 1973 at 11:59 p.m.

Places of Public Accommodation; Physically Disabled Persons

155:39–a Definition of Place of Public Accommodation. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subdivision if its operations affect commerce:

I. Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than 5 rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.

II. Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment.

III. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.

Source. 1990, 170:1, eff. July 1, 1990.

155:39–b Public Accommodations Discrimination. All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation. Nothing in this subdivision shall be construed to supersede or contradict the provisions of RSA 354–A:8, IV, relative to discriminatory practices in places of public accommodation.

Source. 1990, 170:1, eff. July 1, 1990.

155:39–c Existing Facilities; Public Accommodations. Nothing in RSA 155:39–b related to equal access to public accommodations or indirectly denying access to the physically disabled shall apply to existing structures, structures under construction or proposed construction submitted for bid before January 1, 1991. For any building or facility proposed to be constructed specifically as a place of public accommodation on or after January 1, 1991, but before January 1, 1992, the following standards of construction shall be met:

I. There shall be at least one public walk not less than 48 inches wide with a slope not greater than one foot rise in 12 feet leading directly to a primary entrance.

II. There shall be a door at such primary entrance with a clear opening of no less than 32 inches and operable by a single effort. If doors at a primary entrance are in a series, they shall have a space between them of not less than 84 inches measured from their closed positions, and each shall open in the same direction so that swings do not conflict.

III. Rest room facilities shall have at least one stall that is not less than 5 feet wide and 5 feet in depth with a 32-inch wide door that swings out or slides, handrails on each side mounted 30 inches from the floor, and a water closet with a seat 18 inches high.

IV. Doors that are not intended for normal use, and that are dangerous if a blind person were to enter or exit by them, shall be made identifiable to touch by knurling the handle or knob.

V. In any building designed and constructed specifically for public accommodations, the bathroom facilities and all accompanying fixtures shall be arranged to permit access and use by a person in a wheelchair in at least 5 percent of the living units, or at least one living unit, whichever is greater. Such units shall be constructed on ground level and shall comply with paragraph III of this section.

Source. 1990, 170:1, eff. July 1, 1990.

155:39–d Public Accommodations Constructed After January 1, 1992. This section applies to any new building or facility proposed to be constructed specifically as a place of public accommodation on or after January 1, 1992. This section also applies to any single enlargement of an existing building or facility which enlargement is proposed to be constructed on or after January 1, 1992, if the cost of such enlargement exceeds 25 percent of the fair market value of the real estate and building or facility situated thereon but only to the portion thereof which is so enlarged. Facilities subject to this section shall meet the requirements of the New Hampshire code for barrier-free design established pursuant to RSA 275–C:14–17. This section shall also be enforced by the building inspector as provided in RSA 676:11–13.

Source. 1990, 170:1, eff. July 1, 1990.

Toilet Facilities Where Food is Served

155:40 Toilet Facilities to be Provided for Restaurants, Etc.

I. All places where the business of serving food to the public is conducted shall be equipped with toilet and lavatory facilities convenient of access for the use of patrons. Separate toilet rooms for each sex shall be provided for patrons of any restaurant designed to seat 25 or more patrons at one time or for patrons of any food establishment where alcoholic beverages are served. The commissioner of the department of health and human services shall have the authority to

waive the requirements of this section for such businesses having 5 or fewer seats, for good cause shown, provided the business is unable to comply with this section because it does not have toilet or lavatory facilities on the effective date of this section as amended, and can show that the requirements of this section would cause substantial hardship.

II. The provisions of this section shall not apply to mobile lunch carts or be construed to require roadside stands or so-called drive-ins, serving food to the public, to provide toilet facilities for patrons where seating facilities within the building are not available.

Source. 1935, 139:1. RL 162:9. RSA 155:40. 1963, 9:1. 1999, 85:1, eff. June 3, 1999.

155:41 Penalty for Failure to Provide. Any person who violates any of the provisions of this subdivision shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. From 10 days after the date of a conviction hereunder, each subsequent day of failure to comply shall constitute a separate and distinct offense.

Source. 1935, 139:2. RL 162:10. RSA 155:41. 1973, 530:13, eff. Oct. 31, 1973 at 11:59 p.m.

Smoking in Places of Public Assembly

155:42 Smoking in Places of Public Assembly.

[Repealed 1981, 464:3, eff. Aug. 23, 1981.]

History

Former RSA 155:42, which was derived from 1977, 415:1, related to smoking in places of public assembly. See now RSA 155:64 et seq.

Food-Choking Relief Display

155:43 Display Required. All commercial eating establishments or any place other than a private residence where food is served for consumption on the premises shall have posted in such premises in a conspicuous place a graphic display of the Heimlich maneuver or similar anti-choking maneuver. Such display shall not be less than 8 inches by 11 inches in size and shall contain at least the following:

I. A description in both words and pictures of what to look for to determine if a person is choking;

II. A description in both words and pictures of how to perform the Heimlich maneuver or similar anti-choking maneuver on a choking victim in order to expel the object from the victim's breathing passages; and

III. Any other information necessary to adequately instruct a rescuer in the proper procedure in aid of a choking victim.

Source. 1979, 115:1, eff. July 20, 1979.

155:44 Penalty. Any person who violates the provisions of this subdivision shall be guilty of a violation.

Source. 1979, 115:1, eff. July 20, 1979.

Smoking in Enclosed Public Places

155:45 to 155:49 Repealed.

[Repealed 1990, 236:3, I, eff. Jan. 1, 1991.]

History

Former RSA 155:45 to 155:49, which were derived from 1981, 464:2, related to smoking in enclosed public places. See now RSA 155:64 et seq.

Smoking in the Workplace

155:50 to 155:53 Repealed.

[Repealed 1990, 236:4, I, eff. July 1, 1993.]

History

Former RSA 155:50 to 155:53, which were derived from 1986, 108:1, related to smoking in the workplace. See now RSA 155:64 et seq.

Smoking in Grocery Food Stores

155:54 to 155:56 Repealed.

[Repealed 1990, 236:3, II, eff. Jan. 1, 1991.]

History

Former RSA 155:54 to 155:56, which were derived from 1986, 155:1, related to smoking in grocery food stores. See now RSA 155:64 et seq.

Clean Indoor Air in Restaurants Act

155:57 to 155:63 Repealed.

[Repealed 1990, 236:4, II, eff. July 1, 1993.]

History

Former RSA 155:57 to 155:63, which were derived from 1987, 87:1, related to smoking in restaurants. See now RSA 155:64 et seq.

Indoor Smoking Act

155:64 Purpose. The purpose of this subdivision is to protect the health of the public by regulating smoking in enclosed workplaces and enclosed places accessible to the public, regardless of whether publicly or privately owned, and in enclosed publicly owned buildings and offices. This subdivision also regulates smoking in public housing facilities, health care facilities, public primary and secondary educational facilities, and in public conveyances operating within the state. This subdivision shall not be construed as addressing airborne contaminants including toxic, chemical, or biological substances that may be present in indoor air other than tobacco smoke.

Source. 1990, 236:2, eff. Jan. 1, 1991.

155:65 Definitions. In this subdivision:

I. "Cocktail lounge" means only that portion or specified area of a restaurant, hotel, motel, convention center or resort which is used primarily to serve liquor or other alcoholic beverages, irrespective of whether or not food is also served there.

II. [Omitted.]

III. "Commissioner" means the commissioner of the department of health and human services or designee.

IV. "Department" means the department of health and human services.

V. "Effectively segregated" means all the following conditions have been met:

(a) Procedures for accurately and fairly determining preference have been followed;

(b) The size and location of no-smoking and smoking-permitted areas are designed, designated, or juxtaposed so that smoke does not cause harm or unreasonably intrude into the area occupied by persons who are not smoking; and

(c) In buildings where existing ventilation systems are in place, areas designated as smoking areas are located, where reasonably possible, proximate to exhaust vents.

VI. "Enclosed place" means a structurally enclosed location, or portion of such location, enclosed by a floor, ceiling, and 3 or 4 solid walls, partitions, or windows, exclusive of doors or passageways.

VII. "Health care facility" means any enclosed place or portion of such place used for the purpose of providing medical or dental treatment, physical or mental health services, or any combination of such treatment or services. This definition shall include buildings or portions of buildings used exclusively for such purposes and buildings or portions of buildings leased, rented, or otherwise made available for such purposes.

VIII. "Law enforcement authority" means the state, county, city, or town police having authority over a given area in the state.

IX. "Person in charge" means:

(a) For enclosed places that are not publicly owned buildings or offices, the person who has responsibility for, directly or by appointment, policy making and overseeing adherence to laws, rules and regulations of an enclosed place of public access or a workplace. This definition shall not mean the owner of the property or place of public access or workplace unless he is routinely present and controls the day-to-day activities, or sets the policy, carried out within the enclosed place.

(b) For publicly owned buildings and offices, the person responsible for the operation of the building or office and the person responsible for the agency or organization occupying the building or office, or that person designated to act in the absence of the person in charge.

X. "Public access" means any enclosed place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses, including, but not limited to, buildings, offices, means of transportation, common carrier waiting rooms, arcades, restaurants, retail stores, grocery stores, libraries, theaters, concert halls, auditoriums, arenas, barber shops, hair salons, laundromats, shopping malls, museums, art galleries, sports and fitness facilities, planetariums, historical sites, and common areas of resorts, hotels and motels, including the lobbies, hallways, elevators, restaurants, restrooms and cafeterias.

XI. "Public educational facility" means any enclosed place or portion of such place, which is supported by public funds and which is used for the instruction of students enrolled in grades kindergarten through 12. This definition shall include areas within facilities supportive of instruction and subject to educational administration including, but not limited to, lounge areas, passageways, restrooms, laboratories, study areas, cafeterias, gymnasiums, libraries, maintenance rooms and storage areas.

XII. "Public conveyance" means any air, land, or water vehicle of public access, which has enclosed sections, used for the transportation of persons in the state of New Hampshire, whether or not for compensation, including, but not limited to, airplanes, trains, buses, boats, vans, or taxis. This definition shall not include privately owned vehicles when used for private purposes, but shall include all vehicles owned by the state and its political subdivisions.

XIII. "Publicly owned buildings and offices" means enclosed places or portions of such places owned, leased, or rented by state, county or municipal governments, or by agencies supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county or municipal taxes. This definition includes, but is not limited to, legislative offices, legislative meeting rooms and other areas used by legislative bodies; courtrooms, jury rooms, and other court facilities;

recreation facilities; police stations; fire stations; county, city and town offices; penal and detention institutions; armories; military training facilities; public housing; subsidized housing; common waiting areas, lobbies or common-use rooms; field offices of any government unit; and postsecondary educational institutions receiving funds appropriated by the state legislature. This definition also includes enclosed places periodically used by state, county or municipal governments or their agencies, including, but not limited to, polling places and rooms in which a public meeting, hearing or other proceeding open to the public is in progress. This definition shall also include, in accordance with federal laws and regulations, enclosed places and offices owned, leased, or rented by the federal government or agencies of the federal government.

XIV. "Restaurant" means any room or enclosed place used and kept open on a regular basis and in a bona fide manner for the serving of meals to guests for compensation. "Restaurant" shall include any such room or place in resorts, hotels, and motels.

XV. "Smoking" means having in one's possession a lighted cigarette, cigar, or pipe, or any device designed to produce the effect of smoking.

XVI. "Smoking-permitted area" means an effectively segregated area which is posted with "Smoking Permitted" signs in a building, facility, room, or group of rooms or other enclosed indoor area and in which smoking is allowed, as designated by the person in charge of the facility in accordance with applicable rules adopted by the commissioner pursuant to RSA 155:71.

XVII. "Workplace" means an enclosed place at which 4 or more individuals perform any type of a service for consideration of payment under any type or term of employment relationship with, but not limited to, a sole proprietorship, corporation, partnership, company, individual, governing body, government agency, private voluntary agency, and any public nonprofit agency. This definition also includes any enclosed place where 4 or more individuals perform services in a volunteer capacity for which individuals are ordinarily paid.

Source. 1990, 236:2. 1995, 310:104, 183. 2000, 303:5. 2007, 203:1, 2, eff. Sept. 17, 2007.

155:66 Smoking Prohibited.

I. Except as provided in RSA 155:67 and notwithstanding any law to the contrary, smoking is prohibited in:

(a) Public educational facilities at any time, and in child care agencies licensed under RSA 170–E during the hours of operation, except foster family homes and foster family group homes.

(b) Hospitals and other acute care facilities.

(c) Grocery stores by customers.

(d) Elevators, tramways, gondolas, and other such public conveyances.

(e) Public conveyances.

(f) Restaurants.

(g) Cocktail lounges.

(h) Enclosed places owned and operated by social, fraternal, or religious organizations when open to the general public. Purposes for which such places may be open to the general public may include, but not be limited to, public meetings, voting, suppers, bingo games, theatrical events, fairs, and bazaars.

II. Smoking may be permitted in enclosed places of public access and publicly-owned buildings and offices, including workplaces, other than those listed in paragraph I, in effectively segregated smoking-permitted areas designated by the person in charge. Smoking shall be totally prohibited in any such enclosed place, if smoking cannot be effectively segregated. The person in charge may declare any facility non-smoking in its entirety.

Source. 1990, 236:2. 2007, 203:3, eff. Sept. 17, 2007.

155:67 Exemptions. The following shall be exempted from the requirements of this subdivision:

I. Public conveyances rented for private purposes.

II. Buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or when they are rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function and not the organization.

III. Guest rooms of hotels, motels and resorts.

IV. Halls, ballrooms, dining rooms and conference rooms of hotels, motels, restaurants, resorts, and publicly accessible buildings or portions thereof, excluding those that are publicly owned, when rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the facility.

V. Resident rooms in dormitories operated by postsecondary educational institutions, but such dor-

mitories shall follow any appropriate procedures established under RSA 155:71, I.

VI. Resident rooms in public housing facilities, but such facilities shall follow any appropriate procedures established under RSA 155:71, I.

VII. Resident rooms in facilities such as nursing homes, sheltered care facilities, and residential treatment and rehabilitation facilities, and prisons and detention facilities, but such facilities shall follow any appropriate procedures established under RSA 155:71, I.

VIII. [Repealed.]

IX. [Repealed.]

X. Health care facilities, except for hospitals and other acute care facilities, provided that the health care facilities shall follow any appropriate procedures established under RSA 155:71, I.

XI. Patients with extraordinary medical conditions, psychiatric disorders, or patients in an alcohol and drug withdrawal program, provided that the patient's physician has written a prescription or an order allowing the patient to smoke.

Source. 1990, 236:2. 2007, 203:4, I, II, eff. Sept. 17, 2007.

155:68 Written Policies. The person in charge of the enclosed places listed in RSA 155:66 shall develop, or oversee the development of, written policies in accordance with RSA 155:71, to achieve compliance with this subdivision. Such policies shall include, but not be limited to, the following:

I. If smoking is completely prohibited in any enclosed workplace, enclosed place of public ownership, or enclosed place accessible to the public, then the written policy shall state that smoking is prohibited in the entire facility.

II. If smoking-permitted areas are to be designated in any enclosed area identified in RSA 155:66, then the written policy shall state, in addition to the requirements of RSA 155:69, that smoking is permitted only in designated smoking-permitted areas and shall specify the area or areas where smoking is permitted in the building or facility.

III. Written policies regarding smoking restrictions shall be provided to, or posted, or otherwise made available to any person who works in or routinely uses any enclosed building or facility.

IV. Staff or employees subject to written policies regarding smoking restrictions in any enclosed building or facility shall receive orientation regarding the written policy to which they are required to adhere.

Source. 1990, 236:2, eff. Jan. 1, 1991.

155:69 Smoking-Permitted Areas; Procedures. If smoking-permitted areas are to be designated pursuant to the policy under RSA 155:68, II, the person in charge of the enclosed places listed in RSA 155:66 shall develop, or oversee the development of, written procedures in accordance with RSA 155:71, to achieve compliance with this subdivision. Such procedures may include, but not be limited to, the following:

I. Training procedures to assure that the provisions of this subdivision are understood.

II. Reviewing and arbitrating complaints.

III. Handling of persons who willfully continue to smoke in a "no smoking" area, after having been asked to stop smoking in that area.

IV. The special consideration which may be given to protect individuals who have a medical condition which is medically recognized and medically proven to be directly and adversely affected by tobacco smoke, including, but not limited to, an allergic reaction, as documented by an occupational physician.

V. Instructing security officers, ushers, receptionists, clerks, and other appropriate personnel to assist in ensuring compliance with this subdivision by asking those who smoke in designated "no smoking" areas to refrain from doing so, and to direct smokers to a smoking-permitted area, if appropriate.

Source. 1990, 236:2, eff. Jan. 1, 1991.

155:70 Signs. Signs shall be appropriately placed in all buildings and facilities regulated under this subdivision. Such signs shall state the smoking restrictions applicable to the building or facility, in accordance with RSA 155:68.

Source. 1990, 236:2, eff. Jan. 1, 1991.

155:71 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to:

I. Criteria for smoking-permitted areas in a manner that effectively segregates areas, in accordance with RSA 155:65, V, where smoking may be permitted in the facilities under RSA 155:67, V, VI, VII, and X.

II. Size and placement of appropriate signs to be used for notification of smoking restrictions.

III. Procedures for resolving complaints and investigations of complaints under RSA 155:73 and 74.

IV. Procedures for requesting a waiver and eligibility determination for a waiver requested under RSA 155:75, and stipulations of a waiver, including time stipulation.

V. Procedures to ensure confidentiality under RSA 155:74.

VI. A schedule of administrative fines which may be imposed under RSA 155:78 for violation of this subdivision or the rules adopted pursuant to it.

VII. Procedures for notice prior to the imposition of an administrative fine imposed under RSA 155:78.

Source. 1990, 236:2. 1995, 310:183. 2008, 325:1, eff. Jan. 1, 2009.

155:72 Retaliation Prohibited; Applicability.

I. No person in charge shall retaliate in any manner against, or otherwise discriminate against, a person, employee, or subordinate who exercises any rights under this subdivision or rules adopted pursuant to this subdivision, or by any policy or procedure promulgated under this subdivision for enclosed places.

II. Nothing in this subdivision shall be construed to authorize an employee to refuse to discharge his ordinary and customary duties in the workplace, including, but not limited to, entering a smoking-permitted area in the discharge of such duties.

Source. 1990, 236:2, eff. Jan. 1, 1991.

155:73 Noncompliance. If an employee or user of a building or facility determines or believes that the person in charge or others are not complying with this subdivision or rules adopted pursuant to this subdivision, a complaint shall be registered with the person in charge. If the complaint is not resolved within one calendar month, the complainant may proceed under the complaint procedures established by the commissioner under RSA 155:71.

Source. 1990, 236:2. 1995, 310:183, eff. Nov. 1, 1995.

155:74 Complaints; Investigations; Confidentiality.

I. The commissioner or his or her designee shall investigate any complaint regarding noncompliance with the provisions of this subdivision or rules adopted under it. The investigation shall include a full opportunity for the person in charge to be informed of and to address the complaint.

II. The name of any person registering a complaint regarding noncompliance shall not be divulged by the department of health and human services in any correspondence or meetings, nor shall it be made available over the telephone, unless specific written approval has been given to do so by the complainant. All complaints, except names, shall be a public record for purposes of RSA 91–A. The name of any complainant who requests anonymity, however, shall not be revealed under RSA 91–A.

Source. 1990, 236:2. 1994, 412:17. 1995, 310:175, 183. 2008, 325:2, eff. Jan. 1, 2009.

155:75 Waiver.

I. The person in charge may seek a period of time to comply with this subdivision by submitting a written request to the commissioner requesting a waiver, specifying the grounds for the waiver and the time period within which such enclosed place shall be subject to the provisions of this subdivision.

II. The person in charge shall have the burden to provide clear and convincing evidence to demonstrate that compelling reasons exist to necessitate a waiver; that the requested waiver will not jeopardize the health and well-being of those who habitually occupy the facility; or that the requirement in question causes undue hardship or interferes with other requirements imposed by policies of the facility in question.

III. The commissioner shall follow procedures adopted by rule in determining the eligibility for a waiver and the time period for which the waiver shall extend.

Source. 1990, 236:2. 1995, 310:183, eff. Nov. 1, 1995.

155:76 Enforcement; Penalties.

I. The person in charge or his designee may call law enforcement authorities if any person refuses to refrain from smoking in an area where smoking is prohibited.

II. Any person who smokes in an enclosed public place where smoking is prohibited shall be guilty of a violation and subject to a fine of not less than $100.

III. Any person in charge who fails to comply with any of the provisions of this subdivision or rules adopted pursuant to it shall be subject to a fine imposed under RSA 155:78.

Source. 1990, 236:2. 1995, 310:175. 2008, 325:3, eff. Jan. 1, 2009.

155:77 Fire Protection, Safety and Sanitation. Nothing in this subdivision shall be construed to permit smoking where smoking is prohibited by any other provision of law or rule relative to fire protection, safety and sanitation.

Source. 1990, 236:2, eff. Jan. 1, 1991.

155:78 Administrative Fines. The commissioner, after notice, pursuant to rules adopted under RSA 541–A, may impose an administrative fine of not more than $100 per day for a first offense and not more than $200 per day for each subsequent offense upon any person who violates any provision of this subdivision or rules adopted under this subdivision. Appeals from a decision of the commissioner shall be in

accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this subdivision. The sums obtained from the levying of administrative fines under this section shall be forwarded to the state treasurer to be deposited into the general fund.

Source. 2008, 325:4, eff. Jan. 1, 2009.

CHAPTER 155–A

NEW HAMPSHIRE BUILDING CODE

History

Former RSA 155–A:1–a, which was derived from 1975, 235:1 and 1990, 140:2, III, related to exit requirements in new buildings.

155–A:1 Definitions. In this chapter:

I. "Building" means building as defined and interpreted by the International Code Council's International Building Code 2009, as amended by the state building code review board and ratified by the legislature in accordance with RSA 155–A:10.

II. "County" means the local legislative body of a county in which there are unincorporated towns or unorganized places.

III. "Local enforcement agency" means for a municipality that has adopted enforcement provisions or additional regulations under RSA 674:51 or RSA 47:22, the building inspector, code official, or other local government official qualified and authorized to make inspections and to enforce the laws, ordinances, and rules enacted by the state and by local government that establish standards and requirements applicable to the construction, alteration, or repair of buildings. For the purpose of enforcement of the state fire code for buildings and structures not owned by the state, the local enforcement agency means the municipal fire chief or his or her representative, pursuant to RSA 154:2, II.

IV. "New Hampshire building code" or "state building code" means the adoption by reference of the International Building Code 2009, the International Existing Building Code 2009, the International Plumbing Code 2009, the International Mechanical Code 2009, the International Energy Conservation Code 2009, and the International Residential Code 2009, as published by the International Code Council, and the National Electrical Code 2017, as amended by the state building code review board and ratified by the legislature in accordance with RSA 155–A:10. The provisions of any other national code or model code referred to within a code listed in this definition shall not be included in the state building code unless specifically included in the codes listed in this definition.

IV–a. "New Hampshire fire code" or "state fire code" means the state fire code as defined in RSA 153:1 and as amended by rules adopted pursuant to RSA 153:5.

V. "Person" means any individual or organized group of any kind, including partnerships, corporations, limited liability partnerships, limited liability companies, and other forms of association, as well as federal, state or local instrumentalities, political subdivisions, or officers.

VI. "Structure" means structure as defined and interpreted by the International Code Council's International Building Code 2009, as amended by the state building code review board and ratified by the legislature in accordance with RSA 155–A:10.

Source. 2002, 8:3. 2003, 245:1. 2006, 112:1. 2007, 187:1–3. 2009, 41:2. 2012, 242:7–10, eff. June 18, 2012. 2014, 314:4, eff. Jan. 1, 2015. 2017, 201:3, eff. Jan. 1, 2018.

155–A:2 State Building Code.

I. All buildings, building components, and structures constructed in New Hampshire shall comply with the state building code and state fire code. The construction, design, structure, maintenance, and use of all buildings or structures to be erected and the alteration, renovation, rehabilitation, repair, removal, or demolition of all buildings and structures previously erected shall be governed by the provisions of the state building code.

II. To the extent that there is any conflict between the state building code and the state fire code, the code creating the greater degree of life safety shall take precedence, subject to the review provisions contained in RSA 155–A:10. If the municipal building and fire code officials cannot agree which code creates the greater degree of life safety, the property owner may notify the 2 officials in writing that if agreement is not reached within 2 business days of delivery of said notification, that the decision shall be made by the property owner to comply with either the applicable building code or fire code. Such decision by the property owner after proper notification shall not be grounds for the denial of a certificate of occupancy.

III. To the extent that it does not conflict with any other provision of law, and except as otherwise provided in this paragraph, the issuance of permits and the collection of fees pursuant to the state building code is expressly reserved for counties, towns, cities, and village districts where such activities have been authorized in accordance with RSA 674:51 and RSA 47:22. Pursuant to the state fire marshal's authority to enforce the state building code under RSA 155–A:7, I, the fire marshal may establish for municipalities that do not have a building inspector or other enforcement mechanism authorized in RSA 155–A:4, with approval of the commissioner of safety and by rules adopted under RSA 541–A, fees to defray the cost of issuing building permits in accordance with the state building code. Such fees shall be deposited in the fire standards and training and emergency medical services fund established in RSA 21–P:12–d.

IV. Except for buildings owned by the state, the community college system of New Hampshire, or the university system, the issuance of permits and certificates of occupancy pursuant to the state building code is expressly reserved for counties, towns, cities, and village districts. The state fire marshal shall issue permits and conduct inspections for buildings owned by the state, the community college system of New Hampshire, and the university system. Nothing in this section shall prohibit the state fire marshal from contracting with or authorizing a local enforcement agency or other qualified third party for these services.

V. Counties, towns, cities, and village districts may adopt by ordinance pursuant to RSA 674:51 or RSA 47:22 any additional regulations provided that such regulations are not less stringent than the requirements of the state building code and the state fire code.

VI. For any municipality which has not adopted an enforcement mechanism under RSA 674:51, the contractor of the building, building component, or structure shall notify the state fire marshal concerning the type of construction before construction begins excluding one- and 2-family dwellings. Any municipality that has adopted an enforcement mechanism under RSA 674:51 may contract with a local enforcement agency or a qualified third party for these services as an alternative to establishing the position of building inspector under RSA 674:51, III(c), and such agency or third party shall have the same authority as a building inspector as provided in that section.

VII. The contractor of a building, building component, or structure shall be responsible for meeting the minimum requirements of the state building code and state fire code. No municipality shall be held liable for any failure on the part of a contractor to comply with the provisions of the state building code.

VIII. Nothing in this chapter shall be construed as amending, repealing, or superseding any local law, ordinance, code, or regulation, except local code requirements that are less stringent than the state building code or state fire code, and all buildings, building components, and structures shall comply with all applicable state or local building and fire code requirements, land use restrictions including but not limited to subdivision regulations, use and location restrictions, density and dimensional limitations, or historic district laws or ordinances.

IX. Nothing in this chapter shall be construed to permit or encourage the state to initiate or assume an independent role in the administration and enforcement of the New Hampshire building code for a building or structure that is not owned by the state unless otherwise authorized by law.

X. No state agency, authority, board, or commission shall vary, modify, or waive the requirements of the state building code or state fire code, unless approved by the state building code review board pursuant to RSA 155–A relative to the state building code or the state fire marshal pursuant to RSA 153:8–a, I(c) for the state fire code. Nothing in this chapter shall affect the statutory authority of the commissioner of labor, the state board for the licensing and regulation of plumbers, or the state electricians' board to administer their respective programs, provided that any changes to codes proposed under the rulemaking authority of these agencies shall not be enforced until approved by the state building code review board.

XI. Notwithstanding the inclusion of the National Electrical Code 2017 in the state building code under RSA 155–A:1, IV, the amended provisions of section 210.12 of the National Electrical Code, which modify the National Electrical Code 2014 version to add arc-fault circuit interrupter requirements for dormitory unit devices and bathrooms, guest rooms and guest suites, and branch circuit extensions or modifications for dormitory units shall not be enforced under the state building code or this chapter.

Source. 2002, 8:3. 2003, 245:2. 2009, 175:1. 2010, 326:2. 2012, 242:11, eff. June 18, 2012. 2017, 201:6, eff. Sept. 3, 2017.

155–A:3 Local Amendments; Application. For a municipality which has adopted an enforcement mechanism or additional regulations to the state building code pursuant to RSA 674:51:

I. The municipality may adopt local amendments to the state building code which do not prohibit minimum implementation and enforcement of the state building code.

II. The procedure for amendment shall be in accordance with applicable statutes and local regulations.

III. At a minimum, the municipality shall ensure that implementation and enforcement includes:

(a) Review and acceptance of appropriate plans.

(b) Issuance of building permits.

(c) Inspection of the work authorized by the building permits.

(d) Issuance of appropriate use and occupancy certificates.

IV. (a) The provisions of this chapter and any local amendments under this section shall not be construed to restrict or encumber the local governing body's authority relative to the appointment, removal, or duties of municipal employees and the organization of municipal departments.

(b) Any provision of the state building code that conflicts with existing or amended local ordinances, regulations, policies, practices, or procedures regarding the appointment, removal, or duties of municipal employees and the organization of municipal departments, shall not apply provided that the ordinances, regulations, policies, practices, or procedures do not prevent effective enforcement of the state building code or state fire code.

Source. 2002, 8:3. 2012, 242:12, eff. June 18, 2012.

155–A:3–a Code Requirements; Biomass Burning Boilers.

I. Notwithstanding any provisions of the state building code or state fire code, the board shall adopt a code and amendments thereto which shall regulate the installation and operation of biomass burning boilers. The code adopted shall include the 1999 EN 303-5 standard established by the European Committee for Standardization, and shall include requirements for the safe installation, operation, and repair of such boilers, and for data plates and warning labels written in English, limits on temperature and pressure with associated relief valves, and the filing of construction and emissions specifications written in English.

II. The inspection procedures and enforcement requirements for the commissioner of labor in RSA 157–A shall apply to boilers installed according to the code and amendments adopted by the board under this section.

III. The code and amendments thereto adopted under paragraph I shall be ratified by appropriate legislation within 2 years of their adoption. If such code and amendments are not ratified, then the code and amendments shall expire at the end of the 2-year period.

Source. 2010, 326:1, eff. Sept. 18, 2010.

155–A:3–b Code Requirements; Log Structures.

I. Notwithstanding any provisions of the state building code or state fire code, the state building code review board shall adopt amendments to the state building code regulating the design and construction of log structures. The adopted amendments shall include ICC 400 Standard on the Design and Construction of Log Structures.

II. The amendments adopted under paragraph I shall be ratified by appropriate legislation within 2 years of their adoption. If such amendments are not ratified, then the amendments shall expire at the end of the 2-year period.

Source. 2012, 189:1, eff. June 11, 2012.

155–A:3–c Installation of Arc-Fault Circuit Interrupters (AFCI); Exception.

I. Notwithstanding any provision of the state building code or state fire code requiring the installation of arc-fault circuit interrupters, after repeated tripping of an AFCI device and determination the branch circuit is not causing the AFCI to trip, an AFCI device may be replaced with one without AFCI protection in accordance with this section.

II. All receptacle outlets supplied by the branch circuit without AFCI protection shall prior to occupancy either be:

(a) Marked "No AFCI Protection;" or

(b) Identified in a notice given by the property owner to all occupants.

III. If an electrician installs a device without AFCI protection, within 5 working days the electrician shall file an AFCI unwanted tripping report with the National Electrical Manufacturers Association on the association's webpage for arc fault breaker safety, and shall submit a copy of the report to the property owner and the electricians' board.

IV. The device without AFCI protection shall be permitted to remain in place for the period of time it takes for the manufacturer to resolve the matter.

V. Nothing in this section shall prevent a homeowner from making electrical installations in or about a single family residence owned and occupied by him or her or to be occupied by him or her as his or her bona fide personal abode.

Source. 2017, 157:1, eff. June 28, 2017.

155–A:4 Permit Required.

I. Before starting new construction or renovation of buildings and structures as described in RSA 155–A:2, I, the person responsible for such construction shall obtain a permit.

II. In municipalities that have adopted an enforcement mechanism pursuant to RSA 674:51 and RSA 47:22, the permit under this section shall conform to the locally adopted process. No permit shall be issued that would not result in compliance with the state building code and state fire code.

III. For buildings and structures owned by the state, the community college system of New Hampshire, or the university system, the person responsible for such activities shall obtain a permit from the state fire marshal. Before issuing the permit, the state fire marshal shall give due consideration to any written recommendations of the municipal fire chief, building official, or designee in the community where the state building is located.

Source. 2002, 8:3. 2012, 242:13, eff. June 18, 2012.

155–A:5 Accessibility Standards for Public Buildings; Purpose and Intent. The requirements of this section and RSA 155–A:5–a and RSA 155–A:5–b are intended to establish a system of certification and enforcement for the accessibility standards in the state building code for public buildings. For purposes of this section, public building means any building that is regulated by the accessibility standards contained in the state building code. This section is not intended to enlarge upon or expand any substantive standard of the state building code. This section is intended to apply solely to the new construction, addition, or alteration of a public building that is commenced on or after July 1, 2010 and only to the extent that the new construction, addition, or alteration is regulated by the accessibility standards in the state building code.

Source. 2002, 8:3. 2009, 285:1, eff. Jan. 1, 2010.

155–A:5–a Accessibility Standards for Public Buildings.

I. The new construction, addition, or alteration of a public building as described in RSA 155–A:5 and as governed under RSA 155–A:2, I shall be subject to the requirements of this section and RSA 155–A:5–b.

II. Except as provided in paragraph III, the contractor shall obtain and submit to the owner of the public building a written certification from a person qualified under RSA 155–A:5–b that:

(a) The design drawings or construction drawings for the proposed new construction, addition, or alteration meets the accessibility standards of the state building code; and

(b) Upon the completion and after inspection, the new construction, addition, or alteration meets the accessibility standards of the state building code.

III. The requirements of paragraph II shall not apply to a public building for which the review of design drawings or construction drawings and inspection of completed work is performed by a municipal building inspector who:

(a) Satisfies the qualifications under RSA 155–A:5–b;

(b) Examines the design drawings or construction drawings prior to the commencement of work and inspects the building upon completion of work for compliance with the accessibility standards in the state building code; and

(c) Provides the governing body of the municipality with a written certification that the design and construction of the building upon completion of work comply with the accessibility standards of the state building code.

IV. Nothing in this section shall be construed as requiring municipalities to inspect and certify public buildings for compliance with accessibility standards. Public buildings located in a municipality that has chosen to authorize its municipal building inspector to

inspect and certify shall remain subject to all other provisions of this section.

V. In addition to other enforcement authority granted in this chapter, the protection and advocacy system for New Hampshire, as designated by the governor pursuant to 42 U.S.C. section 15043, shall have standing to enforce the accessibility standards required by this section. If the protection and advocacy system determines that probable cause exists that a public building violates the accessibility certification or inspection requirements of this section, it shall issue a letter to the owner of the building specifically identifying the deficiencies and requesting that the building be brought into compliance. The owner shall have 30 days to respond to the letter and 270 days to bring the building into compliance. If the owner does not respond, does not agree that there are some or all of the deficiencies asserted, or does not agree to bring the building into compliance within the specified time periods, or any other dispute remains as to compliance, either the owner or the protection and advocacy system may file an action in the superior court to determine compliance with this section. The protection and advocacy system may bring the action in its name or in the name of any individual with a physical impairment who is adversely affected by the alleged failure to adhere to the accessibility standards of the state building code, or both. If it is determined by the superior court that the building is not in compliance with the accessibility standards in the state building code, the court shall order that the responsible party bring the building into compliance. The court may award reasonable attorney's fees and costs to the prevailing party. For purposes of this section, a party prevails only if it receives either an enforceable judgment on the merits or a consent decree.

VI. Any individual with a physical impairment who is adversely affected by the failure to adhere to the requirements of this section shall have a private right of action against the owner pursuant to the procedure established in paragraph V, including the right to court costs and reasonable attorney's fees as the prevailing party.

VII. Any owner of a public building or contractor who is found by a preponderance of the evidence in a proceeding under this section to have knowingly violated the accessibility standards of the state building code shall be subject to a civil penalty. The penalties shall be the same as those established by RSA 155–A:8. All civil penalties shall be deposited into the general fund. The party bringing the action shall be entitled to reasonable attorney's fees and costs if it is determined by the court to be the prevailing party.

Source. 2009, 285:2. 2012, 197:1, eff. Aug. 12, 2012.

155–A:5–b Accessibility Certifiers and Inspectors; Penalty.

I. New Hampshire licensed architects, professional engineers, certified building officials, and master code officials may certify building plans and/or inspect public buildings for compliance with the accessibility standards in RSA 155–A:5 and RSA 155–A:5–a without further examination. Any other person engaged in the business of certifying building plans and/or inspecting public buildings for compliance with accessibility standards required by RSA 155–A:5 and RSA 155–A:5–a shall successfully pass an International Code Council examination that covers the accessibility standards contained in the state building code prior to certifying that a building complies with RSA 155–A:5 and RSA 155–A:5–a. All accessibility certifiers and inspectors shall complete 2 hours of continuing education related to accessibility codes every 3 years and be able to produce proof of continuing education upon request.

II. Whoever falsely claims to be certified under this section through advertising, signage, or other written or oral representation shall be guilty of a violation if a natural person, or guilty of a class B misdemeanor if any other person.

Source. 2009, 285:2, eff. Jan. 1, 2010.

155–A:6 Inspection of State Buildings.

[Repealed 2012, 242:22, eff. June 18, 2012.]

History

Former RSA 155–A:6, which was derived from 2002, 8:3, related to safety inspections of occupied state buildings.

155–A:7 Enforcement Authority.

I. The local enforcement agency appointed pursuant to RSA 674:51 or RSA 47:22 shall have the authority to enforce the provisions of the state building code and the local fire chief shall have the authority to enforce the provisions of the state fire code, provided that where there is no local enforcement agency or contract with a qualified third party pursuant to RSA 155–A:2, VI, the state fire marshal or the state fire marshal's designee may enforce the provisions of the state building code and the state fire code, subject to the review provisions in RSA 155–A:10, upon written request of the municipality.

II. Upon the request of a local enforcement agency, state agencies, boards, and commissions may provide advisory services and technical assistance con-

cerning any building or any construction project in the local enforcement agent's jurisdiction.

III. The local enforcement agency appointed to enforce the state building code shall have the authority to inspect all buildings, structures, construction sites, and other places in the jurisdiction. If consent for such inspection is denied or not reasonably obtainable, the local enforcement agency may obtain an administrative inspection warrant under RSA 595–B.

IV. All local enforcement agencies and selectmen and the state fire marshal in those communities without a local enforcement agency shall provide information on the local and state appeals process when issuing a building permit or notice of violation.

Source. 2002, 8:3. 2012, 225:1, eff. Aug. 14, 2012; 242:14, eff. June 18, 2012.

155–A:8 Penalty. Fines, penalties, and remedies for violations of this chapter shall be the same as for violations of title LXIV, as stated in RSA 676:15 and 676:17.

Source. 2002, 8:3, eff. Sept. 14, 2002.

155–A:9 Fees. The municipality may establish fees to defray the costs of administration, implementation, and enforcement of the state building code and any local amendments. Such fees shall be for the general use of the municipality having responsibility over the local enforcement agency.

Source. 2002, 8:3, eff. Sept. 14, 2002.

155–A:10 State Building Code Review Board.

I. There is established a state building code review board consisting of the commissioner of safety or the commissioner's designee, and the following members, appointed by the commissioner of safety:

(a) One architect licensed in this state for a minimum of 5 years, nominated by the board of architects established in RSA 310–A:29.

(b) One structural engineer licensed in this state for a minimum of 5 years, nominated by the board of professional engineers established in RSA 310–A:3.

(c) One mechanical engineer licensed in this state for a minimum of 5 years, nominated by the board of professional engineers established in RSA 310–A:3.

(d) One electrical engineer licensed in this state for a minimum of 5 years, nominated by the board of professional engineers established in RSA 310–A:3.

(e) One representative of the state's municipalities, nominated by the New Hampshire Municipal Association.

(f) One municipal building official, nominated by the New Hampshire Building Officials Association.

(g) One municipal fire chief, nominated by the New Hampshire Association of Fire Chiefs.

(h) One active fire prevention officer, nominated by the New Hampshire Association of Fire Chiefs.

(i) One building contractor, primarily engaged in the business of constructing nonresidential buildings, nominated by the Associated General Contractors of New Hampshire.

(j) One building contractor primarily engaged in the business of constructing residential buildings, nominated by the New Hampshire Home Builders Association.

(k) One representative from the state energy conservation code office under RSA 155–D, nominated by the New Hampshire public utilities commission.

(*l*) One master plumber licensed in this state for a minimum of 5 years, nominated by the mechanical licensing board established in RSA 153:27–a.

(m) One mechanical contractor, primarily engaged in the business of mechanical construction, nominated by the Plumbers, Fuel Gas Fitters, and HVAC Association of New Hampshire.

(n) One master electrician licensed in this state for a minimum of 5 years, nominated by the electricians' board established in RSA 319–C.

(*o*) One representative of the Committee on Architectural Barrier-Free Design nominated by the governor's commission on disability.

(p) One electrical contractor, nominated by Electrical Contractors Business Association.

II. The term of each member shall be 3 years. The chair of the board shall be appointed by the commissioner of safety after meeting with the board. Board members shall be appointed for no more than 2 consecutive 3-year terms. The board shall elect from among the members a vice-chair, who shall assume the responsibilities of the chair in the event of the chair's absence.

III. The board shall be administratively attached to the department of safety under RSA 21–G:10.

IV. The board shall meet to review and assess the application of the state building code and shall recommend legislation, as the board deems necessary, to amend the requirements of the state building code in order to provide consistency with the application of

other laws, rules, or regulations, to avoid undue economic impacts on the public by considering the cost of such amendments, and to promote public safety and best practices.

V. The board may adopt rules to amend the state building code for the codes described in RSA 155–A:1, IV and IV–a, to the extent the board deems that such amendments are necessary, provided that any such amendments are ratified by the adoption of appropriate legislation within 2 years of their adoption. If such amendments are not ratified, then the rules shall expire, notwithstanding RSA 541–A:17, I, at the end of the 2-year period. With the approval of the commissioner of safety, the board shall be authorized, pursuant to RSA 541–A, to adopt rules relative to procedures of its operation and appeals to the board.

VI. The state building code review board shall not adopt or enforce any rule requiring the installation of fire sprinkler systems in any new or existing detached one- or 2-family dwelling unit in a structure used only for residential purposes. This paragraph shall not prohibit a duly adopted requirement mandating that fire sprinkler systems be offered to the owners of dwellings for a reasonable fee.

VII. Members of the board shall receive mileage at the rate established in the United States Internal Revenue Code and Regulations when attending meetings of the board for the round trip distance from their residences to the location of the board meeting.

Source. 2002, 8:3; 270:4. 2003, 245:3, 4, 6. 2007, 11:1, 2. 2010, 282:3. 2012, 242:15. 2013, 64:1, eff. June 6, 2013; 275:10, eff. July 1, 2013. 2015, 276:197, eff. July 1, 2015.

155–A:11 Appeals of Decisions of the State Fire Marshal.

I. Any person aggrieved by a decision of the state fire marshal relative to the application and enforcement of the state building code pursuant to RSA 153:8–a, I(a), or the state fire code, may appeal the decision to the board.

II. The board shall hold a hearing within 40 days of receipt of a complaint, unless an extension of time has been granted by the board at the written request of one of the parties and shall render a decision within 30 days of the conclusion of a hearing.

Source. 2002, 8:3. 2012, 242:16, eff. June 18, 2012.

155–A:11–a Appeal of Decisions of the Electricians' Board and the Board of Home Inspectors.

I. The board shall hear appeals of final decisions of the board established under RSA 319–C:4 and the board established under RSA 310–A:186.

II. The board shall hold a hearing within 40 days of the receipt of an appeal, unless an extension of time has been granted by the board at the written request of one of the parties and shall render a decision within 30 days of the conclusion of the hearing.

Source. 2004, 257:55. 2008, 339:3. 2013, 275:11, eff. July 1, 2013.

155–A:12 Appeal From Board's Decision.

I. A party to the proceeding shall have the right to file a petition in the superior court of the county in which the building or structure is located to review the final order of the board within 30 days of the date of the final order.

II. At the earliest practical time, the court shall review the record as developed before the board, together with any written legal argument presented to the court. Based on that review, the court may affirm or reverse the decision of the board or order that oral argument be held. As justice may require, the court may remand the case to the board for further findings and rulings. The petition for appeal shall set forth all the grounds upon which the final order is sought to be overturned. Issues not raised by the appellant before the board shall not be raised before the superior court. The burden of proof shall be on the appellant to show that the decision of the board was clearly unreasonable or unlawful.

III. No new or additional evidence shall be introduced in the superior court, but the case shall be determined upon the record and evidence transferred, except that in any case, if justice requires the review of evidence which by reason of accident, mistake, or misfortune could not have been offered before the board, the superior court shall remand the case to the board to receive and consider such additional evidence.

Source. 2002, 8:3, eff. Sept. 14, 2002.

155–A:13 Building Requirements for State Funded Buildings.

I. Any new construction, reconstruction, alteration, or maintenance in any state owned building, plant, fixture, or facility, meeting the definition of "project" in RSA 21–I:78, considered a major project under RSA 21–I:80, and constructed using any state funding, shall meet a high performance, energy efficient, sustainable design standard determined by the commissioners of the department of environmental services and the department of administrative services, in consultation with the division of historic resources and the community college system, that shows the building or structure can recoup the incre-

mental costs of implementing the requirements of this section as measured by reduced energy costs over a 10-year period of time.

II. The following construction or renovation projects shall be exempt from the requirements of paragraphs I:

(a) A building or structure that is less than 25,000 square feet.

(b) A building or structure that does not consume energy for heating, ventilating, or air conditioning.

(c) A renovation or modification that is estimated to cost less than $1,000,000.

(d) Temporary structures.

(e) Public school facilities that are subject to RSA 198:15–c.

(f) The university system of New Hampshire.

(g) Projects employing new, innovative, or experimental energy efficient technology that may not recoup their incremental costs within 10 years, as may be determined by the commissioner of the department of administrative services to be in the best interest of the state.

Source. 2010, 347:1, eff. July 1, 2011.

CHAPTER 159

PISTOLS AND REVOLVERS

159:1 Definition. Pistol or revolver, as used herein, means any firearm with barrel less than 16 inches in length. It does not include antique pistols, gun canes, or revolvers. An antique pistol, gun cane, or revolver, for the purposes of this chapter, means any pistol, gun cane, or revolver utilizing an early type of ignition, including, but not limited to, flintlocks, wheel locks, matchlocks, percussions and pinfire, but no pistol, gun cane, or revolver which utilizes readily available center fire or rim-fire cartridges which are in common, current use shall be deemed to be an antique pistol, gun cane, or revolver. Nothing in this section shall prevent antique pistols, gun canes, or revolvers from being owned or transferred by museums, antique or arms collectors, or licensed gun dealers at auctions, gun shows, or private premises provided such ownership or transfer does not conflict with federal statutes.

Source. 1923, 118:1. PL 149:1. RL 179:1. RSA 159:1. 1967, 220:1. 1992, 273:1, eff. July 17, 1992.

159:2 Carrying by Offenders.

[Repealed 1977, 403:3, eff. Sept. 3, 1977.]

History

Former RSA 159:2, which was derived from 1923, 118:2; PL 149:20; RL 179:2; RSA 159:2; 1967, 220:2; and 1973, 528:82, related to additional punishment for commission of a crime when armed with a pistol or revolver.

159:3 Convicted Felons.

I. A person is guilty of a class B felony if he:

(a) Owns or has in his possession or under his control, a pistol, revolver, or other firearm, or slungshot, metallic knuckles, billies, stiletto, switchblade knife, sword cane, pistol cane, blackjack,

dagger, dirk-knife, or other deadly weapon as defined in RSA 625:11, V; and

(b) Has been convicted in either a state or federal court in this or any other state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of:

(1) A felony against the person or property of another; or

(2) A felony under RSA 318–B; or

(3) A felony violation of the laws of any other state, the District of Columbia, the United States, the Commonwealth of Puerto Rico or any territory or possession of the United States relating to controlled drugs as defined in RSA 318–B.

I–a. A person is guilty of a class B felony if such person completes and signs an application for purchase of a firearm and the person is a convicted felon under the provisions of paragraph I.

II. The state shall confiscate to the use of the state the weapon or weapons of persons convicted under this section.

III. It is an affirmative defense to a charge under this section that a felony of which a defendant has been convicted in another jurisdiction would not have constituted a felony in the state of New Hampshire at the time such felony was committed.

Source. 1923, 118:3. PL 149:3. RL 179:3. RSA 159:3. 1973, 405:1; 528:83. 1981, 553:4. 1993, 157:1. 2001, 189:1; 214:1, eff. Jan. 1, 2002.

159:3–a Armed Career Criminals.

I. No person who has been convicted of any combination of 3 or more felonies in this state or any other state under homicide, assault, sexual assault, arson, burglary, robbery, extortion, child sexual abuse images, or controlled drug laws, shall own or have in his or her possession or under his or her control, a pistol, revolver, rifle, shotgun, or any other firearm.

II. Any person who violates paragraph I shall be guilty of a felony and, notwithstanding RSA 651:2, II, shall be sentenced to a minimum mandatory term of 10 years imprisonment and a maximum term of imprisonment of not more than 40 years and shall be fined not more than $25,000.

III. Notwithstanding any other provision of law, neither the whole, nor any part of the minimum mandatory sentence provided under paragraph II shall be served concurrently with any other term, nor shall the whole or any part of such additional term of imprisonment be suspended or deferred. No action brought to enforce sentencing under this section shall be continued for sentencing, nor shall the provisions of RSA 651:20 relative to suspensions or RSA 651–A relative to parole apply to any sentence of imprisonment imposed.

Source. 1989, 295:1, eff. Jan. 1, 1990. 2017, 91:2, eff. Aug. 6, 2017.

159:4 Carrying Without License.

[Repealed 2017, 1:3, eff. Feb. 22, 2017.]

History

Former RSA 159:4, which was derived from 1923, 118:4; PL 149:4; RL 179:4; 1951, 151:1; RSA 159:4; 1967, 220:3; 1973, 528:84; and 1994, 48:1, related to a requirement to obtain a license to carry a concealed pistol or revolver.

159:5 Exceptions. The provisions of RSA 159:3 and 4 shall not apply to marshals, sheriffs, policemen or other duly appointed peace and other law enforcement officers, or bailiffs and court officers responsible for court security; nor to the regular and ordinary transportation of pistols or revolvers as merchandise, nor to members of the armed services of the United States when on duty; nor to the national guard when on duty; nor to organizations by law authorized to purchase or receive such weapons; nor to duly authorized military or civil organizations when parading, or the members thereof when at, or going to or from, their customary places of assembly.

Source. 1923, 118:5. PL 149:5. RL 179:5. 1951, 151:2. RSA 159:5. 1985, 258:1, eff. Jan. 1, 1986.

159:5–a Exceptions and Exemptions Not Required to be Negated. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

Source. 1987, 181:2, eff. May 12, 1987.

159:6 License to Carry.

I. (a) The selectmen of a town, the mayor or chief of police of a city or a full-time police officer designated by them respectively, the county sheriff for a resident of an unincorporated place, or the county sheriff if designated by the selectmen of a town that has no police chief, upon application of any resident of such town, city, or unincorporated place, or the director of state police, or some person designated by such director, upon application of a nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol or revolver in this state

for not less than 5 years from the date of issue, if it appears that the applicant has good reason to fear injury to the applicant's person or property or has any proper purpose, unless the applicant is prohibited by New Hampshire or federal statute from possessing a firearm. Hunting, target shooting, or self-defense shall be considered a proper purpose. The license shall be valid for all allowable purposes regardless of the purpose for which it was originally issued.

(b) The license shall be in duplicate and shall bear the name, address, description, and signature of the licensee. The original shall be delivered to the licensee and the duplicate shall be preserved by the people issuing the same for 5 years. When required, license renewal shall take place within the month of the fifth anniversary of the license holder's date of birth following the date of issuance. The license shall be issued within 14 days after application, and, if such application is denied, the reason for such denial shall be stated in writing, the original of which such writing shall be delivered to the applicant, and a copy kept in the office of the person to whom the application was made. The fee for licenses issued to residents of the state shall be $10, which fee shall be for the use of the town or city granting said licenses; the fee for licenses granted to out-of-state residents shall be $100, which fee shall be for the use of the state. The director of state police is hereby authorized and directed to prepare forms for the licenses required under this chapter and forms for the application for such licenses and to supply the same to officials of the cities and towns authorized to issue the licenses. The form shall require no more information than was required on the state of New Hampshire application for pistol/revolver license, form DSSP 85, as revised in December 2009. No other forms shall be used by officials of cities and towns. The cost of the forms shall be paid out of the fees received from nonresident licenses.

II. No photograph or fingerprint shall be required or used as a basis to grant, deny, or renew a license to carry for a resident or nonresident, unless requested by the applicant.

III. The availability of a license to carry a loaded pistol or revolver under this section or under any other provision of law shall not be construed to impose a prohibition on the unlicensed transport or carry of a firearm in a vehicle, or on or about one's person, whether openly or concealed, loaded or unloaded, by a resident, nonresident, or alien if that individual is not otherwise prohibited by statute from possessing a firearm in the state of New Hampshire.

Source. 1923, 118:6. PL 149:6. 1941, 172:1. RL 179:6. 1951, 151:3. RSA 159:6. 1959, 100:1. 1967, 220:4. 1977, 563:76. 1979, 355:1. 1993, 27:1; 203:1. 1994, 257:1, 2. 1996, 167:2. 2003, 90:1. 2009, 144:194. 2012, 255:1, eff. Aug. 17, 2012. 2015, 124:1, eff. June 8, 2015. 2017, 1:1, eff. Feb. 22, 2017.

159:6–a Confidentiality of Licenses. Notwithstanding the provisions of RSA 91–A:4 or any other provision of law to the contrary, all papers and records, including applications, pertaining to the issuance of licenses pursuant to RSA 159:6 and all licenses issued pursuant to said section are subject to inspection only by law enforcement officials of the state or any political subdivision thereof or of the federal government while in the performance of official duties or upon written consent, for good cause shown, of the superior court in the county where said license was issued.

Source. 1979, 106:1, eff. July 10, 1979.

159:6–b Suspension or Revocation of License.

I. The issuing authority may order a license to carry a loaded pistol or revolver issued to any person pursuant to RSA 159:6 to be suspended or revoked for just cause, provided written notice of the suspension or revocation and the reason therefore is given to the licensee. A licensee whose license has been suspended or revoked shall be permitted a hearing on such suspension or revocation if a hearing is requested by the licensee to the issuing authority within 7 days of the suspension or revocation.

II. When the licensee hereunder ceases to be a resident of the community in which the license was issued he shall notify in writing the issuing authority at his new place of residence that he has a current license. Such license shall remain in effect until it expires pursuant to RSA 159:6.

Source. 1979, 355:2, eff. Aug. 22, 1979.

159:6–c Appeal From Denial, Suspension, or Revocation. Any person whose application for a license to carry a loaded pistol or revolver has been denied pursuant to RSA 159:6 or whose license to carry a loaded pistol or revolver has been suspended or revoked pursuant to RSA 159:6–b may within 30 days thereafter, petition the district or municipal court in the jurisdiction in which such person resides to determine whether the petitioner is entitled to a license. The court shall conduct a hearing within 14 days after receipt of the petition. During this hearing the burden shall be upon the issuing authority to demonstrate by clear and convincing proof why any denial, suspension, or revocation was justified, failing

which the court shall enter an order directing the issuing authority to grant or reinstate the petitioner's license. The court shall issue its decision not later than 14 days after the hearing on whether the petitioner is entitled to a license.

Source. 1979, 355:2. 1998, 380:2, eff. Jan. 1, 1999.

159:6–d Reciprocity. The director of the division of state police shall negotiate and enter into reciprocal agreements with other jurisdictions to recognize in those jurisdictions the validity of the license issued under RSA 159:6. The director shall apply to every jurisdiction with which New Hampshire does not have a reciprocity agreement, at least once every 5 years to obtain recognition in those jurisdictions of the license issued under RSA 159:6. Any such agreement executed shall not expire unless an expiration date is required under the statutes of the reciprocal jurisdiction.

Source. 1993, 130:1, eff. Jan. 1, 1994. 2017, 1:2, eff. Feb. 22, 2017.

159:6–e Violation. Any person aggrieved by a violation of the licensing sections of this chapter by a licensing entity may petition the superior court of the county in which the alleged violation occurred for injunctive relief. The court shall give proceedings under this chapter priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of the licensing sections of this chapter by the licensing entity, and may be filed by the petitioner or the petitioner's counsel with the clerk of court or the justice. The clerk of court or any justice shall order service by copy of the petition on the licensing entity or a person employed by the entity. If the justice finds that time is of the essence, the justice may order notice by any reasonable means, and shall have authority to issue an order ex parte when the justice reasonably deems such an order necessary to insure compliance with the provisions of this chapter.

Source. 1996, 122:1, eff. Jan. 1, 1997.

159:6–f Remedies.

I. If any licensing entity or employee or member of the city council or board of selectmen, in violation of the provisions of this chapter, refuses to comply with this chapter, such entity or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter to enforce the terms of this chapter, provided that the court finds that such lawsuit was necessary in order to obtain compliance with this chapter by the licensing authority. Fees shall not be awarded unless the court finds that the entity or person knew or should have known that the conduct engaged in was a violation of this chapter or when the parties, by agreement, provide that no such fees shall be paid. In any case in which fees are awarded under this chapter, upon a finding that an employee, or other official of a licensing entity has acted in bad faith in refusing to comply with this chapter, the court may award such fees personally against such employee or other official.

II. The court may invalidate an action of a licensing entity taken in violation of the provisions of this chapter, if the circumstances justify such invalidation, and may require the licensing entity to issue a license or otherwise comply with the provisions of this chapter.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter.

Source. 1996, 122:1, eff. Jan. 1, 1997.

159:7 Sales to Felons. No person shall sell, deliver, or otherwise transfer a pistol, revolver or any other firearm, to a person who has been convicted, in any jurisdiction, of a felony. Whoever violates the provisions of this section shall be guilty of a class B felony.

Source. 1923, 118:8. PL 149:7. RL 179:7. RSA 159:7. 1973, 405:2; 528:85. 1981, 553:5, eff. Aug. 29, 1981.

159:8 License to Sell. The selectmen of a town and the chief of police of a city may grant licenses, the form of which shall be prescribed by the director of the division of state police, effective for not more than 3 years from date of issue, permitting the licensee to sell at retail pistols and revolvers subject to the following conditions, for breach of any of which the licensee shall be subject to forfeiture:

I. The business shall be carried on only in the building designated in the license or at any organized sporting show or arms collectors' meeting sponsored by a chartered club or organization.

II. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

III. No pistol, revolver, or other firearm shall be delivered to a purchaser not personally known to the seller or who does not present clear evidence of his identity; nor to a person who has been convicted of a felony.

Source. 1923, 118:10. PL 149:8. RL 179:8. RSA 159:8. 1967, 220:5. 1979, 44:1. 1981, 553:6. 1991, 254:2. 1996, 167:1, eff. Aug. 2, 1996.

159:8–a Sales to Nonresidents; Attorney General. No person holding a license issued under the provisions of RSA 159:8 shall sell a pistol or revolver to a nonresident unless such nonresident has authority under the laws of the state of his residence, to purchase a pistol or revolver in the state of his residence, or unless the director of the division of state police, for good cause shown, has issued to such nonresident a permit for the purchase of a pistol or revolver. The attorney general shall, at least once annually, file with the secretary of state a summary of the laws of each state of the United States relative to the purchase of pistols and revolvers in such states; and a licensee may rely upon such summary in determining if a nonresident offering to purchase a pistol or revolver has authority to make such purchase under the laws of the state of his residence.

Source. 1967, 220:6, eff. Aug. 21, 1967.

159:8–b Penalties. If a licensee shall in any court be found guilty of a violation of any of the provisions of RSA 159:8–a, such court shall, for each such violation, order the suspension of his license for a period of 3 months, and may, in addition, impose a fine not in excess of $100.

Source. 1967, 220:6, eff. Aug. 21, 1967.

159:9 Record of Sale.

[Repealed 1996, 116:1, I, eff. July 14, 1996.]

History

Former RSA 159:9, which was derived from 1923, 118:10; PL 149:9; RL 179:9; RSA 159:9; and 1991, 254:3, related to the making and keeping of records of sale for pistols and revolvers.

159:10 Sale Without License. Any person who, without being licensed as herein provided, sells, advertises or exposes for sale, or has in his possession with intent to sell, pistols or revolvers shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.

Source. 1923, 118:9. PL 149:10. RL 179:10. RSA 159:10. 1967, 220:7. 1973, 528:86, eff. Oct. 31, 1973 at 11:59 p.m.

159:11 False Information. Any person who, in purchasing or otherwise securing delivery of a pistol, revolver, or other firearm, gives false information or offers false evidence of his identity, shall be guilty of a misdemeanor for the first offense, and be guilty of a class B felony for any subsequent offense.

Source. 1923, 118:11. PL 149:11. RL 179:11. RSA 159:11. 1967, 220:8. 1981, 553:7, eff. Aug. 29, 1981.

159:12 Sale to Minors.

I. Any person who shall sell, barter, hire, lend or give to any minor any pistol or revolver shall be guilty of a misdemeanor.

II. This section shall not apply to:

(a) Fathers, mothers, grandparents, guardians, administrators or executors who give a revolver to their children or wards or to heirs to an estate.

(b) Individuals instructing minors in the safe use of firearms during a supervised firearms training program, provided the minor's parent or legal guardian has granted the minor permission to participate in such program.

(c) Licensed hunters accompanying a minor while lawfully taking wildlife.

(d) Individuals supervising minors using firearms during a lawful shooting event or activity.

Source. 1923, 118:7. PL 149:12. RL 179:12. RSA 159:12. 1973, 528:87. 2006, 73:2, eff. April 28, 2006.

159:13 Changing Marks. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification on any pistol or revolver. Possession of any such firearms upon which the same shall have been changed, altered, removed or obliterated shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

Source. 1923, 118:12. PL 149:13. RL 179:13. RSA 159:13. 1973, 528:88, eff. Oct. 31, 1973 at 11:59 p.m.

159:14 Exemption. None of the provisions of this chapter shall prohibit an individual not licensed under the provisions thereof who is not engaged in the business of selling pistols or revolvers from selling a pistol or revolver to a person licensed under this chapter or to a person personally known to him.

Source. 1967, 220:9, eff. Aug. 21, 1967.

159:15 Possession of Dangerous Weapon While Committing a Violent Crime.

I. A person shall be guilty of a class A misdemeanor if that person uses or employs slung shot, metallic knuckles, billies, or other deadly weapon as defined in RSA 625:11, V during the commission or attempted commission of a violent crime.

II. "Violent crime," for purposes of this section, means "violent crime" as defined in RSA 651:5, XIII.

Source. 1973, 370:15. 1998, 373:1. 2001, 214:2, eff. Jan. 1, 2002.

159:16 Carrying or Selling Weapons. Whoever, except as provided by the laws of this state, sells, has in his possession with intent to sell, or carries on his person any blackjack, slung shot, or metallic knuckles shall be guilty of a misdemeanor; and such weapon or articles so carried by him shall be confiscated to the use of the state.

Source. 1973, 370:16. 1992, 273:2. 2010, 67:1, eff. May 18, 2010.

159:17 Exceptions. The provisions of the preceding section shall not apply to officers of the law, to persons holding hunting or fishing licenses when lawfully engaged in hunting or fishing, to employees of express companies while on duty, to watchmen while on duty, to emergency medical technicians, firefighters, or military personnel while in the course of their duties, or to duly authorized military or civic organizations when parading, or to the members thereof when at, or going to or from, their customary places of assembly.

Source. 1973, 370:17. 2006, 227:1, eff. July 31, 2006.

159:18 Felonious Use of Teflon-coated, Armor-piercing and Exploding Bullets and Cartridges.

I. A person is guilty of a class B felony if he uses or attempts to use any teflon-coated or armor-piercing bullet or cartridge, or any bullet or cartridge which contains any explosive substance in the projectile and is designed to explode upon impact, in the course of committing any misdemeanor or felony.

II. Neither the whole nor any part of a sentence of imprisonment imposed for a violation of this section shall be served concurrently with any other term of imprisonment.

Source. 1983, 311:1, eff. Aug. 17, 1983.

159:19 Courthouse Security.

I. No person shall knowingly carry a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, whether open or concealed or whether licensed or unlicensed, upon the person or within any of the person's possessions owned or within the person's control in a courtroom or area used by a court. Whoever violates the provisions of this paragraph shall be guilty of a class B felony.

II. Firearms may be secured at the entrance to a courthouse by courthouse security personnel.

III. For purposes of paragraph I, "area used by a court" means:

(a) In a building dedicated exclusively to court use, the entire building exclusive of the area between the entrance and the courthouse security.

(b) In any other building which includes a court facility, courtrooms, jury assembly rooms, deliberation rooms, conference and interview rooms, the judge's chambers, other court staff facilities, holding facilities, and corridors, stairways, waiting areas, and elevators directly connecting these rooms and facilities.

IV. The provisions of this section shall not apply to marshals, sheriffs, deputy sheriffs, police or other duly appointed or elected law enforcement officers, bailiffs and court security officers, or persons with prior authorization of the court for the purpose of introducing weapons into evidence and as otherwise provided for in RSA 159:5.

V. It shall be an affirmative defense to any prosecution under paragraph I that there was no notice of the provisions of paragraph I posted in a conspicuous place at each public entrance to the court building.

Source. 1985, 258:2. 2000, 175:1, eff. Jan. 1, 2001.

159:19–a Criminal Use of Pistol Cane or Sword Cane.

I. Any person who uses a pistol cane or sword cane on another person with intent to commit a crime punishable as a misdemeanor shall be guilty of a misdemeanor.

II. Any person who uses a pistol cane or sword cane on another person with intent to commit a crime punishable as a felony shall be guilty of a class B felony.

III. Neither the whole nor any part of a sentence of imprisonment imposed for a violation of this section shall be served concurrently with any other term of imprisonment.

Source. 1992, 273:3, eff. July 17, 1992.

Self-Defense Weapons

159:20 Self-Defense Weapons Defined. In this subdivision:

I. "Electronic defense weapon" means an electronically activated non-lethal device which is designed for or capable of producing an electrical charge of sufficient magnitude to immobilize or incapacitate a person temporarily.

II. "Aerosol self-defense spray weapon" means any aerosol self-defense spray weapon which is designed to immobilize or incapacitate a person temporarily.

Source. 1986, 46:1. 1994, 139:2, eff. July 1, 1995.

159:21 Possession by Felons Prohibited. Any person who has been convicted of a felony in this or any other state who possesses an electronic defense weapon away from the premises where he resides shall be guilty of a class B felony. Neither the whole nor any part of a sentence of imprisonment imposed for a violation of this section shall be served concurrently with any other term of imprisonment.

Source. 1986, 46:1, eff. May 5, 1986.

159:22 Restricted Sale. Any person who knowingly sells an electronic defense weapon to a person under 18 years of age shall be guilty of a violation.

Source. 1986, 46:1, eff. May 5, 1986.

159:23 Criminal Use of Electronic Defense or Aerosol Self-Defense Spray Weapons.

I. Any person who uses an electronic defense or aerosol self-defense spray weapon on a law enforcement officer or another person with intent to commit a crime punishable as a misdemeanor shall be guilty of a misdemeanor.

II. Any person who uses an electronic defense or aerosol self-defense spray weapon on a law enforcement officer or another person with intent to commit a crime punishable as a felony shall be guilty of a class B felony.

III. Neither the whole nor any part of a sentence of imprisonment imposed for a violation of this section shall be served concurrently with any other term of imprisonment.

Source. 1986, 46:1. 1994, 139:3, eff. July 1, 1995.

Martial Arts Weapons

159:24 Sale of Martial Arts Weapons.

I. "Martial arts weapon" means any kind of sword, knife, spear, throwing star, throwing dart, or nunchaku or any other object designed for use in the martial arts which is capable of being used as a lethal or dangerous weapon.

II. Any person who shall sell, deliver, or otherwise transfer any martial arts weapon to a person under the age of 18 without first obtaining the written consent of such person's parent or guardian shall be guilty of a misdemeanor.

III. Paragraph II shall not apply to fathers, mothers, guardians, administrators or executors who give a martial arts weapon to their children or wards or to heirs to an estate.

Source. 1986, 222:3, eff. Jan. 1, 1987.

Voluntarily Surrendered Firearms

159:25 Voluntarily Surrendered Firearms. No state agency shall operate a firearms "voluntary surrender and destroy" program. Firearms which are voluntarily surrendered to a state agency shall be sold at public auction or kept by the state agency for its own use. Proceeds from firearms sold at public auction by the state shall be deposited in the general fund.

Source. 1998, 380:1, eff. Aug. 25, 1998.

State Jurisdiction

159:26 Firearms, Ammunition, and Knives; Authority of the State.

I. To the extent consistent with federal law, the state of New Hampshire shall have authority and jurisdiction over the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, firearms supplies, or knives in the state. Except as otherwise specifically provided by statute, no ordinance or regulation of a political subdivision may regulate the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state. Nothing in this section shall be construed as affecting a political subdivision's right to adopt zoning ordinances for the purpose of regulating firearms or knives businesses in the same manner as other businesses or to take any action allowed under RSA 207:59.

II. Upon the effective date of this section, all municipal ordinances and regulations not authorized under paragraph I relative to the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearm components, ammunition, firearms supplies, or knives shall be null and void.

Source. 2003, 283:2. 2011, 139:1, eff. Aug. 6, 2011.

CHAPTER 161–E

PERSONAL CARE FOR THE SEVERELY PHYSICALLY DISABLED

161–E:1 Definitions. In this chapter:

I. "Department" shall mean the department of health and human services.

II. "Personal care attendant" shall mean a qualified non-family member whether or not that person is a professional or paraprofessional and who, in accordance with a plan of care prescribed by a physician and developed in conjunction with and reviewed by a registered nurse, assists severely physically disabled persons to maintain themselves in their homes and gain greater control over their own lives by providing medically oriented long-term maintenance and supportive care.

III. "Severely physically disabled person" shall mean an adult individual over the age of 18 who has been approved to participate in an independent living program and who requires a minimum of 2 hours of medically necessary personal care per day in order to maintain himself or herself in a noninstitutional setting. Such care may include assistance in the following areas: basic personal care and grooming, assistance with bladder and bowel care, assistance with medications, assistance with nutrition including meal preparation and essential household services.

Source. 1979, 275:1. 1983, 291:1. 1991, 32:1. 1995, 310:28, eff. Nov. 1, 1995. 2016, 306:1, eff. Aug. 20, 2016.

161–E:2 Services Provided. The commissioner of the department of health and human services shall develop a program under which severely physically disabled persons eligible for coverage under medical assistance programs are provided with personal care attendants to provide medically necessary long-term maintenance and supportive care to assist them, as is required in each individual case, to maintain themselves in their homes and gain greater control over their own lives. Personal care services under this chapter may be delivered in noninstitutional locations in which normal life activities occur.

Source. 1979, 275:1. 1995, 310:182, eff. Nov. 1, 1995. 2016, 306:2, eff. Aug. 20, 2016.

161–E:3 Federal Funds. The commissioner of the department of health and human services shall attempt to obtain such federal funds as are available to provide the services authorized under this chapter. The commissioner shall be authorized to expend such monies as he receives from the federal or state government or any other source for the purposes of this chapter.

Source. 1979, 275:1. 1995, 310:182, 183, eff. Nov. 1, 1995.

CHAPTER 161–G

REVOLVING LOAN FUND FOR NONPROFIT CHILD CARE PROVIDERS

[Repealed 1998, 303:8, eff. June 26, 1998.]

History

Former RSA 161–G:1, which was derived from 1989, 411:2 and 1995, 310:181, 182, related to the establishment of the revolving loan fund.

Former RSA 161–G:2, which was derived from 1989, 411:2 and 1995, 310:117, related to total amount allowed loaned and the term of repayment.

Former RSA 161–G:3, which was derived from 1989, 411:2; 1990, 257:2; and 1995, 310:175, 179, related to eligibility requirements for the loan and delivery of service standards.

Former RSA 161–G:4, which was derived from 1989, 411:2; 1990, 257:3, 4; and 1995, 310:118, related to definitions.

CHAPTER 167–C

WHITE CANE LAW

167–C:1 Policy. It is the policy of the state of New Hampshire to encourage and enable the blind, the visually disabled, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment.

Source. 1971, 351:1. 1990, 140:2, X, eff. June 18, 1990.

167–C:2 Access to Public Facilities.

[Repealed 2011, 170:6, eff. Jan. 1, 2012.]

History

Former RSA 167–C:2, which was derived from 1971, 351:1; 1983, 275:5; and 1990, 131:4, 140:2, X, related to the access to public facilities.

167–C:3 Penalty. Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation who denies or interferes with the admittance to or enjoyment of the public facilities enumerated in RSA 167–D or otherwise interferes with the rights of a totally or partially blind or otherwise disabled person as provided in RSA 167–C or RSA 167–D shall be fined not more than $25.

Source. 1971, 351:1. 1983, 275:6, eff. Aug. 17, 1983.

167–C:4 White Cane Safety Day. Each year, the governor shall take suitable public notice of October 15 as White Cane Safety Day. He shall issue a proclamation in which he:

I. Comments upon the significance of the white cane;

II. Calls upon the citizens of the state to observe the provisions of the white cane law and to take precautions necessary to the safety of the disabled;

III. Reminds the citizens of the state of the policies with respect to the disabled herein declared and urges the citizens to cooperate in giving effect to them;

IV. Emphasizes the need of the citizens to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, or other public places, places of public accommodation, amusement and resort, and other places to which the public is

invited, and to offer assistance to disabled persons upon appropriate occasions.

Source. 1971, 351:1, eff. Aug. 24, 1971.

167–C:5 Employment of Blind Persons. It is the policy of this state that the blind, the visually disabled, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

Source. 1971, 351:1. 1990, 140:2, X, eff. June 18, 1990.

CHAPTER 167–D

SERVICE ANIMALS AND SEARCH AND RESCUE DOGS

167–D:1 Definitions. As used in this chapter:

I. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

II. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally, or customarily permitted or invited.

III. A "place of public accommodation" shall mean, but shall not be limited to, any tavern roadhouse, hotel, motel, or trailer camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation, or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice, and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage; any public conveyance operated on land or water, or in the air, or any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or any other place of amusement; any comfort station; any dispensary, clinic, or hospital; any public library; any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the state board of education, or the commissioner of education of the state of New Hampshire.

IV. "Service animal" means any dog individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for purposes of this definition.

V. "Service animal trainer" means any person who is employed to train dogs for or is volunteering to raise dogs for a provider of service animals for persons with disabilities or an individual trainer who helps a person with disabilities to train his or her own service animal or an individual trainer who tests an animal to verify its eligibility for the New Hampshire service animal tag.

VI. "Search and rescue dog" means any dog which has been trained to perform typical search and rescue operations and is certified by a competent authority or holds a title from a competent authority or organization recognized by the office of the governor, the department of safety, the department of fish and game, or the Federal Emergency Management Agency or its successor agency.

Source. 2011, 170:2, eff. Jan. 1, 2012. 2014, 66:3, eff. Jan. 1, 2015.

167–D:2 Service Animal Duties.

I. The work or tasks performed by a service animal shall be directly related to the handler's disability. Work and tasks may include, but is not limited to:

(a) Assisting individuals who are blind or have low vision with navigation and other tasks.

(b) Alerting individuals who are deaf or hard of hearing to the presence of people or sounds.

(c) Providing nonviolent protection or rescue work.

(d) Pulling a wheelchair.

(e) Assisting an individual during a seizure.

(f) Alerting individuals to the presence of allergens.

(g) Retrieving items such as medicine or a telephone.

(h) Providing physical support and assistance with balance and stability to individuals with mobility disabilities.

(i) Helping persons with psychiatric and neurological disability by preventing or interrupting impulsive or destructive behaviors.

II. The crime determent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship does not constitute work or tasks for the purposes of this chapter.

Source. 2011, 170:2, eff. Jan. 1, 2012.

167–D:3 Private Clubs, Etc. Nothing herein contained shall be construed to include or apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his or her control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or postsecondary school from using good faith criteria other than race, creed, color, national origin, ancestry, or disability in admission of students.

Source. 2011, 170:2, eff. Jan. 1, 2012.

167–D:4 Service Animals May Accompany. It is lawful for any service animal to accompany his or her handler or trainer into any public facility, housing accommodation, or place of public accommodation to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

Source. 2011, 170:2, eff. Jan. 1, 2012.

167–D:5 Application of RSA 167–D:4 to Search and Rescue Dogs. The provisions of RSA 167–D:4 shall also apply to dogs involved in search and rescue missions at the request of a government agency when such dogs are in the course of, or traveling to or from the scene of, their official duties.

Source. 2011, 170:2, eff. Jan. 1, 2012.

167–D:6 Service Animal Trainer. A service animal trainer, while engaged in the actual training process and activities of such animals, shall have the same rights and privileges with respect to access to public facilities, and the same responsibilities as are applicable to persons with disabilities using a service animal.

Source. 2011, 170:2, eff. Jan. 1, 2012.

167–D:7 Licensing. Service animals shall be licensed as provided in RSA 466.

Source. 2011, 170:2, eff. Jan. 1, 2012.

167–D:8 Prohibited Acts.

I. It is unlawful for a person, directly or indirectly, either to prohibit, hinder, or interfere with a service animal's handler or trainer who otherwise complies with the limitations applicable to persons without disabilities.

II. It is unlawful for any person to fit an animal with a collar, leash, vest, sign, or harness of the type which represents that the animal is a service animal, or service animal tag issued under RSA 466:8 or to request a service animal tag issued under RSA 466:8 if in fact said animal is not a service animal.

III. It is unlawful for any person to willfully interfere or attempt to interfere with a service animal.

IV. It is unlawful for any person to represent that such person has a disability or is a service animal trainer for the purpose of acquiring a service animal unless said person has a disability or is a service animal trainer and to impersonate, by word or action, a person with a disability for the purpose of receiving service dog accommodations or service animal accessories such as a collar, leash, vest, sign, harness, or service animal tag, which represents that the animal is a service animal or to acquire a service animal tag issued under RSA 466:8.

Source. 2011, 170:2. 2012, 211:2, eff. Aug. 12, 2012. 2014, 66:1, eff. Jan. 1, 2015.

167–D:9 Nonuse of Service Animal. A person with a disability not using a service animal in any of the places, accommodations, or conveyances listed in RSA 167–D shall have all of the rights and privileges conferred by law upon other persons; and the failure of a person with a disability to use a service animal in those places, accommodations, or conveyances shall

not be held to constitute nor be evidence of contributory negligence.

Source. 2011, 170:2, eff. Jan. 1, 2012.

167–D:10 Penalty.

I. Any person violating any provision of this chapter shall be guilty of a misdemeanor and subject to enhanced penalties in paragraphs II and III.

II. It is a misdemeanor if a person willfully causes physical injury to a service animal or willfully allows his or her animal to cause physical injury to a service animal. If the physical injury to a service animal is severe enough that a veterinarian or service animal trainer determines that the service animal is incapable of returning to service, that person shall be guilty of a class A misdemeanor.

III. In any case where a person is convicted of harming a service animal as described in paragraph II, he or she may be ordered by the court to make restitution to the person or agency owning the animal for any bills for veterinary care, the replacement cost of the animal if it is incapable of returning to service, and the salary of the service animal handler or trainer for the period of time his or her services are lost to the agency or self employment.

Source. 2011, 170:2, eff. Jan. 1, 2012. 2014, 66:4, eff. Jan. 1, 2015.

CHAPTER 169–B

DELINQUENT CHILDREN

169–B:1 Applicability of Chapter, Purpose.

This chapter shall apply to delinquent children as defined in RSA 169–B:2. This chapter shall be liberally interpreted, construed and administered to effectuate the following purposes and policies:

I. To encourage the wholesome moral, mental, emotional, and physical development of each minor coming within the provisions of this chapter, by providing the protection, care, treatment, counselling, supervision, and rehabilitative resources which such minor needs.

II. Consistent with the protection of the public interest, to promote the minor's acceptance of personal responsibility for delinquent acts committed by the minor, encourage the minor to understand and appreciate the personal consequences of such acts, and provide a minor who has committed delinquent acts with counseling, supervision, treatment, and rehabilitation and make parents aware of the extent if any to which they may have contributed to the delinquency and make them accountable for their role in its resolution.

III. To achieve the foregoing purposes and policies, whenever possible, by keeping a minor in contact with the home community and in a family environment by preserving the unity of the family and separating the minor and parents only when it is clearly necessary for the minor's welfare or the interests of public safety and when it can be clearly shown that a change in custody and control will plainly better the minor.

IV. To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

Source. 1979, 361:2. 1995, 302:1, 2; 308:99. 1999, 305:1, eff. Jan. 1, 2000.

169–B:2 Definitions. In this chapter:

I. "Adult lock-up or jail" means a locked facility, used primarily to house adults charged with or convicted of violating criminal law. This includes police lock-ups, county correctional facilities, and any facility used by county sheriffs, state police, or local police to securely detain adult offenders and accused offenders.

II. "Alternative to secure detention" means any local program, approved by the court, police, probation, or the department of health and human services, which offers a less restrictive alternative to secure detention for minors. Such programs include, but are not limited to, youth attender, crisis home placement, group homes which have entered into agreements with the department of health and human services to provide such care, truant and runaway programs, and alcohol and drug detoxification programs.

III. "Court" means the district court, unless otherwise indicated.

III–a. "Custody" means a legal status created by court order wherein the department of health and human services has placement and care responsibility for the minor.

IV. "Delinquent" means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, or which is a violation of RSA 318–B:2–c, II or III, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.

IV–a. "Diversion" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regard to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the juvenile in the formal legal system. Diversion of a juvenile may take place either at prefiling as an alternative to the filing of a petition, or at arraignment.

IV–b. "Court approved diversion program" means a program that has been approved by the administrative judge of the judicial branch family division and has been approved to accept court referrals. An approved diversion program is a community based alternative to the formal court process that integrates restorative justice practices, promotes positive youth development, and reduces juvenile crime and recidivism.

IV–c. "Intervention" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regard to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of intervention is to prevent further involvement of the juvenile in the formal legal system. Intervention for a juvenile may take place either at the adjudicatory or dispositional level.

V. "Detention" means the care of a minor in physically restricted facilities and shall not include placement at residential treatment or evaluation facilities, staff-secure shelter facilities, or foster care homes.

V–a. "Home detention" means court-ordered confinement of a minor with the parents or other specified home for 24 hours a day unless otherwise pre-

scribed by written court order, under which the minor is permitted out of the residence only at such hours and in the company of persons specified in the court order establishing the home detention.

VI. "Minor" means a person under the age of 18.

VII. "Non-secure detention" means the care of a minor in a facility where physical restriction of movement or activity is provided solely through facility staff.

VIII. "Conditional release" means a legal status created by court order following an adjudication that a minor is delinquent and shall be permitted to remain in the community, including the minor's home, subject to:

(a) The conditions and limitations of the minor's conduct prescribed by the court;

(b) Such counselling and treatment as deemed necessary, pursuant to methods and conditions prescribed by the court, for the minor and family;

(c) The supervision of a juvenile probation and parole officer, as authorized by RSA 170–G:16; and

(d) Return to the court for violation of conditions of the release and change of disposition at any time during the term of conditional release.

IX. "Restitution" means moneys, compensation, work, or service which is reimbursed by the offender to the victim who suffered personal injury or economic loss.

X. "Concurrent plan" means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

XI. "Out-of-home placement" means when a minor, as the result of a delinquent petition, is removed from a biological parent, adoptive parent, or legal guardian of the minor and placed in substitute care with someone other than a biological parent, adoptive parent, or legal guardian. Such substitute care may include placement with a custodian, guardian, relative, friend, group home, crisis home, shelter care, or a foster home.

XII. "Permanency hearing" means a court hearing for a minor in an out-of-home placement to review, modify, and/or implement the permanency plan or adopt the concurrent plan.

XIII. "Permanency plan" means a plan for a minor in an out-of-home placement that is adopted by the court and that provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XIV. "Serious threats to school safety" means acts involving weapons; acts involving the possession, sale, or distribution of controlled substances; acts that cause serious bodily injury to other students or school employees; threats to cause bodily injury to students or school employees, where there is a reasonable probability that such threats will be carried out; acts that constitute felonious sexual assault or aggravated felonious sexual assault under RSA 632–A; arson under RSA 634:1; robbery under RSA 636:1; and criminal mischief under RSA 634:2, II and RSA 634:2, II–a.

XV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of children no less than 11 nor more than 17 years of age. Shelter care facilities may be utilized for children prior to or following adjudication or disposition. A shelter care facility may not be operated in the same building as a facility for architecturally secure confinement of children or adults.

Source. 1979, 361:2. 1987, 402:7. 1988, 197:1, 14. 1989, 285:1, 2. 1994, 212:2. 1995, 302:3, 4; 308:100–102; 310:181. 1999, 305:2. 2000, 294:9. 2001, 162:1. 2007, 236:1; 325:7. 2010, 175:1. 2013, 198:1, eff. Jan. 1, 2014; 249:17, eff. Sept. 22, 2013. 2014, 215:3, 4, eff. July 1, 2015. 2017, 248:8, eff. Sept. 16, 2017.

169–B:2–a Parental Responsibility.

I. In each case brought pursuant to this chapter, on the date of the arraignment, the court shall identify the parent or parents of the minor or, in their absence, the guardian or other person charged by law with the responsibility for the welfare of the minor. It shall be the obligation of such parent or guardian to:

(a) Personally attend and assure the attendance of the minor at all hearings of the court.

(b) Personally attend and assure the attendance of the minor at all meetings with the department of health and human services and collateral support service agencies occasioned by the action.

(c) Fully participate in all services ordered by the court including, but not limited to, substance abuse treatment, parenting classes, mediation, diversion, and community service.

(d) Pay a portion, or all, of any restitution or fines imposed by the court or court approved diversion program fees, when the court finds the payment by the parent to be in the interest of justice and rehabilitation.

(e) Supervise the minor's compliance with all orders of the court and conditions of release and

probation including, but not limited to, curfew, school attendance and general behavior.

II. Failure to supervise and otherwise accept responsibility as required by this section may be treated as criminal contempt of court punishable by up to a $1,000 fine and 90 days' imprisonment. It shall be a defense to any such charge of contempt that the parent, guardian or such other person or persons having custody and control of the minor made reasonable efforts to comply.

Source. 1999, 305:3. 2010, 175:2, eff. Jan. 1, 2011.

169–B:3 Jurisdiction. The court shall have exclusive original jurisdiction over all proceedings alleging delinquency.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:4 Jurisdiction Over Certain Persons.

I. The court shall have jurisdiction over any minor with respect to whom a petition is filed under this chapter after the minor's eighteenth and before the minor's nineteenth birthday for an alleged delinquency offense committed before the minor's eighteenth birthday.

II. The court may retain jurisdiction over any minor during the period after the minor's eighteenth birthday as justice may require for any minor who, prior to the minor's eighteenth birthday, was adjudicated delinquent and:

(a) For whom the department has recommended extension of the court's jurisdiction;

(b) Who has, prior to the minor's eighteenth birthday, consented to the court's retention of jurisdiction; and

(c) Who is attending school for the purpose of obtaining a high school diploma or general equivalency diploma and is considered likely to receive such diploma.

III. At the request of the prosecutor or the department, the court may retain jurisdiction over the minor for a period of up to 2 years following the completion of any appeal if the petition was filed after the minor had attained the age of 17 years. Notwithstanding the provisions of RSA 169–B:19, III, when jurisdiction is retained pursuant to this section, the court may sentence a person to the county correctional facility for a term that may extend beyond the person's eighteenth birthday.

IV. The court shall close the case when the minor reaches age 18 or, if jurisdiction is extended pursuant to paragraph II, when:

(a) The minor revokes the minor's consent in writing and such revocation has been approved by the court;

(b) The minor ceases to be enrolled as a full-time student during sessions of the school;

(c) The minor graduates from high school or receives a general equivalency diploma;

(d) The minor attains 21 years of age; or

(e) The department revokes its consent in writing; whichever event shall first occur. The court shall approve the minor's revocation of consent if it finds that the minor, in seeking to do so, is acting intelligently, knowledgeably, and in acceptance of the legal consequences.

V. Notwithstanding paragraph III, when the court finds by clear and convincing evidence that closing the case would endanger the safety of the minor, any other person, or the community, or the court finds that there is a high probability that continued provision of treatment services is necessary to rehabilitate the minor, the court may retain jurisdiction over any minor:

(a) Who has been found to have committed a violent crime as defined under RSA 169–B:35–a, I(c);

(b) Who has been petitioned to the court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses; or

(c) Who is subject to the jurisdiction of the court prior to the minor's eighteenth birthday and for whom the department has filed a motion with the court requesting that the court retain jurisdiction under this subparagraph; provided that the department's motion is filed within the 90 days prior to the minor's eighteenth birthday and provided further that the court's jurisdiction pursuant to this subparagraph shall continue until the minor's nineteenth birthday.

VI. A minor may be subject to the extended jurisdiction of the court for a period of time no longer than that for which an adult could be committed for a like offense or the minor reaches the age of 21, whichever occurs first. For purposes of this section, the time shall be calculated from the date of the original dispositional order.

VII. In any instance in which the statute of limitations has not tolled and no juvenile petition has been filed based upon acts committed before the minor's eighteenth birthday, the state may proceed against the person in the criminal justice system after that person's eighteenth birthday.

Source. 1979, 361:2. 1992, 11:1. 1995, 302:5, 6; 308:103; 310:175. 2002, 170:1, 2. 2004, 79:2. 2006, 190:1, eff. July 1, 2007. 2014, 215:5–9, eff. July 1, 2015. 2015, 260:4, 5, eff. July 1, 2015 at 12:01 a.m.

169–B:5 Venue.

I. Proceedings under this chapter may be originated in any judicial district in which the minor is found or resides, or where the offense is alleged to have occurred.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

III. When a minor who is on conditional release moves from one political subdivision to another, the court may transfer, upon notice and acceptance, to the court with jurisdiction over the political subdivision of the minor's new residence, if such transfer is in the best interest of the minor.

Source. 1979, 361:2. 1987, 402:8. 2003, 253:1, eff. July 14, 2003.

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

Source. 1991, 57:1. 1994, 212:2. 1995, 310:181. 2008, 274:1, eff. July 1, 2008.

169–B:6 Petition.

I. Any person may file a petition, alleging the delinquency of a minor, with a judge or clerk of the court in the judicial district in which the minor is found or resides or where the offense is alleged to have occurred. The petition shall be in writing and verified under oath. The following notice shall be printed on the front of the petition in bold in no smaller than 14 point font size: "See back for important information and financial obligations." The back of the petition shall include a notice of liability for parents and other individuals chargeable by law for the child's support and necessities.

II. To be legally sufficient, the petition must set forth with particularity, but not be limited to, the date, time, manner, and place of the conduct alleged and shall state the statutory provision alleged to have been violated, and shall be entitled, "In the interest of _____, a minor."

III. Absent serious threats to school safety, when a delinquency petition is filed by a school official, including a school resource officer assigned to a school district pursuant to a contract agreement with the local police department, or when a petition is filed by a local police department as a result of a report made by a school official or school resource officer, based upon acts committed on school grounds during the school day, information shall be included in the petition which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, including the school discipline process, if appropriate, that the school has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so, that the minor has not responded to such approaches and continues to engage in delinquent behavior, and that court intervention is needed.

IV. When a school official, including a school resource officer assigned to a school district pursuant to a contract agreement with the local police department, or a local police department as a result of a report made by a school official or school resource officer, files a petition involving a minor with a disability pursuant to RSA 186–C, upon submission of a juvenile petition, but prior to the child's initial appearance, the legally liable school district shall provide assurance that prior to its filing:

(a) It was determined whether or not the child is a child with a disability according to RSA 186–C:2, I.

(b) If the school district has determined that the child is a child with a disability, a manifestation review pursuant to 20 U.S.C. section 1415(k)(1)(E) occurred.

(c) If the child's conduct was determined to be a manifestation of the child's disability, the school district followed the process set forth in 20 U.S.C. section 1415(k)(1)(F).

(d) It has reviewed for appropriateness the minor's current individualized education program (IEP), behavior intervention plan, and placement, and has made modifications where appropriate.

Source. 1979, 361:2. 1999, 305:4. 2003, 253:2. 2006, 291:4. 2009, 302:1. 2013, 198:2, eff. Jan. 1, 2014.

169–B:6–a Notice of Petition to Department of Health and Human Services. Upon the filing of any petition under RSA 169–B:6, the court shall serve the department of health and human services with a copy of the petition and the department shall be a party to and shall receive notice of all proceedings under this chapter from the court and all other parties.

Source. 1995, 308:58; 310:175, 181. 2004, 31:1, eff. Jan. 1, 2005.

169–B:7 Issuance of Summons and Notice.

I. After a legally sufficient petition has been filed, the court shall issue a summons to be served personally or, if personal service is not possible, at the usual place of abode of the person having custody or control of the minor or with whom the minor may be, requiring that person to appear with the minor at a specified place and time, which time shall not be less than 24 hours nor more than 7 days after service. If the person so notified is not the parent or guardian of the minor, then a parent or guardian shall be notified, provided they and their residence are known, or if there is neither parent nor guardian, or their residence is not known, then some relative, if there be one whose residence is known.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall contain a notice of the right to representation by counsel and the available procedures for obtaining counsel. The summons shall also state as follows: "Pursuant to RSA 169–B:40, parents and other individuals chargeable by law for the minor's support and necessities may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186–C regarding children with disabilities grants minors and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

Source. 1979, 361:2. 1983, 458:7. 1990, 140:2, X. 1995, 302:7. 2006, 291:5. 2008, 274:31, eff. July 1, 2008.

169–B:8 Failure to Appear; Felony Against Person or Property; Felony Drug Offense; Warrant.

I. Any person summoned who, without reasonable cause, fails to appear with the minor, may be proceeded against as in case of contempt of court.

II. If a summons cannot be served or the party served fails to obey the same, and in any case where it appears to the court that such summons will be ineffectual, a warrant may be issued for the minor's appearance or for the appearance of anyone having custody or control of the minor or for both.

III. Notwithstanding the provisions of paragraphs I and II, a warrant may be issued for the detention of a minor whose offense constitutes a felony against the person or property, or a felony under RSA 318–B.

Source. 1979, 361:2. 1995, 302:8, eff. Jan. 1, 1996.

169–B:9 Arrest or Taking Minor Into Custody.

I. Nothing in this chapter shall be construed as forbidding any juvenile probation and parole officer from immediately arresting or taking into custody any minor who is found violating any law, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such as to endanger such minor's person or welfare, unless immediate action is taken.

II. Nothing in this chapter shall be construed as forbidding any police officer from immediately taking into custody any minor who is found violating any law, or whose arrest would be permissible under RSA 594:10, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such as to endanger such minor's person or welfare, unless immediate action is taken.

Source. 1979, 361:2. 1987, 402:12. 1995, 302:9. 2000, 294:9, eff. July 1, 2000.

169–B:9–a Use of Alternatives to Secure Detention. An officer may release a minor to an alternative to secure detention, with court approval, pending the arrival of the parent, guardian, or custodian. The alternative program may release the minor to the parent, guardian, or custodian upon their arrival. Any court or police or juvenile probation and parole officer, acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of release to an alternative to secure detention.

Source. 1988, 197:2. 2000, 294:9, eff. July 1, 2000.

169–B:9–b Recognition of Foreign Probation Officers. If a minor has been placed on probation or protective supervision by a juvenile court of another state and the minor is in this state with or without the permission of such court, the probation officer of that court or other person designated by that court to supervise or take custody of the minor has all the powers and privileges in this state with respect to the minor as have like officers or persons of this state, including the right of visitation, counseling, control,

direction, taking into custody, and returning the minor to that state.

Source. 1990, 201:3, eff. June 26, 1990.

169–B:10 Juvenile Diversion.

I. An officer authorized under RSA 169–B:9 to take a minor into custody may dispose of the case without court referral by releasing the minor to a parent, guardian, or custodian. The officer shall make a written report to the officer's department identifying the minor, specifying the grounds for taking the minor into custody and indicating the basis for the disposition.

I–a. Prior to filing a delinquency petition with the court, the arresting agency or prosecutor shall screen the petition for participation in diversion. The petitioner shall identify why diversion was not an appropriate disposition prior to seeking court involvement.

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

II–a. The administrative judge of the judicial branch family division shall have the authority to approve diversion referral procedures for use in all juvenile matters throughout the state.

III. Referral to diversion or other community resource after filing is appropriate if:

(a) The facts bring the case within the jurisdiction of the court;

(b) Referral of the case is in the best interest of the public and the minor; and

(c) The minor and the parents, guardian, or other custodian give knowing, informed, and voluntary consent.

IV. Referral after filing shall stay the proceedings for a period not to exceed 6 months from the date of referral, unless extended by the court for an additional period not to exceed 6 months and does not authorize the detention of the minor.

V. During the period of referral, the court may require further conditions of conduct on the part of the minor and the minor's parents.

VI. No person who performs public service as part of his or her participation in a court approved diversion program under this chapter shall receive any benefits that such employer gives to its employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is found to be negligent.

Source. 1979, 361:2. 1995, 302:10. 1999, 305:5. 2000, 294:9. 2008, 274:2. 2010, 175:3. 2011, 151:1, eff. Jan. 1, 2012.

169–B:11 Release Prior to Arraignment. An officer taking a minor into custody pursuant to RSA 169–B:9 may release the minor to a parent, guardian or custodian pending arraignment; however, if the minor is not released within 4 hours of being taken into custody, the court shall be notified, and thereupon, placement, until arraignment, shall be determined by the court.

I. A minor taken into custody pursuant to RSA 169–B:9 shall be released to a parent, guardian, or custodian pending arraignment; or

II. If such a person is not available, the court may release the minor under the supervision of a relative or friend; or may release the minor to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a crisis home, a shelter care facility, a group home with expenses charged according to RSA 169–B:40, or an alcohol crisis center certified to accept juveniles; or

III. If the court determines that continued detention is required, based upon the criteria specified under RSA 169–B:14, I(e)(2), it may order continued detention at an alternative to secure detention, or any facility certified for the detention of minors by the commissioner of the department of health and human services. A minor shall not be held in any facility where adults charged, convicted or committed for criminal offenses are simultaneously detained except that a juvenile alleged or found to be delinquent may be held for up to 6 hours in a metropolitan area or up to 24 hours in a non-metropolitan area for processing and while awaiting release or transfer to a juvenile facility, provided that the detention is in a room or

cell separate and removed from all contact, both sight and sound, with all adult inmates.

Source. 1979, 361:2. 1982, 39:12. 1985, 379:1. 1988, 197:3. 1989, 285:3. 1992, 18:1. 1994, 212:2. 1995, 310:171. 2001, 117:4. 2007, 325:8, eff. July 16, 2007.

169–B:11–a Minor's Welfare; Findings Regarding Removal.

I. The court shall, in its first court ruling that sanctions, even temporarily, the removal of a minor from the home, determine whether continuation in the home is contrary to the minor's welfare.

II. The court shall, within 60 days of a minor's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the minor's removal. In determining whether reasonable efforts were made to prevent the minor's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

Source. 2007, 236:2, eff. Jan. 1, 2008.

169–B:12 Appointment of Counsel; Waiver of Counsel.

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

I–a. When an attorney is appointed as counsel for a child, representation shall include counsel and investigative, expert, and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child.

II. The court may accept a waiver of counsel in a delinquency proceeding only when:

(a) The minor is represented by a non-hostile parent, guardian, or custodian;

(b) Both the minor and parent, guardian, or custodian agree to waive counsel;

(c) In the court's opinion the waiver is made competently, voluntarily, and with full understanding of the consequences;

(d) The petition does not allege a violation of RSA 631:1, RSA 631:2, RSA 635:1, or any violation of RSA 630, RSA 632–A, RSA 633, or RSA 636; and

(e) The prosecution has informed the court that it does not intend to seek certification pursuant to RSA 169–B:24, RSA 169–B:25, or any other provision of law permitting adult prosecution of the minor.

II–a. If the minor and the parent, guardian, or custodian have not consulted with counsel about the possible consequences of the proposed waiver of the right to counsel, the court may only accept a waiver pursuant to paragraph II after making case-specific written findings with regard to each of the required conditions for waiver.

II–b. The court may appoint counsel for an indigent minor for the purpose of consultation about the decision to request or waive counsel, and shall advise the minor and the parent, guardian, or custodian that they may request such appointment and that the appointment of counsel for such purpose will not be subject to a repayment requirement. Counsel appointed for such purposes shall be compensated by the judicial council pursuant to RSA 604–A, but the cost of such counsel shall not be subject to the repayment provisions of RSA 604–A:9.

II–c. A verbatim record shall be made of all proceedings conducted pursuant to this section and of all subsequent proceedings in any case in which a court has accepted a waiver of counsel under this section.

III. Whenever a court appoints counsel pursuant to the provisions of paragraph I, the court shall conduct an appropriate inquiry as to whether any person who pursuant to RSA 546–A:2 is liable for the support of the minor for whom counsel was appointed is financially able to pay for such minor's counsel. If the court determines that the person liable for support is financially able to pay for said counsel, in whole or in part, the court shall enter an appropriate order requiring said person to reimburse the state for the representation provided. For the purposes of this paragraph, the inquiry conducted by the court shall include notice and hearing to the person liable for support.

IV. A juvenile shall not be subject to detention unless:

(a) The juvenile is represented by counsel at the hearing where detention is ordered; or

(b) Detention is ordered on an emergency basis and a detention hearing is scheduled within 24 hours of the emergency detention, Saturdays, Sundays, and holidays excepted, at which hearing the juvenile shall be represented by counsel.

V. No prosecutor, law enforcement officer, juvenile probation and parole officer, juvenile parole board member, or any other state or municipal employee shall advise a juvenile to waive his or her right to counsel under this chapter or under chapter 621, nor shall any such person advise a parent or guardian of a juvenile that the juvenile should waive his or her right to counsel, nor shall any such person provide information to a juvenile or the parent or guardian of a juvenile under circumstances which a reasonable person would know would encourage a waiver of the right to counsel.

Source. 1979, 361:2. 1981, 568:20, IV, V. 1995, 302:11. 1997, 292:1. 2001, 162:2, 3. 2008, 274:3, eff. July 1, 2008. 2014, 215:20, eff. July 1, 2015. 2015, 260:1, eff. July 1, 2015 at 12:01 a.m. 2017, 180:2, eff. Aug. 28, 2017.

169–B:13 Arraignment; Court Referrals; Uncompensated Public Service by Minors.

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

(a) Advise the minor in writing and orally of any formal charges;

(b) Inform the minor of the applicable constitutional rights;

(c) Appoint counsel pursuant to RSA 169–B:12;

(d) Establish any conditions for release; and

(e) Set a hearing date.

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

(A) Determined to have a cognitive disability; or

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

(C) Identified as eligible for special education services.

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

I–a. No plea shall be taken until the minor has the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169–B:12.

II. The court may, at any time after arraignment, dispose of the petition by referring the minor or the minor and family for participation in a court approved diversion program or other intervention program.

III. A referral under this section may include an order for the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this paragraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

Source. 1979, 361:2. 1999, 305:6–8. 2008, 274:4. 2010, 175:4, eff. Jan. 1, 2011.

169–B:14 Release or Detention Pending Adjudicatory Hearing.

I. Following arraignment a minor alleged to be delinquent may be ordered by the court to be:

(a) Retained in the custody of a parent, guardian, or custodian; or

(b) Released in the supervision and care of a relative or friend; or

(c) Released to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility with expenses charged according to RSA 169–B:40; or

(d) [Repealed.]

(e) Detained at a facility certified by the commissioner of the department of health and human services for detention of minors pursuant to the following:

(1) No minor charged with delinquency shall be securely detained following arraignment unless the prosecution establishes probable cause to believe that the minor committed the alleged delinquent acts and unless the prosecution demonstrates by clear and convincing evidence the need for secure detention, based upon the criteria for secure detention specified in subparagraph (e)(2);

(2) A minor shall not be securely detained unless secure detention is necessary:

(A) To insure the presence of the juvenile at a subsequent hearing; or

(B) To provide care and supervision for a minor who is in danger of self-inflicted harm when no parent, guardian, custodian, or other suitable person or program is available to supervise and provide such care; or

(C) To protect the personal safety or property of others from the probability of serious bodily harm or other harm.

[Paragraph I(e)(3) effective May 1, 2018.]

(3) Secure detention shall not be ordered for delinquency charges which may not form the basis for commitment under RSA 169–B:19, I(j).

II. The adjudicatory hearing shall be held within 21 days of arraignment for minors detained pending such hearing and within 30 days of arraignment for minors not detained. An extension of these time limits may be permitted, upon a showing of good cause, for an additional period not to exceed 14 calendar days.

II–a. After arraignment, the court shall determine if the legally liable school district shall be joined pursuant to RSA 169–B:22.

III. All orders issued pursuant to this section shall set forth findings in writing and may be subject to such conditions as the court may determine.

Source. 1979, 361:2. 1982, 39:13. 1985, 379:2. 1988, 197:4. 1994, 212:2. 1995, 302:12; 310:171. 1997, 19:1. 2001, 117:5. 2007, 325:9, 15, I. 2008, 274:5, eff. July 1, 2008. 2017, 156:158, eff. May 1, 2018.

169–B:15 No Detention at Jail. Following arraignment no minor shall be detained in any facility where adults charged, convicted or committed for criminal offenses are simultaneously detained.

Source. 1979, 361:2. 1992, 18:2, eff. Jan. 1, 1993.

169–B:15–a Inspection of Facilities; Lock-up Log. Each facility used by law enforcement, county sheriffs, or state police to securely detain minors shall establish a lock-up log for all minors securely detained. The log shall contain the identification number, the charge, the date and time locked in secure detention, the date and time released from secure detention, to whom released, and reason for secure detention. The log shall be kept confidential both by the agency or facility which maintains it and by the department of health and human services, which shall receive copies of the log, January 1 and July 1 of each year, beginning January 1, 1989. To ensure that the requirements of this chapter and of 42 U.S.C. section 5633 are met, any secure or nonsecure facility which detains minors shall provide, upon request and in a timely manner, access to the facility for inspection purposes to the department of health and human services jail compliance monitor, or the monitor's designee. If the facility is required under this section to maintain a log, access to the log shall also be provided.

Source. 1988, 197:5, 15. 1992, 18:3. 1994, 212:2. 1995, 310:181. 2008, 175:1, eff. Aug. 10, 2008.

169–B:15–b Notification of Right to Request Records. The court shall notify parties of their right to request in advance of any hearing under this chapter that a record of such hearing shall be preserved and made available to the parties.

Source. 1996, 248:1, eff. Jan. 2, 1997.

169–B:16 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court, separate from the trial of criminal cases.

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

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

(a) Order the department of health and human services or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school records and the mental, physical and social history of the minor, and if ordered by the court, a physical and mental examination of the minor conducted pursuant to RSA 169–B:23, RSA 169–B:20 and RSA 169–B:21.

(b) Determine whether the legally liable school district shall be joined pursuant to RSA 169–B:22, and if joined, review the school district's recommendations. The court shall not issue a disposition order until it reviews the investigative report re-

quired under this chapter or the school district recommendations required under RSA 169–B:22.

IV. The court shall share the report with the parties. The report shall be used only after a finding of delinquency and only as a guide for the court in determining an appropriate disposition for the minor.

V. The court shall hold a hearing on final disposition within 21 days of the adjudicatory hearing if the minor is detained and within 30 days of the adjudicatory hearing if the minor is released.

VI. Whenever a court contemplates a placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. In cases where immediate court action is required to protect the health or safety of the child or of the community, the court may act without providing for an appearance by the school district, but shall make reasonable efforts to solicit and consider input from the school district before making a placement decision.

Source. 1979, 361:2. 1987, 402:13. 1994, 212:2. 1995, 302:13; 310:181. 2004, 41:1. 2007, 295:1. 2008, 274:6, eff. July 1, 2008.

169–B:16–a Limits on Extended Detention Following Adjudicatory Hearing. Following the initial dispositional order issued pursuant to RSA 169–B:19 regarding a charge or charges arising out of a single incident, a child shall not be securely detained for a period or periods totaling longer than 21 days while awaiting placement or a hearing regarding a change of disposition, or for any other purpose. The court may permit extended detention beyond this limit if it finds by clear and convincing evidence that extended detention is necessary for the safety of the child or the public and the child consents with the assistance of counsel. In any case involving a child who is detained, the court shall ensure that the child is continuously represented by counsel during any period of detention. In cases where extended detention is permitted pursuant to this section, the court shall hold review hearings with the child and counsel present on a weekly basis to determine whether detention continues to be justified.

Source. 2017, 156:160, eff. Jan. 1, 2018.

169–B:17 Burden of Proof. The petitioner has the burden to prove the allegations in support of the petition beyond a reasonable doubt.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:18 Custody Pending Final Disposition. Following the adjudicatory hearing, release pending the dispositional hearing shall be determined in accordance with RSA 169–B:14.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:19 Dispositional Hearing.

I. The department of health and human services shall provide the court with costs of the recommended services, placements and programs. If the court finds that a minor is delinquent, the court may order the least restrictive of the following dispositions, which the court finds is the most appropriate:

(a) Return the minor to a parent, custodian or guardian.

(b) Fine the minor up to $250, require restitution or both. Restitution ordered by the court may be collected by the department or by the court or by an agency designated by the court to collect it. In any case where a parent is ordered to pay all or any portion of the fine or restitution pursuant to RSA 169–B:2–a, the parents shall have the right to a hearing before the court to contest the amount of restitution or their liability.

(c) Order the minor or the family or both to undergo physical treatment or treatment by a mental health center or any other psychiatrist, psychologist, psychiatric social worker or family therapist as determined by the court, or to attend mediation sessions, parenting programs, or any other such program or programs the court determines to carry out the purposes of this chapter, with expenses charged according to RSA 169–B:40. Utilization of community resource programs shall be encouraged.

(d) Place the minor on conditional release for a term no longer than 5 years.

(e) Release the minor in the care and supervision of a relative or friend; or to home detention for a period not to exceed 6 months. Such home detention shall be subject to the written consent of the parents to the terms and conditions established by the court. The court shall include in its order for home detention any restrictions on the hours of detention.

(f) Release the minor to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility, with expenses charged according to RSA 169–B:40.

(g) [Repealed.]

(h) Order the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official author-

ized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this paragraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

(i) Any combination of the above.

(j) Commit the minor to the custody of the department of health and human services for the remainder of minority. Commitment under this subparagraph may only be made following written findings of fact by the court, supported by clear and convincing evidence, that commitment is necessary to protect the safety of the minor or of the community, and may only be made if the minor has not waived the right to counsel at any stage of the proceedings. Commitment may not be based on a finding of contempt of court if the minor has waived counsel in the contempt proceeding or at any stage of the proceedings from which the contempt arises. Commitment may include, but is not limited to, placement by the department of health and human services at a facility certified for the commitment of minors pursuant to RSA 169–B:19, VI, administrative release to parole pursuant to RSA 621:19, or administrative release consistent with the cap on youth development center population under RSA 621:10, provided that the appropriate juvenile probation and parole officer is notified. Commitment under this subparagraph shall not be ordered as a disposition for a violation of RSA 262 or 637, possession of a controlled drug without intent to sell under RSA 318–B, or violations of RSA 634, 635, 641, or 644, which would be a misdemeanor if committed by an adult. However, commitment may be ordered under this subparagraph for any offense which would be a felony or class A misdemeanor if committed by an adult if the minor has previously been adjudicated under this chapter for at least 3 offenses which would be felonies or class A misdemeanors if committed by an adult. A court shall only commit a minor based on previous adjudications if it finds by clear and convincing evidence that each of the prior offenses relied upon was not part of a common scheme or factual transaction with any of the other offenses relied upon, that the adjudications of all of the prior offenses occurred before the date of the offense for which the minor is before the court, and that the minor was represented by counsel at each stage of the prior proceedings following arraignment.

(k) Order the minor to register as a sexual offender or offender against children pursuant to RSA 651–B until the juvenile reaches the age of 18 if the court finds that the minor presents a risk to public safety.

II. If a minor is placed out of state, the provisions of RSA 169–A and 170–A shall be followed.

II–a. When a minor is in an out-of-home placement, the court shall adopt a concurrent plan other than reunification for the minor. The other options for a permanency plan include termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

II–b. No minor may be placed in inpatient treatment at an alcohol or drug treatment facility unless a finding is made that the child requires substance use disorder services pursuant to an evaluation by any licensed health care professional making the decision based on American Society of Addiction Medicine criteria. In addition, no placement at such a facility may be made without the consent of the operator of such facility, and in the case of a serious violent offender as defined in RSA 621:19, IV, unless such consent is made in writing and transmitted to the court.

III. A minor found to be a delinquent on a petition filed after the minor's sixteenth birthday, in addition to or in place of the dispositions provided for in paragraph I, may be committed to a county correctional facility for no greater term than an adult could be committed for a like offense; provided, however, that during minority the minor shall not be confined in a county correctional facility and provided further that the term shall not extend beyond the minor's eighteenth birthday.

III–a. (a) Prior to the eighteenth birthday of a minor who had been adjudicated delinquent for committing a violent crime as defined in RSA 169–B:35–a, I(c), or who had been petitioned to court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses, the prosecutor or the department of health and human services may file a motion with the court to extend jurisdiction pursuant to RSA 169–B:4,

V. The department of youth development services may file a motion to extend jurisdiction for any minor committed to its custody pursuant to RSA 169–B:19, I(j). The department of corrections shall be served a copy of the motion and be a party to the proceeding.

(b) For purposes of assessing whether a minor meets the criteria of RSA 169–B:4, V, the department may provide representatives of the department of corrections with access to the minor's case records.

(c) If the court retains jurisdiction over the minor pursuant to RSA 169–B:4, V, the court may modify any dispositional order to transfer supervision from the department of health and human services to the department of corrections, or to transfer the place of detention from the youth development center to an adult facility.

(d) If the court orders a transfer of placement or supervisory authority, the court shall also order the transfer of all of the minor's treatment records to the agency having supervisory authority over the minor.

(e) When a dispositional order is extended beyond the minor's seventeenth birthday, the court may enforce its order with a finding of criminal contempt. Notwithstanding RSA 169–B:35, the state may utilize any relevant portion of a juvenile's records in a criminal contempt proceeding.

(f) If the court retains jurisdiction over the minor pursuant to RSA 169–B:4, V, and the court has determined that the minor is required to register as a sexual offender or offender against children pursuant to RSA 169–B:19, I(k), the minor shall continue to register pursuant to RSA 651–B; provided, the court retains jurisdiction over the case.

III–b. Notwithstanding any provision of law to the contrary, a minor over whom the court has exercised jurisdiction pursuant to RSA 169–B:4, I or retained jurisdiction pursuant to RSA 169–B:4, V(c), may be committed or continue to be committed at the youth development center pursuant to RSA 169–B:19, I(j) until the minor's eighteenth birthday.

III–c. (a) A minor who meets the criteria for commitment to an adult correctional facility pursuant to RSA 169–B:4, RSA 169–B:19, III, or RSA 169–B:19, III–a, and whose disposition includes an order of conditional release extending beyond the juvenile's age of majority, or suspended, deferred, or imposed incarceration at an adult correctional facility shall not be committed without first being afforded the right to a jury trial or waiving the right to a jury trial.

(b) Any minor sentenced after a contested adjudicatory hearing to an order of conditional release extending beyond the juvenile's age of majority or suspended, deferred, or imposed incarceration at an adult correctional facility may, after the disposition is issued, request a de novo trial before a jury. To obtain a de novo jury trial under this chapter, the juvenile shall file a written request in the clerk's office within 3 days of the dispositional order. A copy of the written request shall also be provided to the local prosecutor and the county attorney. The request shall be given priority on the court's calendar. Whenever possible, any such hearing shall be held in a district court building equipped with jury capability. It shall be conducted by a district court judge specially assigned by the administrative judge of the district court. The jury panel shall be chosen from the jury pool of the superior court serving the county in which the court is located.

(c) The court in which the petition originated shall retain jurisdiction over all matters and orders pertaining to the placement, supervision and treatment of the juvenile during the pendency of the pre-trial and trial proceedings. The request for jury trial shall not suspend any provisions of the original court's order regarding placement, supervision, evaluation, or treatment. All other orders shall be vacated pending the de novo jury trial. The judge assigned to conduct the jury trial shall have authority to preside over the jury trial, decide trial management issues, and rule on all pre-trial and post-trial adjudicatory findings. In the event the juvenile waives the right to jury trial after the case has been specially assigned, the case shall be returned to the court in which the petition originated for continued action pursuant to this chapter.

(d) In the event the jury returns a finding of not true on all charges, the dispositional order in its entirety shall be vacated. In the event the jury returns a finding of true on one or more of the charges, the trial judge shall review and may reinstate or modify only those portions of the dispositional order made by the originating court suspended under this section during the pendency of the de novo process. In all other respects, the original dispositional order shall remain in effect.

(e) The provisions of RSA 169–B:34 through 169–B:38, relating to confidentiality of proceedings and records, shall apply to all de novo trials conducted pursuant to this section.

IV. A summary of the investigative officer's report shall accompany each commitment order.

V. All dispositional orders issued pursuant to this section shall include written findings as to the basis for the disposition, and such conditions as the court may determine.

VI. A minor committed to the youth development center for the remainder of minority may be placed at any facility certified by the commissioner of the department of health and human services for the commitment of minors. The commissioner of the department of health and human services shall be responsible for notifying the court, within 5 business days, of any such placement and of any subsequent changes in placement made within 60 days of the original placement. The commissioner shall maintain certification of at least one Medicaid-eligible residential treatment facility for the transfer pursuant to this paragraph of offenders other than serious violent offenders beginning January 1, 2018, and no fewer than 2 such facilities no later than July 1, 2018. For purposes of this section, a "serious violent offender" is a minor subject to a commitment order for a serious violent offense as defined in RSA 169–B:31–c. The process for identification and certification of residential treatment facilities under this subparagraph may include consultation with the operators of existing facilities in the state about their physical and programmatic capacity and the identification of any necessary enhancements in programming or rate structure to develop the resources required by this subparagraph.

VII. If the judge orders services, placements or programs different from the recommendations of the department, the judge shall include a statement of the costs of services, placements and programs so ordered.

VIII. When a dispositional order places a minor in an out-of-home placement pursuant to RSA 169–B:19, I(e) or (f), prior to concluding the dispositional hearing the court shall set a date for a permanency hearing pursuant to RSA 169–B:31–a, I.

IX. Prior to any placement which will require educational services outside the minor's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

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

Source. 1979, 361:2. 1982, 39:14. 1985, 376:3. 1987, 402:9. 1988, 89:16. 1989, 285:4. 1990, 201:4, 5. 1992, 18:4; 284:3. 1994, 81:3; 212:2. 1995, 181:2; 302:14–16; 308:59, 61, 104, 105; 310:171, 175, 181. 1997, 198:1, 2. 1999, 219:1; 305:9, 10. 2000, 294:9. 2001, 117:1; 286:5, 19. 2002, 168:1; 170:3. 2006, 327:23, 24. 2007, 236:3, 4; 295:2; 325:10, 15, II, 16. 2008, 274:7. 2013, 249:16, eff. Sept. 22, 2013. 2014, 215:10, 21, eff. July 1, 2015. 2015, 260:6, eff. July 1, 2015 at 12:01 a.m. 2017, 156:159, eff. Jan. 1, 2018; 156:161, eff. Mar. 1, 2018; 156:170, eff. July 1, 2017.

169–B:19–a Out-of-District Placement. In the case of an out-of-district placement, the appropriate court shall notify the department of education on the date that the court order is signed, stating the initial length of time for which such placement is made. This section shall apply to the original order and all subsequent modifications of that order.

Source. 1991, 324:1, eff. Aug. 27, 1991.

169–B:19–b Presumption in Favor of In-State Placements. There shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that there is no appropriate in-state placement available.

Source. 1995, 308:62, eff. July 1, 1995.

169–B:19–c Court Order for Services, Placements, and Programs Required for Minors From Certain Providers Qualified for Third-Party Payment. The court, wherever and to the extent possible, shall order services, placements, and programs by providers certified pursuant to RSA 170–G:4, XVI-II who qualify for third-party payment under any insurance covering the minor.

Source. 1996, 286:10, eff. June 10, 1996.

169–B:20 Determination of Competence.

I. As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

(a) "Chronological immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation.

(b) "Mental illness" means any diagnosable mental impairment supported by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(c) "Developmental disability" means a disability which is attributable to an intellectual disability,

cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for persons with an intellectual disability.

(d) "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.

II. A minor is competent to proceed in a delinquency proceeding if the minor has:

(a) A rational as well as a factual understanding of the proceedings; and

(b) A sufficient present ability to consult with counsel with a reasonable degree of rational understanding.

III. The issue of a competency to proceed may be raised by the minor, by the prosecutor, or by the court at any point in the proceeding. A competency determination is necessary whenever the court has a bona fide or legitimate doubt as to a competency to proceed.

IV. If the court determines that a competency determination is necessary, it shall order that a minor be examined to evaluate the minor's competency to proceed. The court shall set the time within which the competency evaluation report shall be filed with the court, which shall be no later than 21 days of the court's order in cases in which at the time of the order the minor is detained, not later than 30 days of the court's order in cases in which at the time of the order the minor is in an out-of-home placement, and not later than 60 days of the court's order in cases in which at the time of the order the minor remains in the home. So that detention or placement outside the home is not unnecessarily extended by the determination of competency, the time within which the report shall be filed with the court shall be appropriately modified by the court in cases in which during the pendency of the competency evaluation the minor's placement changes. Following notice and an opportunity to be heard to the parties, upon a showing of good cause, the court may extend the time for filing of the evaluation report. Any such extension shall be limited to the time necessary for completion of the evaluation report and shall be set out in a written order which details the basis for the extension.

V. A competency evaluation may be conducted by an entity approved by the commissioner of health and human services, which may include an agency other than the Philbrook center, a psychiatrist, or psychologist licensed in the state of New Hampshire. The commissioner shall adopt standards establishing the process for approval as an examiner as well as the qualifications required for approval, which shall be based on generally accepted standards for forensic psychiatrists and psychologists. The expense of such evaluation shall be borne by the department of health and human services as provided in RSA 169–B:40, I(a) and shall not be subject to reimbursement under RSA 169–B:40, I(c).

VI. Pending a competency examination, the court shall suspend proceedings on the petition. The suspension shall remain in effect pending the outcome of a competency determination hearing.

VII. (a) The examiner's report shall address the juvenile's capacity and ability to:

(1) Appreciate the allegations of the petition.

(2) Appreciate the nature of the adversarial process, including:

(A) Having a factual understanding of the participants in the juvenile's proceeding, including the judge, defense counsel, prosecutor, and mental health expert; and

(B) Having a rational understanding of the role of each participant in the proceeding.

(3) Appreciate the range of possible dispositions that may be imposed in the proceedings against the minor and recognize how possible dispositions imposed in the proceedings will affect the minor;

(4) Appreciate the impact of the minor's actions on others;

(5) Disclose to counsel facts pertinent to the proceedings at issue including:

(A) Ability to articulate thoughts.

(B) Ability to articulate emotions.

(C) Ability to accurately and reliably relate to a sequence of events.

(D) Display logical and autonomous decision making.

(E) Display appropriate courtroom behavior.

(F) Testify relevantly at proceedings.

(G) Demonstrate any other capacity or ability either separately identified by the court or determined by the examiner to be relevant to the court's determination.

(b) In assessing the minor's competency, the examiner shall compare the minor being examined to juvenile norms that are broadly defined as those

skills typically possessed by the average minor defendant adjudicated in the juvenile justice system.

(c) The examiner shall determine and report if the minor suffers from mental illness, developmental disability, or chronological immaturity.

(d) If the minor suffers from mental illness, developmental disability, or chronological immaturity, the examiner shall report the severity of the impairment and its potential effect on the minor's competency to proceed.

(e) If the examiner determines that the minor suffers from chronological immaturity, the examiner shall report a comparison of the minor to the average juvenile defendant.

(f) If the examiner determines that the minor suffers from a mental illness, the examiner shall provide the following information:

(1) The prognosis of the mental illness; and

(2) Whether the minor is taking any medication and, if so, what medication.

VIII. Following receipt of the competency examination report from the examiner, the court shall provide copies of the report to the parties and hold a competency determination hearing. The court may consider the report of the examiner, together with all other evidence relevant to the issue of competency, including a subsequent evaluation requested by defense under RSA 604–A, in its determination whether the minor is competent to proceed. If the court finds that the minor is competent to proceed, the court shall promptly resume the proceedings. If the court is not satisfied that the minor is competent to proceed, the court shall dismiss the petition.

IX. The prosecution shall have the burden of proving competence by a preponderance of the evidence.

X. Statements made by the minor in the course of a competency examination shall not be admitted as evidence in the adjudicatory or dispositional stage of the proceedings. The evaluation facility, agency, or individual shall keep records; but no reports or records of information shall be made available, other than to the court and parties, except upon the written consent of the minor if an adult at the time of consent or of the minor's parent or guardian.

XI. (a) Notwithstanding a finding by the court that the minor is competent to proceed in a juvenile proceeding, if the minor is subsequently transferred to the superior court, the issue of the minor's competency may be revisited.

(b) If a juvenile is found not competent to stand trial, the judge may refer the juvenile to the department of health and human services to assess eligibility for services through the department.

Source. 1979, 361:2. 1985, 195:4. 1990, 3:65. 1995, 302:17; 310:172. 1998, 234:5, eff. Oct. 31, 1998. 2014, 215:19, eff. July 1, 2015.

169–B:21 Mental Health and Substance Abuse Evaluation.

I. Any court, finding that a minor has committed the alleged offense may, before making a final disposition, order the minor, minor's parents, guardian, or person with custody or control to submit to a mental health or substance abuse evaluation to be completed within 60 days. Any substance abuse evaluation of the parent guardian, or person having custody of the child shall be conducted by a provider contracted with the bureau of substance abuse services, or a provider paid by the parent, guardian, or person having custody of the child. The cost of such evaluation shall be paid by private insurance, if available, or otherwise by the person undergoing the evaluation, to whom the evaluation shall be provided free or at reduced cost if the person is of limited means. A written report of the evaluation shall be given to the court before the dispositional hearing. If the parents, guardian, minor, or person having custody or control objects to the mental health or substance abuse evaluation, they shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of the evaluation. The court shall hold a hearing to consider the objection prior to ordering such evaluation. Upon good cause shown, the court may excuse the parents, guardian, minor, or person having custody or control from the provisions of this section.

II. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluating facility, agency, or individual shall keep records, but no reports or records of information contained therein shall be made available other than to the court and parties, except upon the written consent of the person examined or treated and except as provided in RSA 169–B:35. The expense of such evaluation shall be borne as provided in RSA 169–B:40.

III. In the case of a minor found guilty of possession of marijuana or hashish, the court, finding that a minor has committed the alleged offense, shall refer the minor for a substance abuse assessment to be completed prior to the dispositional hearing. The

court may waive the requirement of an assessment if it has access to a similar assessment completed in the previous year or, based on substantial evidence, the court does not find there is a need for an assessment. The assessment shall be completed by a licensed drug and alcohol counselor. In the event the parent, guardian, or person having custody of the child is of limited means, the evaluation shall be provided for free or at reduced cost. The results of the assessment shall be submitted to the court and, if indicated, the court shall order that the minor obtain appropriate treatment. The minor shall furnish the court with evidence of participation and completion of the substance abuse assessment.

Source. 1979, 361:2 1999, 305:11, eff. Jan. 1, 2000. 2017, 248:9, eff. Sept. 16, 2017.

169–B:22 Disposition of a Minor With a Disability.

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

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

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

IV. In an administrative due process hearing conducted by the department of education pursuant to RSA 186–C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that:

(a) At least 20 days prior to providing any records to the hearing officer, the school district files notice of its intention to do so with the court and all parties to the proceedings, and no party objects to the release of records;

(b) The notice filed by a school district under this section shall include, on a separate sheet of paper, the following statement in bold typeface: "Persons subject to juvenile proceedings have important rights to the confidentiality of juvenile court proceedings. This notice requests the disclosure of some or all of that information. If you object to the disclosure of information, you must file a written objection with the court no later than 10 days after the filing of the school district's notice. If you fail to object in writing, the court may allow private information to be revealed to the New Hampshire Department of Education hearing officer."; and

(c) Any objection by a party shall be filed with the court no later than 10 days after the filing of the school district's notice with the court, unless such time is extended by the court for good cause.

V. The court may, on its own initiative and no later than 13 days after the filing of the school district's notice to the court, issue an order directing the school district to show cause as to why the information should be disclosed to the hearing officer. Upon receipt of an objection or issuance of a show cause order, the court shall schedule an expedited hearing on the matter to determine if the requested records may be released. The court may rule without a hearing if the school district and a parent or legal guardian or the juvenile, if he or she has reached the age of majority, agree in writing to waive a hearing. Upon the filing of an objection or show cause order, the school district may file a reply explaining why the school district believes that the information should be disclosed to the hearing officer. In determining whether to authorize the disclosure of

the information requested by the school district, the court shall balance the importance of disclosure of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the court, the child's parent or legal guardian, or the juvenile if he or she has reached the age of majority, except that a court conducting an appellate review of an administrative due process hearing shall have access to the same information released to a hearing officer pursuant to this paragraph.

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

Source. 1979, 361:2. 1983, 458:1. 1986, 223:12. 1987, 402:21. 1990, 140:2, X. 2008, 274:8, eff. July 1, 2008.

169–B:23 Orders for Physical Examination and Treatment. If it is alleged in any petition, or it appears at any time during the progress of the case, that a delinquent is in need of physical treatment, the failure to receive which is a contributing cause of delinquency, due notice of that fact shall be given as provided in RSA 169–B:7. If the court, upon hearing, finds that such treatment is reasonably required, it shall be ordered and the expense thereof shall be borne as provided in RSA 169–B:40.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:24 Transfer to Superior Court.

I. All cases before the court in which the offense complained of constitutes a felony or would amount to a felony in the case of an adult may be transferred to the superior court prior to hearing under RSA 169–B:16 as provided in this section. The court shall conduct a hearing on the question of transfer and shall consider, but not be limited to, the following criteria in determining whether a case should be transferred:

(a) The seriousness of the alleged offense to the community and whether the protection of the community requires transfer.

(b) The aggressive, violent, premeditated, or willful nature of the alleged offense.

(c) Whether the alleged offense was committed against persons or property.

(d) The prospective merit of the complaint.

(e) The desirability of trial and disposition of the entire offense in one court if the minor's associates in the alleged offense were adults who will be charged with a crime.

(f) The sophistication and maturity of the minor.

(g) The minor's prior record and prior contacts with law enforcement agencies.

(h) The prospects of adequate protection of the public, and the likelihood of reasonable rehabilitation of the minor through the juvenile court system.

II. The minor shall be entitled to the assistance of counsel. Both the prosecutor and counsel for the minor shall have access to the court records, probation reports, or other agency reports. If the court orders transfer to superior court, it shall provide a written statement of findings and reasons for such transfer to the minor. When persons so certified are accepted by the superior court, the superior court may dispose of all criminal charges arising out of the incident which led to the transfer petition according to the relevant laws of this state without any limitations as to sentence or orders required by this chapter. All original papers in transferred cases shall remain in the court from which transferred and certified copies of the papers shall be filed with and shall constitute the records of the court to which transfer is made. Pending disposition by the superior court, a juvenile who is transferred and accepted by the superior court may be placed under the supervision of the department of corrections or required to recognize with sufficient sureties, or in default of such sureties, be detained at a county correctional facility or the youth development center to await disposition of the case in the superior court.

III. Upon the filing of a petition for transfer to the superior court, the court shall conduct a scheduling hearing and establish a scheduling order for all future hearings necessary to the transfer petition, notwithstanding the provisions of RSA 169–B:14, II.

IV. When the felony offense charged is first degree murder, second degree murder, attempted murder, manslaughter, first degree assault, second degree assault (except when the allegation is a violation of RSA 631:2, I(d)), aggravated felonious sexual assault, kidnapping, criminal restraint, robbery punishable as a class A felony, a violation of RSA 318–B:26, I(a) or (b), or negligent homicide under RSA 630:3, II, or when the minor is charged with any felony and, prior to the filing of the felony petition, the minor has been petitioned to the court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses, and the minor commits the act after the

minor's fifteenth birthday, there shall be a presumption that the factors listed in RSA 169–B:24, I support transfer to the superior court.

V. [Repealed.]

Source. 1979, 361:2. 1987, 402:12. 1988, 89:17. 1995, 302:18; 308:106. 1998, 381:2. 2003, 265:1. 2004, 158:3, eff. May 24, 2004. 2016, 303:1, eff. July 1, 2016.

169–B:25 Petition by County Attorney or Attorney General. If facts are presented to the county attorney or attorney general establishing that a person under the age of 18 has been guilty of conduct which constitutes a felony or would amount to a felony in the case of an adult and if such person is not within the jurisdiction of this state, the county attorney or attorney general may file a petition with the judge of the municipal or district court which would otherwise have jurisdiction under the provisions of this chapter. The petition shall set forth the nature of the offense with which the person is charged and shall specify the person's whereabouts if known. On receipt of such petition, the court may summarily authorize the county attorney or attorney general to proceed against such person under regular criminal procedures, and without regard to the provisions of this chapter. Pending determination by the superior court as provided in this section and pending final disposition of the matter, such persons shall be bailable with sufficient sureties as in the case of adults and, in default thereof, may be committed to the custody of the juvenile probation and parole officer or detained at a county correctional facility unless detention elsewhere is ordered by the superior court. The superior court shall determine, after hearing, whether such person shall be treated as a juvenile under the provisions of this section or whether the case shall be disposed of according to regular criminal procedures.

Source. 1979, 361:2. 1987, 402:12. 1988, 89:18. 1995, 302:19; 308:107. 2000, 294:9, eff. July 1, 2000. 2014, 215:11, eff. July 1, 2015.

169–B:26 Petition by Minor. At any time prior to hearing pursuant to RSA 169–B:16, a minor who is charged with an act of delinquency committed after the minor's seventeenth birthday may petition the court to be tried as an adult and to have such case dealt with in the same manner as any other criminal prosecution.

Source. 1979, 361:2. 1995, 302:19; 308:107, eff. Jan. 1, 1996. 2014, 215:12, eff. July 1, 2015.

169–B:27 Treatment of Juvenile as Adult. Any minor who has been tried and convicted as an adult shall henceforth be treated as an adult for all purposes in connection with any criminal offense with which said minor may be charged.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:28 Disqualification of Judge. A judge who conducts a hearing pursuant to RSA 169–B:24, RSA 169–B:25, or RSA 169–B:26 shall not participate in any subsequent proceedings relating to the offense or conduct alleged in the delinquency petition if the minor or counsel for the minor objects to such participation.

Source. 1979, 361:2. 1995, 302:20, eff. Jan. 1, 1996.

169–B:29 Appeals. An appeal, under this chapter, may be taken to the supreme court by the minor within 30 days of the final dispositional order; but an appeal shall not suspend the order or decision of the court unless the court so orders.

Source. 1979, 361:2. 1995, 308:108, eff. Jan. 1, 1996.

169–B:30 Committal of Children Under Eleven. Notwithstanding any other provision of law, minors under the age of 11 years shall not be committed to the youth development center unless and until the court has referred the matter to and received the recommendation of an appropriate public or private agency or of a juvenile probation and parole officer that there is no other public or private home or institution suitable for such commitment.

Source. 1979, 361:2. 1987, 402:12. 2000, 294:9, eff. July 1, 2000.

169–B:31 Case Closure and Review of Disposition. Upon making a finding that the purposes of this chapter have been met with regard to the minor named in the petition, or for such other reason the court may deem appropriate and consistent with the purposes of this chapter, the court may order a case closed. Any case remaining open for 12 months after the date of the disposition shall be reviewed by the court annually and closed, unless the court finds by a preponderance of the evidence that the continued provision of services and court involvement are necessary and shall be fruitful to rehabilitate the minor or protect the public interest. All such findings shall be in writing and shall include the basis upon which those findings were made. Upon request by the child, the court shall also review any case in which the child remains at the youth development center more than 6 months after the order of commitment without having been released on parole or having been returned to the youth development center following revocation of parole. Successive requests for review shall be granted upon request by the child but the court may deny such requests without a hearing if a review was held less than 90 days prior to receipt of a request for review. In each instance that the court reviews a case in which the child remains at the youth development center at the time of review, the

child shall be entitled to the assistance of counsel, which may not be waived except following consultation between the child and a parent or counsel. Consultation between a child and parent is not sufficient to support waiver under this section if the parent was a victim or complainant in the underlying proceeding or has been a witness or provided information in support of the basis for revocation in a parole revocation proceeding involving the child. Children known to the department of health and human services or the court to have an emotional disorder, intellectual disability, or any other condition which may be expected to interfere with a child's ability to understand the proceedings, make decisions, or otherwise handle the proceedings without the assistance of counsel may not waive the right to counsel guaranteed by this section.

Source. 1979, 361:2. 1999, 305:12. 2013, 249:22, eff. Sept. 22, 2013. 2014, 215:23, eff. July 1, 2015.

169–B:31–a Permanency Hearings.

I. For a minor who enters an out-of-home placement prior to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 14 months of the minor's entry into out-of-home placement or within 12 months of the court's adjudicatory finding, whichever is earlier. For a minor who enters an out-of-home placement subsequent to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 12 months of the minor's entry into out-of-home placement. For a minor who is in out-of-home placement following the initial permanency hearing, the court shall hold and complete a subsequent permanency hearing within 12 months of the initial permanency hearing and every 12 months thereafter as long as the minor is in an out-of-home placement.

II. At a permanency hearing the court shall consider whether the parent or parents and the minor have met the responsibilities pursuant to the dispositional orders issued by the court. If compliance with the dispositional orders pursuant to RSA 169–B:19 is not met, the court may adopt a permanency plan other than reunification for the minor. Other options for a permanency plan include:

(a) Termination of parental rights or parental surrender when an adoption is contemplated;

(b) Guardianship with a fit and willing relative or another appropriate party; or

(c) Another planned permanent living arrangement.

III. At a permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

Source. 2007, 236:5. 2008, 213:3, eff. Aug. 15, 2008.

169–B:31–b Data Collection; Reporting Requirement.

I. The department shall establish a system to collect data related to:

(a) Charges which led to involvement with the juvenile justice system.

(b) The racial and ethnic identity of the child.

(c) The length of time a child receives services under this chapter, beginning at the time of arraignment.

(d) The identity of paid services or programs to whom the department has referred a child or family.

(e) Any other information, including outcome data, that may assist the department and the court in evaluating the availability and effectiveness of services for children who receive assistance under this chapter.

(f) The type of services ordered by the court after adjudication and disposition.

II. The department shall, upon request, make available to members of the public, compilations of the data which do not contain identifying information.

III. Beginning on or before December 30, 2014, the department shall provide quarterly reports regarding cases handled pursuant to this chapter to the chair of the house children and family law committee, the chair of the senate health, education and human services committee, or to the chairs of their successor committees, as well as the chair of the joint fiscal committee. The reports shall include:

(a) Total census at Sununu Youth Services Center (SYSC) at the beginning of each quarterly reported period reported by:

(1) Sex.

(2) County of residence.

(3) Status (i.e. pre-trial, confinement).

(4) Criminal charge.

(5) Re-entry into the juvenile justice system.

(b) The number of 6 month parole hearings and the outcomes during the previous quarter and year to date.

Source. 2014, 215:24, eff. July 1, 2015.

169–B:31–c Dispositions and Case Closure in Certain Cases.

I. Notwithstanding any other provision of this chapter, the court shall close all cases other than those involving serious violent offenses no later than 2 years after the date of adjudication. This section shall not apply if, with the assistance of counsel, the minor consents to continued jurisdiction.

II. In this section, "serious violent offenses" mean first degree murder, second degree murder, attempted murder, manslaughter, negligent homicide under RSA 630:3, II, first degree assault, second degree assault, except when the allegation is a violation of RSA 631:2, I(d), felonious sexual assault, aggravated felonious sexual assault, kidnapping, criminal restraint, robbery punishable as a class A felony, burglary while armed or involving the infliction of bodily harm under RSA 635:1, II, or arson punishable as a felony.

Source. 2017, 156:162, eff. June 28, 2017.

169–B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title XIII, a law relating to fireworks under RSA 160–B or RSA 160–C, any town or municipal ordinance which provides for a penalty not exceeding $100 plus the penalty assessment, and shall not be construed as applying to any minor charged with the violation of any law relating to the possession, sale, or distribution of tobacco products to or by a person under 18 years of age. However, if incarceration takes place at any stage in proceedings on such violations, incarceration shall be only in a juvenile facility certified by the commissioner of the department of health and human services.

Source. 1979, 361:2. 1981, 563:2. 1992, 18:5; 44:7. 1994, 212:2. 1995, 308:64; 310:171. 1999, 348:15, eff. Jan. 21, 2000.

169–B:33 Religious Preference. The court and officials, in placing minors, shall, as far as practicable, place them in the care and custody of some individual holding the same religious beliefs as the minor or the parents of said minor, or with some association which is controlled by persons of like religious faith. No minor under the supervision of any state institution shall be denied the free exercise of the minor's own religion or the religion of the parents, whether living or dead, nor the liberty of worshipping God according thereto.

Source. 1979, 361:2. 1995, 302:21, eff. Jan. 1, 1996.

169–B:34 Court Sessions; Access to Information.

I. (a) All juvenile cases shall be heard separately from the trial of criminal cases, and such hearing shall be held wherever possible in rooms not used for such trials. Only such persons as the parties, their witnesses, their counsel, the victim, a victim witness advocate or other person chosen by the victim, the county attorney, the attorney general and the representatives of the agencies present to perform their official duties shall be admitted; provided, however, that if the witness is under 16 years of age, the witness' parent or other appropriate adult shall be permitted to be present during the witness' testimony. In those cases where the delinquent act complained of would constitute a felony if the act of an adult, the attorney general and the county attorney of the county in which the offense took place shall receive notice thereof by the court.

(b) For the purpose of this section, "victim" means a person who suffers direct physical, emotional, psychological, or economic harm as a result of the commission of a crime or delinquent act. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

II. If the victim is unable to attend the hearing under paragraph I, the prosecution, upon request of the victim, may disclose to the victim information disclosed at the hearing.

III. At any time after the diversion or arraignment of a juvenile, the following information regarding the juvenile shall be disclosed to the victim, and may be disclosed to the victim's immediate family, upon the request of the victim or the victim's immediate family, by a law enforcement agency or the prosecution:

(a) Name.
(b) Age.
(c) Address.
(d) Gender.
(e) Offense charged.
(f) Custody status.
(g) Adjudicatory status and disposition.

IV. It shall be unlawful for a victim or any member of the victim's immediate family to disclose any confidential information to any person not authorized

or entitled to access such confidential information. Any person who knowingly discloses such confidential information shall be guilty of a misdemeanor.

V. No minor who is the subject of a petition filed pursuant to RSA 169–B:6 shall be held in or escorted through any part of a court facility that is occupied by the members of the public while the minor is in handcuffs, shackles, or other devices which would indicate that the minor is in law enforcement custody or subject to an order of confinement, unless no reasonable, alternative means of egress is available.

Source. 1979, 361:2. 1985, 228:3. 1996, 294:1. 2003, 275:1, eff. Sept. 16, 2003. 2017, 180:1, eff. Aug. 28, 2017.

169–B:35 Juvenile Case and Court Records.

I. All case records, as defined in RSA 170–G:8–a, relative to delinquency, shall be confidential and access shall be provided pursuant to RSA 170–G:8–a.

II. Court records of proceedings under this chapter, except for those court records under RSA 169–B:36, II, shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by officers of the institution where the minor is committed, juvenile probation and parole officers, a parent, a guardian, a custodian, the minor's attorney, the relevant county, and others entrusted with the corrective treatment of the minor. Additional access to court records may be granted by court order or upon the written consent of the minor. Once a delinquent reaches 21 years of age, all court records and individual institutional records, including police records, shall be closed and placed in an inactive file.

III. Notwithstanding paragraphs I and II:

(a) Police officers and prosecutors involved in the investigation and prosecution of criminal acts shall be authorized to access police records concerning juvenile delinquency, including the files of persons who at the time of the inquiry are over the age of 18, and to utilize for the purposes of investigation and prosecution of criminal cases police investigative files on acts of juvenile delinquency, including information from police reports, exemplars, and forensic investigations.

(b) Prosecutors involved in the prosecution of criminal acts shall be authorized to access police records concerning juvenile delinquency or records of adjudications of delinquency, including the files of persons who at the time of the inquiry are over the age of 18, if the prosecutor has reason to believe that the individual may be a witness in a criminal case. The prosecutor may disclose the existence of an adjudication for juvenile delinquency only when such disclosure is constitutionally required or after the court having jurisdiction over the criminal prosecution orders its disclosure.

(c) [Repealed.]

(d) Pursuant to RSA 651–B, the department of safety shall disclose registration information to law enforcement agencies for juveniles if the court has found that the juvenile is required to register as a sexual offender or offender against children. In no event shall any juvenile required to register be listed on the list of sexual offenders and offenders against children made available to the public pursuant to RSA 651–B:7.

Source. 1979, 361:2. 1987, 402:14. 1993, 266:1; 355:2. 1995, 308:109, 110. 1999, 219:2. 2000, 294:10. 2001, 286:21, I. 2006, 327:25, eff. Jan. 1, 2007. 2014, 215:13, eff. July 1, 2015.

169–B:35–a Access to Information by Victims of Violent Crime.

I. For the purposes of this section:

(a) "Victim" shall mean a person who suffers direct physical, emotional, or psychological harm as a result of the commission of a violent crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

(b) "Immediate family" shall mean a victim's spouse, parent, sibling, or child; a person acting in loco parentis for the victim; or anyone related to the victim by blood or marriage and living in the same household as the victim.

(c) "Violent crime" shall mean capital, first-degree or second-degree murder, attempted murder, manslaughter, aggravated felonious sexual assault, felonious sexual assault, first-degree assault, or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs, as these crimes are defined by statute.

II. In cases where a minor is charged with a violent crime and in addition to the provisions of RSA 169–B:34, a victim of violent crime shall have the rights provided in this paragraph. Upon request to the prosecution, the victim shall be entitled to the following:

(a) Prior to the disposition of the minor pursuant to RSA 169–B:19 or a transfer hearing pursuant to RSA 169–B:24, to:

(1) Be informed of the name, age, address, and custody status of the minor arraigned or adjudicated for the violent crime;

(2) Be informed of all court proceedings conducted pursuant to RSA 169–B;

(3) Confer with the prosecution and be consulted about the disposition of the case, including plea bargaining;

(4) Be informed of case progress and final disposition;

(5) Have input in the juvenile predispositional report;

(6) Appear and make a written or oral victim impact statement at the dispositional hearing or, in the case of a plea bargain, prior to any plea bargain agreement; and,

(7) Be informed of an appeal, receive an explanation of the appeal process, and receive notice of the result of the appeal.

(b) Subsequent to the disposition of a minor adjudicated for a violent crime, the victim shall receive notice of all review hearings conducted pursuant to RSA 169–B:31 and notice of any change in placement, temporary release or furlough, interstate transfer, parole, runaway, escape, or release of the minor.

(c)(1) When the court's jurisdiction over a minor adjudicated for a violent crime terminates pursuant to RSA 169–B:4 or 169–B:19, the victim and the arresting law enforcement agency shall receive notice of the termination of the court's jurisdiction and any information concerning the minor's intended residence.

(2) The court may authorize the arresting law enforcement agency to provide information concerning the location of the minor's intended residence to the law enforcement agency of that location if public safety requires such notification.

III. [Repealed.]

IV. It shall be unlawful for a victim or member of a law enforcement agency to disclose any confidential information to any person not authorized or entitled to access such confidential information. Any person who knowingly discloses such confidential information shall be guilty of a misdemeanor.

V. (a) Except as expressly provided in this section or RSA 169–B:34, nothing in this section shall be construed to provide victims with the right to attend proceedings conducted pursuant to RSA 169–B, 170–H, or 621; to participate in decisions concerning the changes in placement, temporary release or furlough, interstate transfer, parole, or release of a minor adjudicated of a violent crime; or to have direct access to the case records or the court records of a minor adjudicated for a violent crime.

(b) Nothing in this section or RSA 169–B:34 shall be construed as creating a cause of action against the state, a county or municipality, or any of their agencies, instrumentalities or employees, or private providers of residential services to adjudicated delinquents.

(c) Nothing in this section or RSA 169–B:34 shall be construed as creating any new cause of action or new remedy or right for a criminal defendant.

Source. 1994, 357:2. 1995, 181:3. 1996, 294:2–5, 8, eff. Aug. 9, 1996.

169–B:36 Penalty for Disclosure of Juvenile Records.

I. It shall be unlawful for any person to disclose court records or any part thereof to persons other than those persons entitled to access under RSA 169–B:35, except by court order. Any person who knowingly violates this provision shall be guilty of a misdemeanor. This prohibition shall not be construed to prevent publication as provided in RSA 169–B:37.

II. Notwithstanding paragraph I, in cases involving a violent crime as defined in RSA 169–B:35–a and when the petition is found to be true, the following information may be disclosed by the court clerk after the adjudicatory hearing:

(a) The name and address of the juvenile charged.

(b) The specific offense found by the court to be true.

(c) The custody status of the juvenile.

(d) The final disposition ordered by the court.

Information provided in subparagraphs (c) and (d) shall not identify the name or address of private providers of residential or other services to the juvenile.

Source. 1979, 361:2. 1993, 355:3. 1995, 308:111, eff. Jan. 1, 1996.

169–B:37 Publication of Delinquency Restricted.

I. It shall be unlawful for any newspaper to publish, or any radio or television station to broadcast or make public the name or address or any other particular information serving to identify any juvenile arrested, without the express permission of the court; and it shall be unlawful for any newspaper to publish,

or any radio or television station to make public, any of the proceedings of any juvenile court. Nothing in this section or RSA 169–B:35 and RSA 169–B:36 shall be construed to prevent publication without using the name of the delinquent of information which shall be furnished by the court about the disposition of a case when the delinquent act would constitute a felony if it were the act of an adult.

II. Notwithstanding paragraph I, the police, with the written approval of the county attorney or the attorney general, may release to the news media the name and photograph of the juvenile if:

(a) The juvenile has escaped from court-ordered custody; and

(b) The juvenile has not been apprehended and there is good cause to believe the juvenile presents a serious danger to the juvenile or to public safety.

Source. 1979, 361:2. 1996, 294:6, eff. Aug. 9, 1996.

169–B:38 Penalty for Forbidden Publication. The publisher of any newspaper or the manager, owner or person in control of a radio or television station or agent or employee of any of the above who violates any provision of RSA 169–B:37 shall be guilty of a misdemeanor.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:39 Reports to Board of Probation.

[Repealed 1989, 285:12, eff. July 28, 1989.]

History

Former RSA 169–B:39, which was derived from 1979, 361:2, related to monthly court reports of statistical data concerning delinquents.

169–B:40 Liability of Expenses and Hearing on Liability.

I. (a) Whenever an order creating liability for expenses is issued by the court under this chapter or whenever a voluntary service plan is developed and provided for the minor and the minor's family by the department, any expenses incurred for services, placements, and programs the providers of which are certified pursuant to RSA 170–G:4, XVIII, shall be payable by the department of health and human services.

(b) Subparagraph (a) shall not apply to expenses incurred for special education and related services, or to expenses incurred for evaluation, care, and treatment of the minor at the Philbrook center or to expenses incurred for the cost of accompanied transportation.

(c) The state shall have a right of action over for such expenses against the parents or the people chargeable by law for the minor's support and necessities and the right to require parents or other people chargeable by law for the minor's support and necessities to assign to the state any insurance benefits that may be available to pay for all or a portion of the services provided. The department shall request reimbursement for such expenses from parents or other people chargeable by law for the minor's support and shall request assignment to the state of any insurance benefits that may be available to pay for all or a portion of the services provided. The court shall require the individual chargeable by law for the minor's support and necessities to submit a financial statement annually to the court upon which the court shall make an order as to reimbursement to the state as may be reasonable and just, based on the person's ability to pay. Such financial statement shall include, but not be limited to, any benefits received from the Social Security Administration or insurance benefits available to the individual. The court shall include disposition of these benefits in its order as to reimbursement. Such reimbursement shall be established on a per month or per week basis and shall continue from the time the services begin until 4 years beyond the time such services end, unless such reimbursement is fully paid prior to the end of the 4-year period. The court's jurisdiction to order reimbursement shall continue until the court-ordered obligation to reimburse has been fulfilled. If the court does not issue a reimbursement order, the court shall issue written findings explaining why such reimbursement is not ordered.

(d) Liability for placement expenses for any court ordered placement of any minor mother under this chapter shall include liability for placement expenses for the child or children of such minor mother if the minor mother and child or children are placed at the same facility.

(e) Payments due under this section for the care of children in foster homes shall commence within 60 days of the child's placement in the foster home and shall be made every 30 days thereafter.

(f) Notwithstanding any provision of law to the contrary, the department of health and human services shall have no responsibility for the payment of the cost of assigned counsel for any party under this chapter.

II. Upon the issuance of the order in paragraph I, the court shall send notice to the state. The state may, within 30 days from the receipt of notice, request a hearing on the issues of the cost or appropriateness of services, or recovery. At such hearing,

the court shall provide all financial information, including names and addresses of persons chargeable by law for the minor's support and necessities, to the state.

III. The office of reimbursements acting on behalf of Laconia developmental services and the New Hampshire hospital is authorized to compromise or reduce any expense to be charged to the state.

IV. The department may enter into an agreement with a county to collect, on behalf of the department, payments from persons or entities which are ordered to reimburse the state under paragraph I, or which are chargeable by law for the minor's support and necessities. An agreement may authorize the county to deduct reasonable administrative costs from the amounts collected. The balance of any amounts collected by the county pursuant to this paragraph shall be forwarded to the department.

V. If the person responsible for paying reimbursements to the department under paragraph IV is financially able to pay such reimbursements but fails to make such payments, the department may apply to the district court for a lien on such person's real or personal property for the amount of reimbursements due.

VI. (a) For the adoptive parent or prospective adoptive parent of a child in the custody of the state whose birth parents have consented to the adoption, relinquished their parental rights to the department, or the parental rights of whose birth parents were terminated pursuant to a petition brought by the department, authorized agency, or foster parent, pursuant to RSA 170–C:4, the state shall have no right of action against such adoptive parent or prospective adoptive parent for the expenses of services, placements, and programs provided pursuant to RSA 169–B, 169–C, or 169–D after the adoption.

(b) If the department determines that the adoptive parent has been convicted of sexual or physical abuse of the adopted child pursuant to RSA 631 or 632–A, or the adoptive parent has misappropriated adoption subsidy moneys, the adoptive parent shall be responsible for payment for subsequent services, placements, and programs provided pursuant to RSA 169–B, 169–C, or 169–D after the adoption. A determination of misappropriation is subject to the provisions of RSA 126–A:5, VIII.

Source. 1979, 361:2; 434:81. 1981, 555:1. 1982, 25:2. 1983, 458:4. 1985, 96:6; 380:37. 1987, 402:29, 30. 1988, 107:5; 153:1, 4. 1989, 75:1; 229:1; 286:1. 1990, 3:46; 203:1. 1991, 265:2. 1993, 266:2. 1994, 212:2. 1995, 220:2; 302:22; 308:60, 63, 112; 310:123, 171, 175, 182. 1996, 286:13, 16. 1997, 305:1. 2007, 263:20. 2008, 274:33. 2009, 144:33, 36, eff. July 1, 2009.

169–B:41 Intentional Contribution to Delinquency.

I. Any parent or guardian or person having custody or control of a minor, or anyone else, who shall knowingly encourage, aid, cause, or abet, or connive at, or has knowingly or willfully done any act to produce, promote, or contribute to the delinquency of such minor, shall be guilty of a misdemeanor. The court may release such person on probation, subject to such orders as it may make concerning future conduct tending to produce or contribute to such delinquency, or it may suspend sentence, or before trial, with such person's consent, it may allow the person to enter into a recognizance, in such penal sum as the court may fix, conditioned for the promotion of the future welfare of the minor, and the case may be placed on file.

II. Notwithstanding the provisions of paragraph I, any parent, guardian or person having custody or control of a minor, or anyone else, who shall knowingly or wilfully, encourage, aid, cause or abet, or connive at, or has knowingly done any act to produce, promote or contribute to the utilization of a minor in any acts of sexual conduct, as defined in RSA 650:1, VI, in order to create obscene material, as defined in RSA 650:1, IV, of the minor engaged in such conduct, shall be guilty of:

(a) A class B felony if such person has had no prior convictions in this state or another state for the conduct described in this paragraph;

(b) A class A felony if such person has had one or more prior convictions in this state or another state for the conduct described in this paragraph.

Source. 1979, 361:2. 1983, 448:4. 1995, 302:23, eff. Jan. 1, 1996.

169–B:42 Procedure. If any minor is found more than once to be delinquent by the court as provided in RSA 169–B:41, the court may, upon complaint of the county attorney or any other person, or upon its own motion, issue a warrant commanding any parent, guardian or person having custody or control of the minor found to be delinquent to be brought before the same court in which the findings of delinquency was made.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:43 Court Orders. The court, upon a complaint issued under RSA 169–B:42, may proceed under that section and, in addition, if the court finds, after a hearing, that the parent, guardian, or person having custody or control of the minor has failed to exercise reasonable diligence in the control of such minor to prevent the minor from becoming guilty of juvenile delinquency as defined by statute, or from

becoming adjudged by the court to be in need of the care and protection of the state as defined by statute, it may make such order specifying future conduct as is designed to reasonably prevent the reoccurrence of delinquency and to promote the future welfare of the minor. Such order shall remain in effect for a period of not more than one year to be specified by the court, and said order may be extended or renewed by the court. Before issuing any such order, the court shall advise such parent, guardian, or other person of the right to have the reasonableness of the order immediately reviewed; and, in this connection, the superior court is vested with jurisdiction to summarily determine the reasonableness of any question of law or fact relating to such written specifications and to make such further orders upon review thereof as justice may require.

Source. 1979, 361:2. 1995, 302:24, eff. Jan. 1, 1996.

169–B:44 Civil Action for Compensation. Nothing in this chapter shall bar civil action to recover damages for the negligence of a person having custody or control of a minor who causes injury to property or persons.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–B:45 Vandalism by Minors.

I. For purposes of this section, "vandalism" has the same meaning as "criminal mischief" in RSA 634:2.

II. The court shall, when appropriate, order any child who is found to have committed vandalism of private property to write a formal apology to the victim or victims of such vandalism.

III. The court shall, when appropriate, order any child who is found to have committed vandalism of public property to write a report on the history and significance of that property to the community or on another topic, as determined by the court.

IV. The court shall also order, when appropriate, any child who is found to have committed vandalism to contribute to the restoration of the property or to the restitution to the victim or victims of such vandalism by payment in money, by property repairs, by service to the injured party, or by service to the community.

V. Notwithstanding any other provision of this chapter, the court may order the parent or legal guardian of any child found to have committed vandalism, to submit restitution to the victim or victims of such vandalism by payment in money if the child is in the custody of and residing with such parent or guardian, and if the court finds that the vandalism was a direct result of the parent or legal guardian having neglected to exercise reasonable supervision and control of the child's conduct. For the purposes of this section, liability for compensation shall be limited to $10,000.

VI. If the person violates the court's order to submit restitution under this section, such person shall be guilty of contempt.

VII. The court may permit payments under this section to be made in installments, up to 7 years, to be administered by the court.

Source. 1979, 450:1. 1995, 302:25. 1996, 225:1, eff. Jan. 1, 1997.

169–B:46 Publication Permitted. Notwithstanding the provisions of RSA 169–B:36 and 169–B:37, there shall be no restriction on the publishing or broadcasting of the name or address of any child found to have committed vandalism under RSA 169–B:45, or any child who is adjudicated to have committed a second or subsequent offense for the possession with intent to distribute any controlled drug, as defined in RSA 318–B:1, VI, and who is at least 12 years of age at the time of such offense, or the name or address of the parent or guardian.

Source. 1979, 450:1. 1989, 174:1. 1995, 302:26, eff. Jan. 1, 1996.

169–B:47 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Source. 1979, 361:2, eff. Aug. 22, 1979.

CHAPTER 169–C

CHILD PROTECTION ACT

169–C:1 Short Title. This chapter shall be known as the Child Protection Act.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:2 Purpose.

I. It is the primary purpose of this chapter, through the mandatory reporting of suspected instances of child abuse or neglect, to provide protection to children whose life, health or welfare is endangered.

II. It is a further purpose of this chapter to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases. Each child coming within the provisions of this chapter shall receive, preferably in the child's own home, the care, emotional security, guidance, and control that will promote the child's best interest; and, if the child should be removed from the control of his or her parents, guardian, or custodian, adequate care shall be secured for the child. This chapter seeks to coordinate efforts by state and local authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

(a) Protect the safety of the child.

(b) Take such action as may be necessary to prevent the abuse or neglect of children.

(c) Preserve the unity of the family.

(d) Provide protection, treatment, and rehabilitation, as needed, to children placed in alternative care.

(e) Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family.

III. This chapter shall be liberally construed to the end that its purpose may be carried out, to wit:

(a) To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing the child with the protection, care, treatment, counseling, supervision, and rehabilitative resources which the child needs and has a right to receive.

(b) To achieve the foregoing purposes and policies, whenever possible, by keeping a child in contact with his or her home community and in a family environment by preserving the unity of the family and separating the child from his or her parents only when the safety of the child is in danger or when it is clearly necessary for the child's welfare or the interests of the public safety and when it can be clearly shown that a change in custody and control will plainly better the child; and

(c) To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

Source. 1979, 361:2. 1983, 331:1, 2, eff. Aug. 17, 1983. 2017, 156:197, eff. July 1, 2017.

169–C:3 Definitions. When used in this chapter and unless the specific context indicates otherwise:

I. "Abandoned" means the child has been left by his parent, guardian or custodian, without provision for his care, supervision or financial support although financially able to provide such support.

II. "Abused child" means any child who has been:

(a) Sexually abused; or

(b) Intentionally physically injured; or

(c) Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or

(d) Physically injured by other than accidental means.

III. "Adjudicatory hearing" means a hearing to determine the truth of the allegations in the petition filed under this chapter.

IV. [Repealed].

V. "Child" means any person who has not reached his eighteenth birthday.

VI. "Child care agency" means a "child day care agency" as defined in RSA 170–E:2, IV or a "child care agency" as defined in RSA 170–E:25, II.

VII. "Child placing agency" means the department, Catholic charities of New Hampshire, or child and family services of New Hampshire, or any successor organization.

VII–a. "Concurrent plan" means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

VIII. "Consent order" means a written agreement entered into among or between the parties regarding the facts and the disposition in a neglect or abuse case, and approved by the court.

IX. "Court" means the district court, unless otherwise indicated.

X. "Custodian" means an agency or person, other than a parent or guardian, licensed pursuant to RSA 170–E to whom legal custody of the child has been given by court order.

XI. "Dispositional hearing" means a hearing held after a finding of abuse or neglect to determine what dispositional order should be made on behalf of the child.

XII. "Department" means the department of health and human services.

XIII. "Foster home" means a residential care facility licensed pursuant to RSA 170–E for child care in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage.

XIII–a. "Founded report" means a report made pursuant to this chapter for which the department finds by a preponderance of the evidence that the child who is the subject of such report is abused or neglected.

XIV. "Guardian" means a parent or person appointed by a court having jurisdiction with the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and to be concerned about the general welfare of the child. Such duty and authority include but are not necessarily limited either in number or kind to:

(a) The authority to consent: (1) to marriage, (2) to enlistment in the armed forces of the United

States, and (3) to major medical, psychiatric and surgical treatment, (4) to represent the child in legal actions; and (5) to make other decisions of substantial legal significance concerning the child;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order; and

(c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized agency.

XIV–a. "Household member" means any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child.

XV. "Imminent danger" means circumstances or surroundings causing immediate peril or risk to a child's health or life.

XVI. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect wherein the person responsible for the child's welfare is a foster parent or is an employee of a public or private residential home, institution or agency.

XVII. "Legal custody" means a status created by court order embodying the following rights and responsibilities unless otherwise modified by court order:

(a) The right to determine where and with whom the child shall live;

(b) The right to have the physical possession of the child;

(c) The right and the duty to protect and constructively discipline the child; and

(d) The responsibility to provide the child with food, clothing, shelter, education, emotional security and ordinary medical care provided that such rights and responsibilities shall be exercised subject to the power, rights, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

XVIII. "Legal supervision" means a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order.

XIX. "Neglected child" means a child:

(a) Who has been abandoned by his or her parents, guardian, or custodian; or

(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, when it is established that the child's health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian; or

(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;

Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.

XX. "Notice" means communication given in person or in writing to the parent, guardian, custodian or other interested party not having custody or control of the child, of the time and place fixed for hearing; and it shall be given in all cases, unless it appears to the court that such notice will be ineffectual.

XX–a. "Out-of-home placement" means the placement of a child in substitute care with someone other than the child's biological parent or parents, adoptive parent or parents, or legal guardian.

XXI. "Parent" means mother, father, adoptive parent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

XXI–a. "Party having an interest" means the child; the guardian ad litem of the child; the child's parent, guardian or custodian; the state; or any household member subject to court order.

XXI–b. "Permanency hearing" means a court hearing for a child in an out-of-home placement to review, modify, and/or implement the permanency plan or to adopt the concurrent plan.

XXI–c. "Permanency plan" means a plan for a child in an out-of-home placement that is adopted by the court and provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XXII. "A person responsible for a child's welfare" includes the child's parent, guardian or custodian, as well as the person providing out-of-home care of the

child, if that person is not the parent, guardian or custodian. For purposes of this definition, "out-of-home care" includes child day care, and any other settings in which children are given care outside of their homes.

XXIII. "Probable cause" means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

XXIV. "Protective custody" means the status of a child who has been taken into physical custody by a police officer or juvenile probation and parole officer because the child was in such circumstances or surroundings which presented an imminent danger to the child's health or life and where there was not sufficient time to obtain a court order.

XXV. "Protective supervision" means the status of a child who has been placed with a child placing agency pending the adjudicatory hearing.

XXVI. "Relative" means parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nieces, nephews or first and second cousins.

XXVII. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship except guardianship pursuant to termination of parental rights, including, but not limited to, right of visitation, consent to adoption, right to determine religious affiliation and responsibilities for support.

XXVII–a. "Serious impairment" means a substantial weakening or diminishment of a child's emotional, physical, or mental health or of a child's safety and general well-being. The following circumstances shall be considered in determining the likelihood that a child may suffer serious impairment:

(a) The age and developmental level of the child.

(b) Any recognized mental, emotional, or physical disabilities.

(c) School attendance and performance.

(d) The child's illegal use of controlled substances, or the child's contact with other persons involved in the illegal use or sale of controlled substances or the abuse of alcohol.

(e) Exposure to incidents of domestic or sexual violence.

(f) Any documented failure to thrive.

(g) Any history of frequent illness or injury.

(h) Findings in other proceedings.

(i) The condition of the child's place of residence.

(j) Assessments or evaluations of the child conducted by qualified professionals.

(k) Such other factors that may be determined to be appropriate or relevant.

XXVII–b. "Sexual abuse" means the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who is under the age of 18 years.

XXVIII. "Unfounded report" means a report made pursuant to this chapter for which the department determines that there is insufficient evidence to substantiate a finding that the child is abused or neglected.

XXIX. A report that is "unfounded but with reasonable concern" means a report made pursuant to this chapter for which the department determines that there is probable cause to believe the child was abused or neglected, but for which there is insufficient evidence to establish by a preponderance of the evidence that the child was abused or neglected.

Source. 1979, 361:2. 1983, 291:1. 1986, 223:2, 3, 5, 6. 1987, 402:12. 1989, 146:1. 1990, 240:1; 257:5, 6. 1994, 212:2; 411:1, 2, 17, 19, I. 1995, 310:124, 175. 2000, 294:9. 2007, 236:6–8, eff. Jan. 1, 2008. 2014, 271:3, eff. July 28, 2014. 2017, 112:5, 6, eff. June 14, 2017; 156:198, 199, eff. July 1, 2017.

169–C:3–a Rulemaking. The commissioner of the department of health and human services shall adopt rules under RSA 541–A relative to:

I. Information contained in the central registry under RSA 169–C:35.

II. Access to confidential records under RSA 169–C:36.

III. The authority to investigate reports of institutional abuse or neglect under RSA 169–C:37.

Source. 1983, 242:8; 291:1, II. 1986, 223:7. 1994, 212:2. 1995, 310:171, eff. Nov. 1, 1995.

169–C:4 Jurisdiction, Continued Jurisdiction, Modification.

I. The court shall have exclusive original jurisdiction over all proceedings alleging the abuse or neglect of a child.

II. The court may, with the consent of the child, retain jurisdiction over any child, who, prior to his or her eighteenth birthday, was found to be neglected or abused and who is attending school until such child completes high school or until his or her twenty-first birthday, whichever occurs first; and the court is authorized to and shall make such orders relative to the support and maintenance of said child during the period after the child's eighteenth birthday as justice may require.

II–a. A child who has consented to the continued jurisdiction of the court pursuant to paragraph II, may revoke his or her consent and request that the case be closed. The revocation of consent and request to close a case shall be made in writing and filed with the court. Upon receipt of the request, the court shall forward copies to all parties of record at their last known address. If no party objects within 10 business days of the date the court forwarded copies of the request to the parties, the court shall accept the child's revocation of consent and shall close the case. If a party objects, the court may, after consideration of the objection, either grant the request and close the case without hearing or schedule the matter for hearing. If the matter is scheduled for hearing, the court shall accept the child's revocation of consent and close the case unless the court finds that immediate closure would create a risk of substantial harm to the child. If the court finds that immediate closure would create a risk of substantial harm to the child, the court shall continue the matter for a period not to exceed 30 days and direct that the department work with the child to develop an independent living plan which shall include referrals to appropriate services. If at the end of such period, the child still wishes to revoke his or her consent and to request that the case be closed, the court shall accept the revocation of consent and close the case.

III. When a custody award has been made pursuant to this chapter, said order shall not be modified or changed nor shall another order affecting the status of the child be issued by the superior court except on appeal under RSA 169–C:28.

Source. 1979, 361:2. 1990, 240:2. 2008, 204:1, eff. Jan. 1, 2009.

169–C:5 Venue.

I. Proceedings under this chapter may be originated in the judicial district in which the child is found or resides.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:6 Protective Custody.

I. A police or juvenile probation and parole officer may take a child into protective custody without the consent of the parents or other person legally responsible for the child's care if the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life unless immediate action is taken and there is not enough time to petition for a court order.

II. If a police or juvenile probation and parole officer removes a child under paragraph I above, the officer:

(a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;

(b) May take the child to a child protection services worker of the department; or

(c) May place the child in a foster home; if a child is placed directly in a foster home, the department shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and

(d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform both parents or other persons legally responsible for the child's care where the child has been taken.

III. Any police or juvenile probation and parole officer or other individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

IV. The court shall hold a hearing on the matter within 48 hours of taking the child into protective custody, Saturdays, Sundays, and holidays excluded. Notice shall be given by the police to both parents, the department, and all parties designated by the petitioner or the court.

V. [Repealed.]

VI. The court having jurisdiction over a child who appears to be abused or neglected, and in imminent danger may issue ex parte orders pursuant to RSA 169–C:6–a, permitting the child or the alleged perpe-

trator to be removed from the home at the request of the department or a law enforcement officer.

VII. No child taken into protective custody pursuant to this section shall be securely detained.

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

Source. 1979, 361:2. 1987, 402:12. 1988, 197:6. 1994, 411:3, 16, 17. 1995, 310:175. 2000, 294:9. 2003, 199:1. 2004, 237:7, eff. June 15, 2004. 2016, 200:2; 201:1, eff. Aug. 5, 2016.

169–C:6–a Emergency Interim Relief.

I. If a child is found by a child protection services worker of the department to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child from such imminent danger, the department's child protection services worker shall contact the court for an ex parte order to remove the child. Prior to any order authorizing foster placement, the child protective services worker shall inform the judge of efforts to locate any non-custodial parent or other relatives for temporary placement.

II. The department or law enforcement officer requesting an ex parte order shall, to the extent known, present in person or by telephone, either orally under oath or by sworn written affidavit, the following information:

(a) A statement of the specific danger requiring either immediate placement of the child or removal of the alleged perpetrator.

(b) The time, place, and manner in which the child was removed from danger, if relevant.

(c) If the child was removed prior to the court order, a brief statement why it was not possible to obtain the order prior to removal.

(d) Why there is not sufficient time to notify the parent, guardian, or custodian prior to the order.

(e) The names and addresses of custodial parents, non-custodial parents, legal custodians, other legal guardians of the child, and any other person responsible for the welfare of the child at the time of removal.

(f) When removal of the child is requested, those alternatives to foster care which were considered, such as removal of the alleged perpetrator, or placement of the child with relatives or others with whom the child is familiar.

III. Whenever a petition is filed for abuse or neglect with or prior to the request for ex parte relief, the request need not repeat information included in the petition.

IV. If the court finds reasonable cause to believe that the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life, the court shall issue such ex parte orders as are necessary to protect the child and shall set the matter for hearing no later than 5 days from the date of the ex parte orders, excluding Saturdays, Sundays, and holidays.

V. If the court issues an ex parte order based upon oral testimony provided by the department, the department shall submit a written affidavit supporting the department's request for ex parte relief on the next business day.

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

Source. 1994, 411:4. 1995, 310:175. 2002, 180:1, eff. July 14, 2002. 2016, 200:1, eff. Aug. 5, 2016.

169–C:6–b Child's Welfare and Findings Regarding Removal.

I. The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

II. The court shall within 60 days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

III. If the court orders that a child be removed from his or her home at the preliminary hearing under RSA 169–C:15, the adjudicatory hearing under RSA 169–C:18, the dispositional hearing under RSA 169–C:19, or the final hearing under RSA 169–C:21, the court order for removal shall include specific written findings regarding the need for the out-of-home placement. The order shall briefly state the

facts the court found to exist that justify ordering the placement.

IV. If the order does not comply with the requirements of paragraph III, the judge shall make a written finding to justify the out-of-home placement. Providing a copy of the order, redacted to protect the identity of the parties and children, to the members of the house committee having jurisdiction over child and family issues shall not be considered a violation of RSA 169–C:25.

Source. 2007, 236:9, eff. Jan. 1, 2008. 2017, 134:1, eff. Jan. 1, 2018.

169–C:7 Petition.

I. A proceeding under this chapter is originated by any person filing a petition, with a judge or clerk in the judicial district in which the child is found or resides, alleging neglect or abuse of a child.

II. The petition shall be entitled "In the Matter of _____," and shall be verified under oath by the petitioner.

III. To be legally sufficient, the petition shall set forth the facts alleged to constitute abuse or neglect, and the statutory grounds upon which the petition is based.

IV. In addition, the petition shall also include, to the extent known:

(a) The name, birth date, and address of the child.

(b) The name and address of any custodial parent.

(c) The name and address of any other individual or agency having custody of the child.

(d) The name of any non-custodial parent.

(e) The name of any household member who is subject to the order.

Source. 1979, 361:2. 1990, 240:3. 1994, 411:5, 6, eff. Jan. 1, 1995.

169–C:8 Issuance of Summons and Notice.

I. After a petition has been filed or an ex parte order issued, the court shall issue a summons to all persons named in the petition to be served by a law enforcement officer personally, or if personal service is not possible, at their usual place of abode. Such summons shall require the person or persons having custody or control of the child to appear personally, unless otherwise ordered, before the court at a time and place set for a preliminary hearing, which shall not be less than 24 hours nor more than 7 days after return of service of the petition.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall contain a notice that the child shall have a guardian ad litem, appointed by the court. The summons shall also state as follows: "Parents and other individuals chargeable by law for the child's support and necessities may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186–C regarding children with disabilities grants children and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

IV. The summons shall also contain a description and explanation of the proceedings and a statement of the rights of the person or persons summoned, under this chapter, RSA 170–C, and under the rules of court.

Source. 1979, 361:2. 1983, 458:8. 1990, 140:2, X. 1991, 214:1. 1994, 411:7. 1995, 308:65. 2007, 236:10. 2008, 274:31, eff. July 1, 2008.

169–C:8–a Notice of Petition to Department of Health and Human Services. The court shall serve the department of health and human services with a copy of any petition filed under RSA 169–C:7 and the department shall have legal standing at and receive notice of all proceedings under this chapter from the time of said service.

Source. 1995, 308:66; 310:175, 181, eff. Nov. 1, 1995.

169–C:9 Failure to Appear; Warrant.

I. Any person or persons summoned having custody or control of the child who, without reasonable cause, fails to appear, may be proceeded against for contempt of court.

II. In case the summons cannot be served, or the parties served fail to appear, or in the case when it appears to the court that service will be ineffectual, or that the best interest of the child requires that he be brought forthwith into the custody of the court, a warrant may be issued for the child's appearance against anyone having custody or control of the child.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:10 Attorneys and Guardians Ad Litem.

I. In cases brought pursuant to this chapter involving a neglected or abused child, the court shall appoint a Court Appointed Special Advocate (CASA) or other approved program guardian ad litem for the child. If a CASA or other approved program guardian ad litem is unavailable for appointment, the court may then appoint an attorney or other guardian ad

litem as the guardian ad litem for the child. The court shall not appoint an attorney for any guardian ad litem appointed for the child. The CASA or other approved program guardian ad litem shall have the same authority and access to information as any other guardian ad litem. For purposes of this paragraph, "unavailable for appointment" means that there is no CASA or other approved program guardian ad litem available for appointment by the court following a finding of reasonable cause at the preliminary hearing held under RSA 169–C:15 so that the child's interests may effectively be represented in preparation for and at an adjudicatory hearing.

II. (a) In cases involving a neglected or abused child under this chapter, where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child. In any case of neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to represent an indigent parent alleged to have neglected or abused his or her child. In addition, the court may appoint an attorney to represent an indigent parent not alleged to have neglected or abused his or her child if the parent is a household member and such independent legal representation is necessary to protect the parent's interest. The court shall not appoint an attorney to represent any other persons involved in a case brought under this chapter.

(b) When an attorney is appointed as counsel for a child, representation may include counsel and investigative, expert and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child.

III. The New Hampshire supreme court shall adopt rules regarding the duties and responsibilities of the CASA guardian ad litem or other guardian ad litem appointed for the child.

Source. 1979, 361:2. 1995, 308:67. 1997, 292:2. 2011, 224:75, 77. 2013, 144:60, eff. July 1, 2013.

169–C:10–a Appointment of Court Appointed Special Advocates and Guardians Ad Litem.

[Repealed 1996, 248:10, eff. Jan. 2, 1997.]

History

Former RSA 169–C:10–a, which was derived from 1994, 361:1, was related to the appointment of court appointed special advocates and guardians ad litem.

169–C:11 Subpoena. A subpoena may be issued pursuant to RSA 516, or upon application of a party to the proceedings, or upon the motion of the court. The court may issue subpoenas requiring the production of papers and the attendance of any person whose presence is required by the child, his parents or guardian or any other person whose presence, in the opinion of the court, is necessary.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:12 Evidence. In any hearing under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material. Evidence of prior founded or unfounded reports of abuse or neglect shall be admissible in proceedings under this chapter in order to establish a relevant pattern or course of conduct.

Source. 1979, 361:2, eff. Aug. 22, 1979. 2017, 156:201, eff. July 1, 2017.

169–C:12–a Testimony During Abuse and Neglect Proceedings. Testimony by parents who are the subject of an abuse and neglect petition and who are alleged to have abused or neglected a child, which is given during proceedings under this chapter or during a fair hearing conducted by the department, shall not be admissible in criminal proceedings relating to such abuse or neglect allegations.

Source. 1990, 240:4. 1995, 310:175, eff. Nov. 1, 1995.

169–C:12–b Filing Reports, Evaluations, and Other Records. All reports, evaluations, and other records from the department of health and human services, counselors, and guardians ad litem in proceedings under this chapter shall be filed with the court and all other parties at least 5 business days prior to any hearing. If a report, evaluation, or other record is not filed at least 5 business days prior to the hearing, a party may request, and the court shall grant, a continuance to a date certain which shall not be more than 10 days from the date of filing. Once filed with the court and given to all other parties, the report, evaluation, or other record need not be refiled during the proceeding. Failure to comply with the provisions of this section shall not be grounds for dismissal of the petition.

Source. 1991, 57:2. 1994, 212:2. 1995, 310:181. 2006, 276:2, eff. Jan. 1, 2007.

169–C:12–c Medical Examinations of Child. A parent who is the subject of an abuse or neglect petition not involving sexual abuse shall be entitled to request a medical examination of each child involved by a licensed physician of the parent's choice at the parent's expense within 72 hours of the first official notice of the complaint received by the parent. Where the department has assumed protective supervision or legal custody of the child and an examination of the child is necessary to verify or refute an allegation of injury, the department shall cooperate

with the request and shall transport the child to the physician's office for examination provided that the physician's office is within a reasonable distance of the district office that is conducting the abuse or neglect investigation. The transportation of a child to a physician's office that is located within the state of New Hampshire shall be presumed to be reasonable under this section.

Source. 2006, 276:3, eff. Jan. 1, 2007.

169–C:12–d Court-Ordered Alcohol and Drug Testing. The court may order alcohol or drug testing at any stage of the proceeding where substance abuse is an ongoing issue in the case, where alcohol or drug use is a disputed issue of fact, or where there is reason to believe that alcohol or drug use may be substantially interfering with a parent's ability to adhere to the case plan. Unless otherwise ordered by the court, the frequency and type of such testing shall be at the discretion of the department.

Source. 2016, 308:3, eff. July 1, 2016.

169–C:12–e Rebuttable Presumption of Harm.

[RSA 169–C:12–e repealed by 2016, 308:5, effective July 1, 2020.]

Evidence of a custodial parent's opioid drug abuse or opioid drug dependence, as defined in RSA 318–B:1, I or RSA 318–B:1, IX, shall create a rebuttable presumption that the child's health has suffered or is very likely to suffer serious impairment. The presumption may be rebutted by evidence of the parent's compliance with treatment for such use or dependence.

Source. 2016, 308:2, eff. June 21, 2016.

169–C:13 Burden of Proof. The petitioner has the burden to prove the allegations in support of the petition by a preponderance of the evidence.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:14 Hearings Not Open to the Public. The general public shall be excluded from any hearing under this chapter and such hearing shall, whenever possible, be held in rooms not used for criminal trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted, except that other persons invited by a party may attend, with the court's prior approval. The court may provide docket information to invited persons.

Source. 1979, 361:2. 1990, 53:1. 2006, 228:1, eff. July 31, 2006.

169–C:14–a Records of Hearings. The court shall notify parties of their right to request in advance of any hearing under this chapter that a record of such hearing shall be preserved and made available to the parties.

Source. 1996, 248:2, eff. Jan. 2, 1997.

169–C:15 Preliminary Hearing.

I. After an ex parte order is issued or petition filed, a preliminary hearing shall be conducted by the court to determine if reasonable cause exists to believe that the child is abused or neglected.

II. If the court does not find reasonable cause to believe that the child is abused or neglected, it shall dismiss the petition.

III. Upon a finding of reasonable cause that the child is abused or neglected, the court shall:

(a) Appoint a CASA or other approved program guardian ad litem or an attorney to represent the child pursuant to RSA 169–C:10.

(b) Determine whether any ex parte orders issued should be continued or modified.

(c) Issue orders pursuant to RSA 169–C:16, which shall be immediate and in writing if the court finds that the child's circumstances or surroundings present an imminent danger to the child's health or life.

(d) Set a date for an adjudicatory hearing. In all cases, the adjudicatory hearing shall be held and completed and written findings issued within 60 days from the date that the petition was filed with the court. If a child is in an out-of-home placement, the adjudicatory hearing shall be held and completed within 30 days from the date the petition was filed with the court, unless the court makes a written finding of extraordinary circumstances requiring the time limit to be extended.

IV. The court shall determine whether each parent summoned, having custody or control of the child, understands the possible consequences to parental rights should the court find that the child is abused or neglected. Each person shall sign a statement stating that such person understands the consequences to parental rights. Such statement shall be in a form to be determined by the court.

V. Any person who is subject to an ex parte order may challenge the order at the preliminary hearing.

Source. 1979, 361:2. 1991, 214:2. 1994, 411:8. 2007, 236:11. 2011, 177:4; 224:76. 2013, 144:59, eff. July 1, 2013.

169–C:16 Preliminary Disposition.

I. If the court finds sufficient facts to sustain the petition, at a preliminary disposition, the court may:

(a) Permit the child to remain with the parent, relative, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.

(b) Transfer legal supervision to a child placing agency.

(c) Transfer protective supervision to a child placing agency.

(d) Issue an order of protection setting forth conditions of behavior by a parent, relative, guardian, custodian, or a household member. Such order may require any such person to:

(1) Stay away from the premises, another party, or the child.

(2) Permit a parent or other named person to visit the child at stated periods and under such conditions as the court may order.

(3) Abstain from harmful conduct with respect to the child or any person to whom custody of the child is awarded.

(4) Correct specified deficiencies in the home that make the home a harmful environment for the child.

(5) Refrain from specified acts of commission or omission that make the home a harmful environment for the child.

I–a. Notwithstanding RSA 169–C:25, a copy of each protective order issued pursuant to RSA 169–C:16, I(d)(1) shall be transmitted to the administrative office of the courts electronically or by facsimile. The administrative office of the courts shall enter information regarding the protective order into the state database, which shall be made available to the police and sheriffs' departments statewide. It shall also update the database upon expiration or termination of the order.

II. A neglected or abused child shall not be placed in an institution established for the care and rehabilitation of delinquent children, the youth development center or any institution where an adult is confined.

III. The court may at any time order the child, parents, guardian, custodian, or household member subject to the petition or ex parte order, to submit to a mental health evaluation, or undergo a physical examination or treatment, with a written assessment being provided to the court. The court may order that the child, who is the subject of the petition or the family or both be evaluated by a mental health center or any other psychiatrist, psychologist or psychiatric social worker or family therapist or undergo physical examination or treatment with a written assessment provided to the court. Evaluations performed at the Philbrook center may occur only upon receiving prior approval for such evaluation from the commissioner of the department of health and human services, or designee.

IV. If the child, the parent, guardian or custodian objects to the mental health evaluation, he shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of said evaluation. The court shall hold a hearing to consider the objection prior to ordering said evaluation. Upon good cause shown, the court may excuse the child, the parent, guardian or custodian from the provisions of this section.

V. If an order is made on a person not before the court under subparagraph I(d)(1), it shall be served on such person by a law enforcement officer. A hearing to challenge an order may be requested in writing. The hearing shall be held within 5 days of the request. A request for a hearing shall not stay the effect of the order.

VI. When the party subject to the order has an obligation to support the child in question, the court may order such party to remain out of the residence of the child. When the party subject to the order has no duty to support the child and solely owns or leases the residence of the child, the court may order such party to remain out of the residence of the child for a period of no more than 30 days.

Source. 1979, 361:2. 1985, 195:5. 1990, 3:47. 1994, 411:9–12. 1995, 310:182. 2005, 244:3, eff. Jan. 1, 2006.

169–C:17 Consent Order.

I. At any time after the filing of the petition and prior to an order of adjudication pursuant to RSA 169–C:18, the court may approve a written agreement entered into among or between the parties.

II. A consent order shall not be approved unless the department consents and the child and parents, guardian, or custodian are informed of the consequences of the order by the court and the court determines that the child and parents voluntarily and intelligently consent to the terms and conditions of the order. A consent order under this section may include a finding of abuse or neglect; however, a finding of abuse or neglect shall not be required except where the consent order provides for out-of-home placement of the child.

III. Where a consent order includes a finding and provides for the out-of-home placement of a child, the order shall set a date for a permanency hearing that

is within 12 months of the date of the court's approval of the consent order.

Source. 1979, 361:2. 1995, 308:68; 310:175. 2002, 152:1. 2007, 236:12, eff. Jan. 1, 2008.

169–C:18 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court separate from the trial of criminal cases.

II. A record of the adjudicatory hearing shall be preserved unless expressly waived in writing by the parties, and the parties shall be notified in writing of their right to appeal.

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

IV. If the court does not find sufficient evidence of neglect or abuse, it shall dismiss the petition.

V. If the court makes a finding that a child has been abused or neglected, the court shall order a child placing agency to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case. The court shall determine whether the minor's school district shall be joined pursuant to RSA 169–C:20, and if joined, the court shall review the school district's recommendations. No disposition order shall be made by a court without first reviewing the social study and without first reviewing the school district recommendations required under RSA 169–C:20. Preliminary orders, continued pursuant to RSA 169–C:16, may be entered or modified as appropriate until the dispositional hearing.

V–a. Where an adjudicatory order includes a finding and provides for the out-of-home placement of a child, the order shall set a date for a permanency hearing that is within 12 months of the date of the adjudicatory finding.

V–b. The department's dispositional report shall include:

(a) A description of efforts made by the department to avoid the need for placement and an explanation of why these efforts were unsuccessful.

(b) An explanation why the child cannot be protected from the identified problems in the home even if services are provided to the child and family.

V–c. If a preliminary order provided for an out-of-home placement of the child, the child shall not be returned to the home unless the court finds that there is no threat of imminent harm to the child and the parent or parents are actively engaged in remedial efforts to address the circumstances surrounding the underlying petition. The court order shall include the facts supporting the placement.

VI. The social study will be used only after a finding of neglect or abuse and only as a guide for the court in determining an appropriate disposition for a child. The court shall share the report with the parties. Any psychiatric report shall be used by the court only after a finding of neglect or abuse unless such report is submitted for determination of competency.

VII. The court shall hold a hearing on final disposition within 30 days after a finding of neglect or abuse.

VIII. Whenever a court contemplates a placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. In cases where immediate court action is required to protect the health or safety of the child or of the community, the court may act without providing for an appearance by the school district, but shall make reasonable efforts to solicit and consider input from the school district before making a placement decision.

Source. 1979, 361:2. 1994, 411:13. 1996, 248:3. 1998, 203:1. 2002, 179:1. 2004, 41:2. 2007, 236:13; 295:3. 2008, 274:9, eff. July 1, 2008. 2015, 127:3, eff. Jan. 1, 2016.

169–C:19 Dispositional Hearing. The department of health and human services shall provide the court with the costs of the recommended services, placements and programs. If the court finds that a child is abused or neglected or if the court issues a consent order pursuant to RSA 169–C:17, II, the court may order the following disposition:

I. The child may be permitted to remain with the parents, guardian, relative, or other custodian, subject to any or all of the following conditions:

(a) That the parents, guardian, relative, or custodian accept legal supervision by a child placing agency.

(b) That the parents, guardian, relative, or custodian, or the child, or both, accept individual or family therapy, or medical treatment.

(c) That the child attend a day care center.

(d) That a homemaker or parent aide be allowed to visit the home and assist the family.

II. (a) An order of protection may be issued setting forth conditions of behavior by a parent, relative, sibling, guardian, custodian or a household member. Such order may require any such person to:

(1) Stay away from the premises, another party, or the child.

(2) Permit a parent or other named person to visit supervised or otherwise, or have contact with the child at stated periods and under such conditions as the court may order.

(3) Abstain from harmful conduct with respect to the child or any person to whom custody of the child is awarded.

(4) Correct specified deficiencies in the home that make the home a harmful environment for the child.

(5) Refrain from specified acts of commission or omission that make the home or contact with the child a harmful environment for the child.

(b) If an order is made affecting a person not before the court under subparagraph (a), it shall be served on such person by a law enforcement officer. A hearing to challenge an order may be requested in writing. The hearing shall be held within 5 days of the request. A request for a hearing shall not stay the effect of the order.

(c) When the party subject to the order of protection has an obligation to support the child in question, the court may order such party to remain out of the residence of the child. When the party subject to the order has no duty to support the child and solely owns or leases the residence of the child, the court may order such party to remain out of the residence of the child for a period of no more than 30 days.

II–a. Notwithstanding RSA 169–C:25, a copy of each protective order issued pursuant to RSA 169–C:19, II(a)(1) shall be transmitted to the administrative office of the courts electronically or by facsimile. The administrative office of the courts shall enter information regarding the protective order into the state database, which shall be made available to the police and sheriffs' departments statewide. It shall also update the database upon expiration or termination of the order.

III. (a) Legal custody may be transferred to a child placing agency or relative provided, however, that no child shall be placed with a relative until a written social study of the relative's home, conducted by a child placing agency, is submitted to the court. Where a child is in an out-of-home placement, the court shall include in its order the concurrent plan for the child.

(b) If the child is placed out of state, the provisions of RSA 170–A shall be followed.

IV. The court may order any parent, guardian, relative, custodian, household member, or child to undergo individual or family therapy, or medical treatment.

V. If the judge orders services, placements, or programs different from the recommendations of the department, the judge shall include a statement of the costs of the services, placements and programs so ordered.

VI. Prior to any placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

Source. 1979, 361:2. 1994, 411:14. 1995, 308:69, 70; 310:175, 181. 1998, 203:3. 2002, 152:2. 2005, 244:4. 2007, 236:14, eff. Jan. 1, 2008; 295:4, eff. Sept. 11, 2007.

169–C:19–a Out-of-District Placement. In the case of an out-of-district placement, the appropriate court shall notify the department of education on the date that the court order is signed, stating the initial length of time for which such placement is made. This section shall apply to the original order and all subsequent modifications of that order.

Source. 1991, 342:2, eff. Aug. 27, 1991.

169–C:19–b Presumption in Favor of In-State Placements. There shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that there is no appropriate in-state placement available.

Source. 1995, 308:71, eff. July 1, 1995.

169–C:19–c Court Order for Services, Placements, and Programs Required for Minors From Certain Providers Qualified for Third-Party Payment. The court, wherever and to the extent possible, shall order services, placements, and programs by providers certified pursuant to RSA 170–G:4, XVI-II who qualify for third-party payment under any insurance covering the minor.

Source. 1996, 286:11, eff. June 10, 1996.

169–C:19–d Visitation With Siblings. The court shall, whenever reasonable and practical, and based on a determination of the best interests of the child, ensure that children who have an existing relationship with a sibling and who are separated from their siblings as a result of a court decree, court order, consent order, or court-recommended placement, including but not limited to, placement in foster homes, or in the homes of parents or extended family members, have access to and visitation rights with such siblings throughout the duration of such placement, and subsequent to such placement if the children or their siblings are separated by long-term or short-term foster care placement.

Source. 1998, 203:2, eff. June 18, 1998.

169–C:19–e Custody Hearing for Parent Not Charged With Abuse or Neglect.

I. A parent who has not been charged with abuse or neglect shall be afforded, upon request, a full hearing in the district or family court regarding his or her ability to obtain custody. At the hearing, the parent shall be provided the opportunity to present evidence pertaining to his or her ability to provide care for the child and shall be awarded custody unless the state demonstrates, by a preponderance of the evidence, that he or she has abused or neglected the child or is otherwise unfit to perform his or her parental duties. The court shall make written findings of fact supporting its decision.

II. The department shall notify a parent who has not been charged with abuse or neglect of his or her right to request a hearing under this section at the earliest available opportunity.

Source. 2001, 229:1. 2007, 173:1, eff. Jan. 1, 2008.

169–C:20 Disposition of a Child With a Disability.

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

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

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

IV. In an administrative due process hearing conducted by the department of education pursuant to RSA 186–C, a school district shall not provide a hearing officer with information from or copies of records maintained by the court which the school district has accessed pursuant to paragraph II of this section, unless the court issues an order authorizing such a release by the school district in accordance with the following:

(a) A school district seeking such authorization shall file a motion with the court describing the need for the disclosure in the department of education proceeding, with copies delivered to all parties on the same day the motion is filed with the court;

(b) A motion filed by a school district under this provision shall include, on a separate sheet of paper, the following statement in bold typeface: "Persons subject to juvenile proceedings have important rights to the confidentiality of juvenile court proceedings. This motion requests the disclosure of some of that information. If you object to the disclosure of information, you must file a written objection with the court no later than 10 days after the filing of the school district's notice. If you fail to object in writing, the court may allow private information to be revealed to the New Hampshire Department of Education hearing officer."; and

(c) Any objection by a party shall be filed with the court no later than 10 days after the filing of the school district's notice with the court, unless such time is extended by the court for good cause.

V. The court shall schedule an expedited hearing on the matter to determine if such information may be released. The court may rule without a hearing if there is no objection filed or if the school district and a parent or legal guardian or the juvenile, if he or she has reached the age of majority, agree in writing to waive a hearing. In determining whether to authorize the disclosure of the information requested by the school district, the court shall balance the importance of disclosure of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the court, the child's parent or legal guardian, or the juvenile if he or she has reached the age of majority, except that any court reviewing an administrative due process hearing on appeal shall have access to the same information released to a hearing officer pursuant to this paragraph.

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

Source. 1979, 361:2. 1983, 458:2. 1986, 223:13. 1987, 402:22. 1990, 140:2, X. 2008, 274:10, eff. July 1, 2008.

169–C:20–a Notice to School District of Out-of-Home Placement; Transition Plan Required.

I. If the department of health and human services recommends or initiates an out-of-home placement or a change in placement that will result in a change of school assignment, whether within or out of the district, the department shall notify the school district as soon as possible to allow the school district to participate in the facilitation of a successful transition of the child from one school to the next.

II. The department and school district shall develop a transition plan for the child. The objective of the plan shall be to minimize the number of placements for the child and to facilitate any change in placement or school assignment with the least emotional and mental impact to the child. To the extent appropriate, the child may be involved in the formation of the plan.

Source. 2016, 65:1, eff. July 4, 2016.

169–C:21 Final Order.

I. If facts sufficient to sustain the petition are established under RSA 169–C:18, the court shall enter a final order in writing finding that the child has been abused or neglected.

II. The order of the court shall include conditions the parents shall meet before the child is returned home. The order shall also include a specific plan which shall include, but not be limited to, the services the child placing agency will provide to the child and family. Prior to the issuance of a final order, the child placing agency shall submit its recommendation for the plan, which the court may use in whole or in part.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:21–a Violation of Protective Order; Penalty.

I. (a) When a person subject to a protective order under RSA 169–C:16, I(d)(1) or RSA 169–C:19, II(a)(1) violates either a temporary or permanent protective order issued or enforced under this chapter, peace officers shall arrest the defendant and ensure that the defendant is detained until arraignment. Such arrests may be made within 6 hours without a warrant upon probable cause, whether or not the violation is committed in the presence of a peace officer.

(b) Subsequent to an arrest, the peace officer shall seize any firearms and ammunition in the control, ownership, or possession of the defendant and any deadly weapons which may have been used, or were threatened to be used, during the violation of the protective order. The law enforcement agency shall maintain possession of the firearms, ammunition, or deadly weapons until the court issues an order directing that the firearms, ammunition, or deadly weapons be relinquished and specifying the person to whom the firearms

and ammunition or deadly weapons will be relinquished.

II. The prosecution and sentencing for criminal contempt for a violation of a protective order shall not preclude the prosecution of or sentencing for other criminal charges underlying the contempt.

III. A person shall be guilty of a class A misdemeanor if such person knowingly violates a protective order issued under this chapter. Charges made under this chapter shall not be reduced to a lesser charge, as permitted in other instances under RSA 625:9.

IV. Any person convicted under paragraph III, or who has been convicted in another jurisdiction of violating a protective order enforceable under the laws of this state, who, within 6 years of such conviction or the completion of the sentence imposed for such conviction, whichever is later, subsequently commits and is convicted of one or more offenses under this chapter may be charged with an enhanced penalty for each subsequent offense as follows:

(a) There shall be no enhanced charge under this section if the subsequent offense is a class A felony or an unclassified felony;

(b) If the subsequent offense would otherwise constitute a class B felony, it may be charged as a class A felony;

(c) If the subsequent offense would otherwise constitute a class A misdemeanor, it may be charged as a class B felony;

(d) If the subsequent offense would otherwise constitute a class B misdemeanor, it may be charged as a class A misdemeanor;

(e) If the subsequent offense would otherwise constitute a violation, it may be charged as a class B misdemeanor.

Source. 2000, 189:1, eff. Jan. 1, 2001.

169–C:22 Modification of Dispositional Orders. Upon the motion of a child, parent, custodian, guardian or of the child placing agency alleging a change of circumstances requiring a different disposition the court shall conduct a hearing and pursuant to RSA 169–C:19 may modify a dispositional order; provided that the court may dismiss the motion if the allegations are not substantiated in the hearing.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:23 Standard for Return of Child in Placement. In the absence of a guardianship of the person of the minor, governed by the terms of RSA 463, before a child in out-of-home placement is returned to the custody of his or her parents, the parent or parents shall demonstrate to the court that:

I. They are in compliance with the outstanding dispositional court order;

II. The child will not be endangered in the manner adjudicated on the initial petition, if returned home;

III. Return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests.

Source. 1979, 361:2. 1999, 149:1, eff. Jan. 1, 2000.

169–C:24 Periodic Review Hearings.

I. The court shall conduct an initial review hearing within 3 months of the dispositional hearing to review the status of all dispositional orders issued under this chapter. The court may conduct additional review hearings upon its own motion or upon the request of any party at any time.

II. At a review hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

Source. 1979, 361:2. 2007, 236:15, eff. Jan. 1, 2008.

169–C:24–a Petition for Termination of Parental Rights Required; Reasonable Efforts to Reunify.

I. The state, through an authorized agency, or if required by a district court, shall file a petition for termination of parental rights or, if such a petition has been filed by another party, the state shall seek to be joined as a party to such petition, where any one or more of the following circumstances exist:

(a) Where a child has been in an out-of-home placement pursuant to a finding of child neglect or abuse, under the responsibility of the state, for 12 of the most recent 22 months;

(b) Where a court of competent jurisdiction has determined that a child has been abandoned as defined by RSA 170–C:5, I; or

(c) Where a court of competent jurisdiction has made any one or more of the following determinations:

(1) That the parent has been convicted of murder, pursuant to RSA 630:1–a or RSA 630:1–b, of another child of the parent, a sibling or step-

sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(2) That the parent has been convicted of manslaughter, pursuant to RSA 630:2, of another child of the parent.

(3) That the parent has been convicted of attempt, pursuant to RSA 629:1, solicitation, pursuant to RSA 629:2, or conspiracy, pursuant to RSA 629:3, to commit any of the offenses specified in subparagraphs I(c)(1) or I(c)(2).

(4) That the parent has been convicted of a felony assault under RSA 631:1, 631:2, 632–A:2, or 632–A:3 that resulted in injury to the child, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

II. Concurrent with the filing or joinder in a petition for termination of parental rights as defined in paragraph I of this section, the state shall seek to identify, recruit, and approve a qualified family for adoption in accordance with the provisions of RSA 170–B, and in accordance with the principle that the health and safety of the child shall be the paramount concern.

III. The state may not be required to file a petition for termination of parental rights, or seek to be joined as a party to such a petition, if one or more of the following conditions exist:

(a) The child is being appropriately cared for by a relative;

(b) A state agency has documented in the case file a compelling reason for determining that filing a petition for termination of parental rights would not be in the best interests of the child; or

(c) The state has not provided to the family of the child, consistent with RSA 170–C:5, III, such services and reasonable efforts as the state deems necessary for the safe return of the child to the child's home. In determining whether the state has made reasonable efforts to prevent placement and reunify the family, the district court shall consider whether services to the family have been accessible, available, and appropriate.

IV. The state shall submit a sworn statement prior to any district court hearing in which the court is to determine whether there have been reasonable efforts to prevent placement, reunify the family, or make and finalize a new permanent home for the child. Such statement shall be submitted to the court and to the parties at least 5 days prior to the hearing, and shall describe such reasonable efforts made by the state or the rationale for not making such efforts.

Source. 1999, 133:3. 2005, 235:2, eff. July 11, 2005.

169–C:24–b Permanency Hearings.

I. For a child that has been in an out-of-home placement for 12 or more months, the court shall hold and complete a permanency hearing within 12 months of the finding. For a child that enters an out-of-home placement subsequent to a finding, the court shall hold and complete a permanency hearing within 12 months of the date the child enters the out-of-home placement.

II. At a permanency hearing, the court shall determine whether and, if applicable, when the child will be returned to the parent or parents, pursuant to RSA 169–C:23. If the standard for return pursuant to RSA 169–C:23 is not met, the court shall identify a permanency plan other than reunification for the child. Other options for a permanency plan include:

(a) Termination of parental rights or parental surrender when an adoption is contemplated;

(b) Guardianship with a fit and willing relative or another appropriate party; or

(c) Another planned permanent living arrangement.

III. At a permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

Source. 2007, 236:16, eff. Jan. 1, 2008.

169–C:24–c Post-Permanency Hearings.

I. For a child who is in an out-of-home placement following the permanency hearing, the court shall hold and complete a post-permanency hearing within 12 months of the permanency hearing and every 12 months thereafter as long as the child remains in an out-of-home placement. The court may conduct periodic post-permanency hearings upon its motion or upon the request of any party at any time.

II. At a post-permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether the services to the family have been accessible, available, and appropriate.

Source. 2007, 236:16, eff. Jan. 1, 2008.

169–C:25 Confidentiality.

I. (a) The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, grandparent pursuant to subparagraph (b), guardian, custodian, attorney, or other authorized representative of the child.

(b) A grandparent seeking access to court records under subparagraph (a) shall file a request for access with the court clerk supported by an affidavit signed by the grandparent stating the reasons for requesting access and shall give notice of such request to all parties to the case and the minor's parents. Any party to the case or parent may object to the grandparent's request within 10 days of the filing of the request. If no objection is made, and for good cause shown, the grandparent's request may be granted by the court. If an objection is made, access may be granted only by court order.

II. It shall be unlawful for any person present during a child abuse or neglect hearing to disclose any information concerning the hearing that may identify a child or parent who is involved in the hearing without the prior permission of the court. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

III. All case records, as defined in RSA 170–G:8–a, relative to abuse and neglect, shall be confidential, and access shall be provided pursuant to RSA 170–G:8–a.

Source. 1979, 361:2. 1983, 331:3. 1990, 19:2. 1993, 266:3; 355:4. 2002, 243:1. 2008, 258:1, eff. Jan. 1, 2009.

169–C:25–a Access to Medical Records.

I. A law enforcement agency may request from the court an order compelling the department or a health care provider to disclose a child's medical records for the purpose of the investigation of child abuse or neglect, a child fatality, or any other crime against a child.

(a) The law enforcement agency shall present to the court the following evidence by affidavit or orally under oath, including telephonically if necessary:

(1) A statement of facts establishing probable cause to suspect that a child has been the victim of a crime, and that the child's medical records will contain evidence of that crime;

(2) A representation that the information is unavailable from another source; and

(3) The names and addresses of the child and the custodial parents, non-custodial parents, legal custodians, or other guardians of the child, if known.

(b) Upon a showing of cause by a law enforcement agency why notice would compromise the investigation, put the child at risk of harm, or for other good cause, the court shall prohibit the health care provider and its attorneys, officers, directors, employees, contractors, or any other agent for the provider from notifying the child and the custodial parents, non-custodial parents, legal custodians, or other guardians of the child about the existence or contents of the order or that information has been furnished pursuant to the order. Such a showing shall be based on facts made by affidavit or orally under oath. Upon issuance of the order, the health care provider shall provide the medical records within 12 hours unless otherwise provided by the court or by agreement. The court shall order the law enforcement agency to notify the child's parent or guardian of the ex parte order within 60 days of issuance; provided, however, that upon a showing of good cause, the court may extend the period beyond 60 days, but in no event beyond 180 days.

(c) If the law enforcement agency satisfies the requirements of subparagraph (a) but not subparagraph (b), the court shall order the law enforcement agency to immediately serve a parent or guardian and the health care provider with notice of the request. The parent or guardian and health care provider shall have 5 days from receipt of notice to file an objection. If no objection is made, the court shall order the health care provider to produce the records to the law enforcement agency within 7 days. If an objection is made, the health care provider shall be ordered to provide the records to the trial court within 7 days from the date of the objection by producing the records under seal for in camera review by the court. The court shall issue an order within 30 days of receipt of the records.

(d) The court may issue such order by telephone, facsimile, or email, and shall include written findings.

(e) Nothing in this section shall be construed to limit the ability of a health care provider to unilaterally disclose to a law enforcement agency a child's medical records or information about a child's medical condition as otherwise permitted by

law, including if the health care provider, in the exercise of its professional judgment, believes the disclosure is necessary to prevent serious harm to the child or other potential victims.

II. Upon notice by a law enforcement agency of a court order permitting access to records for use in the investigation of the abuse or neglect of a child, a child fatality, or any other crime against a child pursuant to RSA 169–C or the criminal code, a health care provider shall permit the law enforcement agency to inspect and copy the medical records, including but not limited to prenatal and birth records, of the child or children involved in the investigation without the consent of the child, or parent or guardian of the child.

III. A health care provider who in good faith discloses medical records for the purpose of an investigation of the abuse or neglect of a child to the law enforcement agency shall not be civilly or criminally liable for the disclosure.

IV. The law enforcement agency in possession of medical records pursuant to this section shall, upon the request of the department or another law enforcement agency, be authorized to re-disclose the medical records to the department or other law enforcement agencies solely for the purpose of conducting investigations of child abuse or neglect, child fatalities, other crimes against a child, and any subsequent actions under this chapter or criminal proceedings. Medical records disclosed under this section shall not be used or further disclosed for any other purpose without a court order. Medical records provided pursuant to this section shall be exempt from disclosure under RSA 91–A.

V. For the purposes of this section, the term "law enforcement agency" shall include the attorney general, a county attorney, a county sheriff, the state police, and any local police department.

Source. 2016, 202:1, eff. Aug. 5, 2016.

169–C:26 Continuances. Except as otherwise provided, continuances in proceedings under this chapter may be granted by the court only for good cause shown. Whenever the court grants a continuance under this section, the court shall make written findings as to the circumstances that warranted the continuance.

Source. 1979, 361:2. 2007, 236:17, eff. Jan. 1, 2008.

169–C:27 Liability of Expenses and Hearing on Liability.

I. (a) Whenever an order creating liability for expenses is issued by the court under this chapter or whenever a voluntary service plan is developed and provided for a minor and the minor's family by the department, any expenses incurred for services, placements, and programs the providers of which are certified pursuant to RSA 170–G:4, XVIII, shall be payable by the department of health and human services.

(b) Subparagraph (a) shall not apply to expenses incurred for special education and related services, or to expenses incurred for evaluation, care, and treatment of the child at the New Hampshire hospital or to expenses incurred for the cost of accompanied transportation.

(c) The state shall have a right of action over for such expenses against the parents or the people chargeable by law for the child's support and necessities and the right to require parents or other people chargeable by law for the minor's support and necessities to assign to the state any insurance benefits that may be available to pay for all or a portion of the services provided. The department shall request reimbursement for such expenses from parents or people chargeable by law for the minor's support and necessities and shall request assignment to the state of any insurance benefits that may be available to pay for all or a portion of the services provided. The court shall require the individual chargeable by law for the child's support and necessities to submit a financial statement annually to the court upon which the court shall make an order as to reimbursement to the state as may be reasonable and just, based on the person's ability to pay. Such financial statement shall include, but not be limited to, any benefits received from the Social Security Administration or insurance benefits available to the individual. The court shall include disposition of these benefits in its order as to reimbursement. Such reimbursement shall be established on a per month or per week basis and shall continue from the time the services begin until 4 years beyond the time such services end, unless such reimbursement is fully paid prior to the end of the 4-year period. The court's jurisdiction to order reimbursement shall continue until the court-ordered obligation to reimburse has been fulfilled. If the court does not issue a reimbursement order, the court shall issue written findings explaining why such reimbursement is not ordered.

(d) Liability for placement expenses for any court ordered placement of any minor mother under this chapter shall include liability for placement expenses for the child or children of such minor

mother if the minor mother and child or children are placed at the same facility.

(e) Payments due under this section for the care of children in foster homes shall commence within 60 days of the child's placement in the foster home and shall be made every 30 days thereafter.

(f) Notwithstanding any provision of law to the contrary, the department shall have no responsibility for the payment of the cost of assigned counsel for any party under this chapter.

II. Upon the issuance of the order in paragraph I, the court shall send notice to the state. The state may, within 30 days from receipt of notice, request a hearing on the issues of the cost or appropriateness of services, or recovery. At such hearing, the court shall provide all financial information, including names and addresses of persons chargeable by law for the child's support and necessities, to the state.

III. The office of reimbursements acting on behalf of Laconia developmental services and the New Hampshire hospital is authorized to compromise or reduce any expense to be charged to the state.

IV. The department may enter into an agreement with a county to collect, on behalf of the department, payments from persons or entities which are ordered to reimburse the state under paragraph I, or which are chargeable by law for the minor's support and necessities. An agreement may authorize the county to deduct reasonable administrative costs from the amounts collected. The balance of any amounts collected by the county pursuant to this paragraph shall be forwarded to the department.

V. If the person responsible for paying reimbursements to the department under paragraph IV is financially able to pay such reimbursements but fails to make such payments, the department may apply to the district court for a lien on such person's real or personal property for the amount of reimbursements due.

VI. (a) For the adoptive parent or prospective adoptive parent of a child in the custody of the state whose birth parents have consented to the adoption, relinquished their parental rights to the department, or the parental rights of whose birth parents were terminated pursuant to a petition brought by the department, authorized agency, or foster parent, pursuant to RSA 170–C:4, the state shall have no right of action against such adoptive parent or prospective adoptive parent for the expenses of services, placements, and programs provided pursuant to RSA 169–B, 169–C, or 169–D after the adoption.

(b) If the department determines that the adoptive parent has been convicted of sexual or physical abuse of the adopted child pursuant to RSA 631 or 632–A, or the adoptive parent has misappropriated adoption subsidy moneys, the adoptive parent shall be responsible for payment for subsequent services, placements, and programs provided pursuant to RSA 169–B, 169–C, or 169–D after the adoption. A determination of misappropriation is subject to the provisions of RSA 126–A:5, VIII.

Source. 1979, 361:2; 434:81. 1981, 555:2. 1982, 25:3. 1983, 458:5. 1985, 96:6; 380:38. 1987, 402:31, 32. 1988, 107:5; 153:2, 5. 1989, 75:2; 229:2; 286:2. 1990, 3:48; 203:2. 1991, 265:3. 1993, 266:4. 1994, 212:2. 1995, 220:3; 308:72, 73; 310:171, 175, 181, 182. 1996, 286:14, 17. 1997, 305:2. 2007, 263:21. 2008, 274:33. 2009, 144:34, 37. 2011, 224:45, 72. 2013, 144:57, eff. July 1, 2013. 2016, 308:4, eff. July 1, 2016.

169–C:28 Appeals.

I. An appeal under this chapter may be taken to the superior court by the child or the child's authorized representative or any party having an interest, including the state, or any person subject to any administrative decision pursuant to this chapter, within 30 days of the final dispositional order; but an appeal shall not suspend the order or decision of the court unless the court so orders. The superior court shall hear the matter de novo, and shall give an appeal under this chapter priority on the court calendar. For purposes of this chapter, a "final dispositional order" includes a dismissal of a petition for abuse and neglect by the district court. "Final dispositional order" shall also include any ruling or order arising from an administrative hearing held or initiated by any administrative agency, including the department, in which a finding of child abuse or neglect is made.

II. This section shall apply to all appeals under this chapter, including appeals in proceedings before the family division of the courts.

Source. 1979, 361:2. 1989, 40:1. 1998, 235:1. 2000, 254:3, eff. June 12, 2000.

169–C:28–a Household Members.

[Repealed 1994, 411:19, II, eff. Jan. 1, 1995.]

History

Former RSA 169–C:28–a, which was derived from 1983, 331:4 and 1992, 208:2 to 4, related to household members living with an abused or neglected child.

Reporting Law

169–C:29 Persons Required to Report. Any physician, surgeon, county medical examiner, psychiatrist, resident, intern, dentist, osteopath, optometrist, chiropractor, psychologist, therapist, registered nurse, hospital personnel (engaged in admission, ex-

amination, care and treatment of persons), Christian Science practitioner, teacher, school official, school nurse, school counselor, social worker, day care worker, any other child or foster care worker, law enforcement official, priest, minister, or rabbi or any other person having reason to suspect that a child has been abused or neglected shall report the same in accordance with this chapter.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:30 Nature and Content of Report. An oral report shall be made immediately by telephone or otherwise, and followed within 48 hours by a report in writing, if so requested, to the department. Such report shall, if known, contain the name and address of the child suspected of being neglected or abused and the person responsible for the child's welfare, the specific information indicating neglect or the nature and extent of the child's injuries (including any evidence of previous injuries), the identity of the person or persons suspected of being responsible for such neglect or abuse, and any other information that might be helpful in establishing neglect or abuse or that may be required by the department.

Source. 1979, 361:2. 1989, 146:2. 1994, 411:17. 1995, 310:175, eff. Nov. 1, 1995.

169–C:31 Immunity From Liability. Anyone participating in good faith in the making of a report pursuant to this chapter is immune from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant has the same immunity with respect to participation in any investigation by the department or judicial proceeding resulting from such report.

Source. 1979, 361:2. 1994, 411:17. 1995, 310:175, eff. Nov. 1, 1995.

169–C:32 Abrogation of Privileged Communication. The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client, shall not apply to proceedings instituted pursuant to this chapter and shall not constitute grounds for failure to report as required by this chapter.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–C:33 Photographs and X-Rays.

I. Any medical person or the department preparing or investigating a report under this chapter, may take, or cause to be taken, photographs of the areas of trauma visible on a child who is the subject of a report and, if medically indicated, cause to be performed a radiological examination of the child without the consent of the child's parents or guardians. All photographs and X-rays taken, or copies of them, shall be sent to the appropriate offices of the department as soon as possible.

II. The reasonable cost of photographs or X-rays taken under this section shall be reimbursed by the department.

Source. 1979, 361:2. 1994, 411:17. 1995, 310:175, eff. Nov. 1, 1995.

169–C:34 Duties of the Department of Health and Human Services.

I. If it appears that the immediate safety or well-being of a child is endangered, the family may flee or the child disappear, or the facts otherwise so warrant, the department shall commence an investigation immediately after receipt of a report. In all other cases, a child protective investigation shall be commenced within 72 hours of receipt of the report.

II. For each report it receives, the department shall promptly perform a child protective investigation to:

(a) Determine the composition of the family or household, including the name, address, age, sex, and race of each child named in the report, and any siblings or other children in the same household or in the care of the same adults, the parents or other persons responsible for their welfare, and any other adults in the same household;

(b) Determine whether any person in the same family or household was named in a prior report of abuse or neglect, and, if there are 2 or more prior unfounded or unfounded but with reasonable concern reports involving any family or household member, conduct an administrative review of all identified reports;

(c) Determine whether there is probable cause to believe that any child in the family or household is abused or neglected, including a determination of harm or threatened harm to each child, the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof, and a determination of the person or persons apparently responsible for the abuse or neglect;

(d) Determine the immediate and long-term risk to each child if the child remains in the existing home environment; and

(e) Determine the protective treatment, and ameliorative services that appear necessary to help prevent further child abuse or neglect and to improve the home environment and the parents' ability to adequately care for the children.

II–a. The department may issue a confidential letter of concern to a person or persons responsible for the safety and welfare of the child that although there is insufficient evidence to substantiate a finding of abuse or neglect or of unfounded but with reasonable concern, the department encourages the person or persons responsible for the safety and welfare of the child to seek family support services and provide contact information to obtain such services.

II–b. The department may make a confidential determination of unfounded but with reasonable concern.

III. The department may request and shall receive from any agency of the state or any of its political subdivisions or any schools, such assistance and information as will enable it to fulfill its responsibilities under this section.

IV. Upon notification by the department that the immediate safety or well-being of a child may be endangered, the court shall, upon finding probable cause to believe that the child's immediate safety or well-being is endangered, order a police officer or a juvenile probation and parole officer or child protection service worker, accompanied by a police officer, to enter the place where the child is located, in furtherance of such investigation.

V. Notwithstanding any other provision of law to the contrary, the department may, pursuant to a voluntary service plan that is developed and provided for a minor and the minor's family by the department, offer voluntary services to families without making a determination of the person or persons apparently responsible for the abuse or neglect. The department shall adopt rules, pursuant to RSA 541–A, relative to the provision of voluntary services under this paragraph.

V–a. Notwithstanding any other provision of law to the contrary, the department may, pursuant to a voluntary service plan that is developed and provided for the child by the department, offer voluntary services to any child who prior to his or her eighteenth birthday was found to be neglected or abused, who was in legal custody of the department as of his or her eighteenth birthday, and who is less than 21 years of age.

VI. At the first contact in person, any person investigating a report of abuse or neglect on behalf of the department shall verbally inform the parents of a child suspected of being a victim of abuse or neglect of the specific nature of the charges and that they are under no obligation to allow a social worker or state employee on their premises or surrender their children to interviews unless that social worker or state employee is in possession of a court order to that effect. Upon receiving such information, the parent shall sign a written acknowledgement indicating that the information required under this paragraph was provided by the person conducting the investigation. The parent and department shall each retain a copy of the acknowledgment.

VII. If the child's parents refuse to allow a social worker or state employee on their premises as part of the department's investigation, and the department has probable cause to believe that the child has been abused or neglected, the department shall seek a court order to enter the premises. If the court finds probable cause to believe that the child has been abused or neglected, the court shall issue an order permitting a police officer, juvenile probation and parole officer, or child protection service worker to enter the premises in furtherance of the department's investigation and to assess the child's immediate safety and well-being. Any juvenile probation and parole officer or child protection service worker who serves or executes a motion to enter issued under this paragraph shall be accompanied by a police officer.

Source. 1979, 361:2. 1987, 402:12. 1994, 411:15–17. 1995, 310:175, 181. 2000, 294:9. 2001, 279:1. 2006, 276:1. 2008, 204:2, eff. Jan. 1, 2009. 2015, 127:1, 2, eff. Jan. 1, 2016. 2017, 112:7, 8, eff. June 14, 2017.

169–C:34–a Multidisciplinary Child Protection Teams.

I. The department of health and human services may enter into formal cooperative agreements with appropriate agencies and organizations to create multidisciplinary child protection teams to assist with the investigation and evaluation of reports of abuse and neglect under this chapter.

II. Multidisciplinary child protection team members may include licensed physical and mental health practitioners, educators, law enforcement officers, representatives from the local child advocacy center, social workers, and such other individuals as may be necessary to assist with the investigation and evaluation of reports of abuse or neglect.

III. The department may share information from its case records to the extent permitted by law with members of a multidisciplinary child protection team in order to assist the team with its investigation and evaluation of a report of abuse or neglect. Multidisciplinary child protection team members shall be required to execute a confidentiality agreement and shall be bound by the confidentiality provisions of RSA 169–C:25 and RSA 170–G:8–a.

IV. The department, in conjunction with the department of justice and the New Hampshire Network of Children's Advocacy Centers, shall develop a written protocol for multidisciplinary child protection team investigations. The purpose of the protocol shall be to ensure the coordination and cooperation of the agencies involved in multidisciplinary child protection team investigations, to increase the efficiency in the handling of these cases, and to minimize the impact on the child of the legal and investigatory process. The protocol developed shall be reviewed and, if necessary, revised not less than once every 3 years. The department shall forward a copy of the approved protocol to the speaker of the house of representatives, the senate president, and the governor by November 1 of the year in which they were approved and revised.

Source. 2006, 118:1, eff. July 10, 2006.

169–C:35 Central Registry.

I. There shall be established a state registry for the purpose of maintaining a record of founded reports of abuse and neglect. The registry shall be confidential and subject to rules on access established by the commissioner of the department under RSA 541–A.

II. Upon receipt by the department of a written request and verified proof of identity, an individual shall be informed by the department whether that individual's name is listed in the founded reports maintained in the central registry. It shall be unlawful for any employer other than those specified in RSA 170–E and RSA 170–G:8–c to require as a condition of employment that the employee submit his or her name for review against the central registry of founded reports of abuse and neglect. Any violation of this provision shall be punishable as a violation.

III. Founded reports of abuse and neglect shall be retained for a period of 7 years subject to an individual's right to petition for the earlier removal of his or her name from the central registry as provided in this section.

IV. Any individual whose name is listed in the founded reports maintained on the central registry may petition the district court to have his or her name expunged from the registry.

(a) A petition to expunge shall be filed in the district court where the abuse and neglect petition was heard. In cases where the department makes a finding but no petition is filed with the court, a petition to expunge shall be filed in the district court where the petition for the abuse and neglect could have been brought.

(b) A petition to expunge shall be filed on forms promulgated by the district courts and may include any information the petitioner deems relevant.

(c) When a petition to expunge is filed, the district court shall require the department to report to the court concerning any additional founded abuse and neglect reports on the petitioner and shall require that the department submit the petitioner's name, birth date, and address to the state police to obtain information about criminal convictions. The court may require the department to provide any additional information that the court believes may aid it in making a determination on the petition.

(d) Upon the receipt of the department's report, the court may act on the petition without further hearing or may schedule the matter for hearing at the request of either party. If the court determines that the petitioner does not pose a present threat to the safety of children, the court shall grant the petition and order the department to remove the individual's name from the central registry. Otherwise, the petition shall be dismissed.

V. When an individual's name is added to the central registry, the department shall notify individuals of their right to petition to have their name expunged from the central registry. No petition to expunge shall be brought within one year from the date that the petitioner's name was initially entered on the central registry. If the petition to expunge is denied, no further petition shall be brought more frequently than every 3 years thereafter.

VI. Upon receipt of a written request from a court in conjunction with a petition for guardianship of a minor pursuant to RSA 463 or a petition for guardianship of an incapacitated person pursuant to RSA 464–A, or from another state's child welfare agency or from a private adoption agency that is licensed or certified in another state to check the central registry established under this section for information on a prospective foster or adoptive parent or any other adult living in the home of such a prospective foster or adoptive parent, the department shall conduct the requested check and shall provide the requesting court, state, or private adoption agency with the results of the check along with such additional information from the department's case records as the department deems necessary for the requesting court, state, or private adoption agency to be able to evaluate the results.

VII. (a) Notwithstanding any provision of law or administrative rule to the contrary, upon the receipt of a written request from another state's lead agency to check the name of a child care provider, child care staff member, or prospective child care staff member in its state against the department's state registry of founded reports of abuse and neglect established under this section, the department shall conduct the requested check and shall provide the results of the check to the requesting state's lead agency.

(b) In this paragraph:

(1) "Lead agency" means the state, territorial or tribal entity, or joint interagency office designated or established pursuant to the requirements of the federal Child Care and Development Fund program.

(2) "Child care provider" means a center based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that is not an individual who is related to all children from whom child care services are provided and is licensed, regulated, or registered under state law or eligible to receive assistance provided under the federal Child Care and Development Fund program.

(3) "Child care staff member" means an individual, other than an individual who is related to all children for whom child care services are provided:

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home who is age 18 or older.

Source. 1979, 361:2. 1983, 331:5. 1985, 367:1. 1993, 355:5. 1995, 310:173, 175. 2002, 111:1. 2007, 325:1. 2010, 160:1, eff. June 17, 2010. 2017, 39:3, eff. July 8, 2017; 62:1, eff. June 2, 2017.

169–C:35–a Records Management of Abuse and Neglect Reports.

I. The department shall retain a screened-out report for one year from the date that the report was screened-out, after which time, the department shall delete or destroy all electronic and paper records of the report. In this section, a "screened-out report" is one which the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for assessment.

II. The department shall retain an unfounded report for 3 years from the date that the department determined the case to be unfounded, after which time, the department shall delete or destroy all electronic and paper records of the report.

III. The department shall retain a founded report or unfounded but with reasonable concern report for 7 years from the date that the department closes the case, after which time, the department shall delete or destroy all electronic and paper records of the report.

IV. The provisions of paragraph III, which relate to the destruction of the records of founded reports, shall not apply to foster placement records or to adoption records.

V. Nothing in this section shall prevent the department from retaining generic, non-identifying information which is required for state and federal reporting and management purposes.

Source. 2002, 162:1. 2010, 164:1, eff. July 1, 2011. 2017, 112:9, eff. June 14, 2017.

169–C:36 Confidentiality.

[Repealed 1983, 331:8, eff. Aug. 17, 1983.]

History

Former RSA 169–C:36, which was derived from 1979, 361:2, related to confidentiality of the contents of the registry. See now RSA 169–C:35.

169–C:37 Institutional Abuse and Neglect. The department of justice shall be empowered to receive and investigate reports of institutional abuse or neglect at the youth development center, Laconia developmental services, and New Hampshire hospital; and the department shall be empowered to receive and investigate reports of all other suspected instances of institutional abuse or neglect. Either the department of justice or the commissioner of the department or both may adopt rules consistent with this authority to investigate such reports and take appropriate action for the protection of children.

Source. 1979, 361:2. 1983, 242:9. 1988, 107:5. 1994, 411:17. 1995, 310:173, 175, eff. Nov. 1, 1995.

169–C:38 Report to Law Enforcement Authority.

I. The department shall immediately by telephone or in person refer all cases in which there is reason to believe that any person under the age of 18 years has been: (a) sexually molested; (b) sexually exploited; (c) intentionally physically injured so as to cause serious bodily injury; (d) physically injured by other than accidental means so as to cause serious bodily

injury; or (e) a victim of a crime, to the local law enforcement agency in the community in which the acts of abuse are believed to have occurred. The department shall also make a written report to the law enforcement agency within 48 hours, Saturdays, Sundays and holidays excluded. A copy of this report shall be sent to the office of the county attorney.

II. All law enforcement personnel and department employees shall cooperate in limiting the number of interviews of a child victim and, when appropriate, shall conduct joint interviews of the child. Employees of the department shall share with the investigating police officers all information in their possession which it is lawful for them to disclose to a law enforcement agency. Investigating police officers shall not use or reveal any confidential information shared with them by the department except to the extent necessary for the investigation and prosecution of the case.

III. No staff member of the department shall be held civilly or criminally liable for a telephone referral or a written report made under paragraph I.

IV. Law enforcement personnel or department employees who are trained caseworkers shall have the right to enter any public place, including but not limited to schools and child care agencies, for the purpose of conducting an interview with a child, with or without the consent or notification of the parent or parents of such child, if there is reason to believe that the child has been:

(a) Sexually molested.

(b) Sexually exploited.

(c) Intentionally physically injured so as to cause serious bodily injury.

(d) Physically injured by other than accidental means so as to cause serious bodily injury.

(e) A victim of a crime.

(f) Abandoned.

(g) Neglected.

V. For any interview conducted pursuant to paragraph IV, the interview with the child shall be videotaped if possible. If the interview is videotaped, it shall be videotaped in its entirety. If the interview cannot be videotaped in its entirety, an audio recording of the entire interview shall be made.

Source. 1979, 361:2. 1986, 225:1. 1988, 237:1. 1994, 411:17. 1995, 310:175. 1998, 185:1, 2, eff. Jan. 1, 1999.

169–C:38–a Standardized Protocol for the Investigation and Assessment of Child Abuse and Neglect Cases. The department of health and human services and the department of justice shall jointly develop a standardized protocol for the interviewing of victims and the investigation and assessment of cases of child abuse and neglect. The protocol shall seek to minimize the impact on the victim. The protocol shall also be designed to protect the rights of all parties affected The protocol shall specifically address the need to establish safe and appropriate places for interviewing children.

Source. 2002, 113:1, eff. July 2, 2002.

169–C:39 Penalty for Violation. Anyone who knowingly violates any provision of this subdivision shall be guilty of a misdemeanor.

Source. 1979, 361:2, eff. Aug. 22, 1979.

Prevention Program

169–C:39–a Purpose.

[Repealed 2010, 195:3, eff. Jan. 1, 2011.]

History

Former RSA 169–C:39–a, which was derived from 1986, 184:1; 1987, 372:1; 1994, 212:2; 1995, 310:181; and 1997, 254:1, related to the purpose of a child abuse and neglect prevention program.

169–C:39–b Definitions.

[Repealed 2010, 195:3, eff. Jan. 1, 2011.]

History

Former RSA 169–C:39–b, which was derived from 1986, 184:1; 1987, 372:2, 3; 1992, 24:2, V; 1997, 254:2; and 2010, 368:28, XV, related to the definitions of terms used in provisions of a child abuse and neglect prevention program.

169–C:39–c New Hampshire Children's Trust Fund.

[Repealed 2010, 195:3, eff. Jan. 1, 2011.]

History

Former RSA 169–C:39–c, which was derived from 1986, 184:1; 1987, 372:4; 1989, 132:2; 1992, 24:2, VI; and 1997, 254:3, 4, related to a children's trust fund.

169–C:39–d New Hampshire Children's Trust Fund Board.

[Repealed 2011, 231:2(3), eff. Dec. 31, 2011.]

History

Former RSA 169–C:39–d, which was derived from 1986, 184:1; 1993, 165:1; 1994, 212:2; 1995, 310:171; and 1997, 254:5, related to the establishment of the New Hampshire children's trust fund board.

169–C:39–e Duties of the Board.

[Repealed 2010, 368:28, XVI, eff. Dec. 31, 2010.]

History

Former RSA 169–C:39–e, which was derived from 1986, 184:1; 1987, 372:5, 10; and 1993, 165:2, related to the duties of the children's trust fund board.

169–C:39–f Criteria for Selection of Grantees.

[Repealed 2010, 368:28, XVII, eff. Dec. 31, 2010.]

169–C:39–f Repealed

History

Former RSA 169–C:39–f, which was derived from 1986, 184:1 and 1997, 254:6, 7, related to the criteria for selection of grantees by the children's trust fund board.

169–C:39–g Amount of Grant.

[Repealed 2010, 195:3, eff. Jan. 1, 2011.]

History

Former RSA 169–C:39–g, which was derived from 1986, 184:1, related to the amount and funding of grants.

169–C:39–h Rulemaking.

[Repealed 2006, 48:1, eff. June 17, 2006.]

History

Former RSA 169–C:39–h, which was derived from 1986, 184:1 and 1987, 372:9, related to rulemaking authority of the New Hampshire children's trust fund board.

169–C:39–i Successor to or Replacement of New Hampshire Charitable Foundation.

[Repealed 2010, 195:3, eff. Jan. 1, 2011.]

History

Former RSA 169–C:39–i, which was derived from 1987, 372:6; 1992, 24:1; and 1997, 254:8, related to a successor to or replacement of the New Hampshire charitable foundation.

Commission to Study Public-Private Partnerships to Fund Medical Care for Abused and Neglected Children

169–C:39–j Commission to Study Public-Private Partnerships to Fund Medical Care for Abused and Neglected Children.

[Repealed 2014, 80:3, eff. Jan. 1, 2015.]

History

Former RSA 169–C:39–j, which was derived from 2014, 80:2, related to a commission to study public-private partnerships to fund medical care for abused and neglected children.

Commission to Review Child Abuse Fatalities

169–C:39–k Commission to Review Child Abuse Fatalities.

[RSA 169–C:39–k repealed by 2015, 127:5, effective June 30, 2018.]

There is established a commission to review child abuse fatalities.

I. The members of the commission 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.

(c) One representative of the office of the governor, appointed by the governor.

(d) The attorney general, or designee.

(e) The commissioner of the department of health and human services, or designee.

(f) One representative of New Hampshire Kids Count, appointed by that organization.

(g) One representative of the New Hampshire Coalition against Domestic and Sexual Violence, appointed by that organization.

(h) One representative of the New Hampshire child fatality review committee, established by executive order number 95-1, appointed by the committee.

(i) One representative of Child and Family Services of New Hampshire, appointed by that organization.

(j) One representative of the New Hampshire Children's Trust, appointed by that organization.

II. Members of the commission shall serve without compensation, except that legislative members shall receive mileage at the legislative rate when attending to the duties of the commission.

III. The commission shall:

(a) Review state laws, rules, policies, and protocols governing child abuse and neglect investigations and child abuse fatalities.

(b) Identify any gaps, deficiencies, or problems in the delivery of services to children who are victims of abuse or neglect.

(c) Determine whether existing procedures adequately provide for a thorough and timely investigation of a child abuse fatality.

(d) Recommend any changes to state law and practice the commission deems appropriate to protect children from abuse or neglect and reduce preventable child abuse deaths.

(e) Identify all potential sources of child abuse and neglect data and recommend a comprehensive system for coordinated reporting to a central source. The commission shall solicit information and testimony from individuals and entities with experience and expertise relevant to the study, including the division of public health services, the department of safety, the Crimes Against Children Research Center at the university of New Hampshire, the Granite State Children's Alliance, the New Hampshire Association of Chiefs of Police, the New Hampshire Hospital Association, and a circuit court judge of the family division.

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

V. The commission shall submit an interim 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 on or before November 1, 2015. The commission shall submit a final report of its findings and recommendations on or before June 30, 2018.

Source. 2015, 127:4, eff. June 11, 2015. 2016, 229:1, 2, eff. June 9, 2016. 2017, 112:13, eff. June 14, 2017.

Severability

169–C:40 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Source. 1979, 361:2, eff. Aug. 22, 1979.

CHAPTER 169–D

CHILDREN IN NEED OF SERVICES

169–D:1 Applicability of Chapter; Purpose. This chapter shall apply to children in need of services as hereinafter defined and shall be construed and administered in accordance with the following purposes and policies:

I. To recognize that certain behaviors occurring within a family or school environment indicate that a child is experiencing serious difficulties and is in need of services and corrective action in order to protect the child from the irreversibility of certain choices, and to protect the integrity of the family and the authority it must maintain in order to fulfill its responsibilities to raise the next generation. To further provide the child with the treatment, care, guidance, counseling, discipline, supervision, and rehabilitation necessary to assist him in becoming a responsible and productive member of society;

II. To recognize that we must no longer bring the weight of family problems down on the child alone but that parents must be made aware of their contribution to the problem and must account for their role in the solution of the problem, and must accept the responsibility to participate in any program of care ordered by the court in order to assure that the outcome may have a good probability of success while, at the same time, supporting families in their mission to teach values to youth and to exercise reasonable control of their children;

III. To keep a child, whenever possible, in contact with his home community and in a family environment by preserving and strengthening the unity of

the family and separating the child from his parents only when it is clearly necessary for his welfare or the interests of public safety, and when it can be clearly shown that a change in custody and control will benefit the child;

IV. To protect the integrity of the family by authorizing adjudication and the imposition of dispositional judgment requiring participation in a plan of services or by offering appropriate voluntary alternatives; and

V. To provide effective judicial procedures through which family service plans are executed and enforced, and which assure the parties fair hearings at which their constitutional and other rights as citizens are recognized and protected.

Source. 1979, 361:2. 1990, 201:6. 1999, 266:1, 2. 2013, 249:1, eff. Sept. 1, 2013.

169–D:2 Definitions. In this chapter:

I. "Child" means a person who is under the age of 18 on the date the petition is filed pursuant to RSA 169–D:5.

II. "Child in need of services" means a child under the age of 18:

(a) Who is subject to compulsory school attendance, and who is habitually, willfully, and without good and sufficient cause truant from school;

(b) Who habitually runs away from home, or who repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian and places himself or herself or others in unsafe circumstances;

(c) Who has exhibited willful repeated or habitual conduct constituting offenses which would be violations under the criminal code of this state if committed by an adult or, if committed by a person 16 years of age or older, would be violations under the motor vehicle code of this state; or

(d) With a diagnosis of severe emotional, cognitive, or other mental health issues who engages in aggressive, fire setting, or sexualized behaviors that pose a danger to the child or others and who is otherwise unable or ineligible to receive services under RSA 169–B or RSA 169–C; and

(e) Is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation.

III. "Conditional release" means a legal status created by a court order following an adjudication that a child is a child in need of services and shall be permitted to remain in the community, including his or her home, subject to:

(a) The conditions and limitations of his or her conduct prescribed by the court.

(b) Such counseling and treatment as are deemed necessary, pursuant to methods and counseling prescribed by the court, for the minor and his or her family.

(c) The supervision of juvenile probation and parole officers as authorized by RSA 170–G:16.

(d) Return to the court for violation of the conditions of the release and change of the disposition at any time during the term of the conditional release.

IV. "Court" means the district court, unless otherwise indicated.

V. "Custody" means a legal status created by court order wherein the department of health and human services has placement and care responsibility for the child.

VI. "Diversion" means a decision made by a person with authority which results in providing an individually designed program for delivery of services for the child by a specific provider, or a plan to assist the child in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the child in the formal legal system. Diversion of a child may take place either at pre-filing as an alternative to the filing of a petition or at any time after the filing of the petition.

VII. "Home detention" means court-ordered confinement of a minor with his or her parents or other specified home for 24 hours a day unless otherwise prescribed by written court order, under which the minor is permitted out of the residence only at such hours and in the company of persons specified in the court order establishing the home detention.

VIII. "Restitution" means moneys, compensation, work, or service which is reimbursed by the offender to the victim who suffered personal injury or economic loss.

IX. "Services" means care, guidance, counseling, discipline, supervision, treatment and rehabilitation or any combination thereof.

X. "Concurrent plan" means an alternate permanency plan in the event that a minor cannot be safely reunified with his or her parents.

XI. "Out-of-home placement" means when a minor, as the result of a delinquent petition, is removed from a biological parent, adoptive parent, or legal guardian of the minor and placed in substitute care with someone other than a biological parent, adoptive parent, or legal guardian. Such substitute care may include placement with a custodian, guardian, rela-

tive, friend, group home, crisis home, shelter care, or a foster home.

XII. "Permanency hearing" means a court hearing for a minor in an out-of-home placement to review, modify, and/or implement the permanency plan or adopt the concurrent plan.

XIII. "Permanency plan" means a plan for a minor in an out-of-home placement that is adopted by the court and that provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XIV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of children no less than 11 nor more than 17 years of age. Shelter care facilities may be utilized for children prior to or following adjudication or disposition. A shelter care facility may not be operated in the same building as a facility for architecturally secure confinement of children or adults.

XV. "Truant" means a child between the ages of 6 and 18 years who is either not attending school as required by law or who is not participating in an alternative learning plan under RSA 193:1. "Truancy" shall have the same meaning as in RSA 189:35–a.

Source. 1979, 361:2. 1987, 402:10. 1989, 285:5, 6. 1990, 201:7, 8. 1995, 308:74. 1999, 266:3. 2000, 294:10. 2007, 236:18; 325:11. 2011, 224:279. 2013, 249:2, 3, eff. Sept. 1, 2013; 249:18, eff. Sept. 22, 2013.

169–D:3 Jurisdiction.

I. The court shall have exclusive original jurisdiction over all proceedings alleging a child is in need of services.

II. The court may, with the consent of the child, retain jurisdiction over any child who, prior to his eighteenth birthday, was found to be a child in need of services, and who is attending school for the purpose of obtaining a high school diploma or general equivalency diploma. The court shall make orders relative to the support and maintenance of the child during the period after the child's eighteenth birthday as justice may require.

III. The court shall close the case when the child reaches age 18, or if jurisdiction is retained, when the child ceases to be enrolled as a full-time student during sessions of the school, or graduates from such school, or upon reaching the age of 21, whichever shall first occur.

Source. 1979, 361:2. 1992, 11:2, eff. July 1, 1992.

169–D:4 Venue.

I. Proceedings under this chapter may be originated in any judicial district in which the child is found or resides.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

III. When a child who is on conditional release moves from one political subdivision to another, the court may transfer, upon notice and acceptance, to the court with jurisdiction over the political subdivision of the child's new residence, if such transfer is in the best interest of the child.

Source. 1979, 361:2. 1987, 402:8, eff. Jan. 1, 1988.

169–D:4–a Filing Reports, Evaluations, and Other Records. All reports, evaluations and other records from the department of health and human services, counselors, and guardians ad litem in proceedings under this chapter shall be filed with the court and all other parties at least 5 days prior to any hearing. Once filed with the court and given to all other parties, the report, evaluation or other record need not be refiled during the proceeding. Failure to comply with the provisions of this section shall not be grounds for dismissal of the petition.

Source. 1991, 57:3. 1994, 212:2. 1995, 310:181, eff. Nov. 1, 1995.

169–D:5 Petition.

I. (a) A petition alleging that a child is in need of services under RSA 169–D:2, II(a) may be filed by a truant officer or school official from the school district where the child is attending school with a judge or clerk of the court in the judicial district where the child is found or resides. In accordance with RSA 189:36, II, a truant officer or school official shall not file a petition alleging that a child is in need of services under RSA 169–D:2, II(a) until all steps in the school district's intervention process under RSA 189:34, II have been followed.

(b) A petition alleging that a child is in need of services under RSA 169–D:2, II(b) or RSA 169–D:2, II(c) may be filed by a parent, legal guardian or custodian, school official, or law enforcement officer with a judge or clerk of the court in the judicial district in which the child is found or resides.

(c) A petition alleging that a child is in need of services under RSA 169–D:2, II(d) may, with the consent of the department, be filed by a parent, legal guardian or custodian, school official, or law

enforcement officer with a judge or clerk of the court in the judicial district in which the child is found or resides.

I–a. The petition shall be in writing and verified under oath. The following notice shall be printed on the front of the petition in bold in no smaller than 14 point font size: "See back for important information and financial obligations." The back of the petition shall include a notice of liability for parents and other individuals chargeable by law for the child's support and necessities, which shall state: "In accordance with RSA 169–D:29, parents and others chargeable by law for the child's support and necessities are required to reimburse the state for the cost of voluntary or court ordered services. The amount that you will be required to reimburse the state will be based on your ability to pay. You have a right, upon written request, to receive a statement from the department of the cost of services incurred in the case to date. Upon our receipt of notice of a proposed service or placement, you must contact your insurance carrier within 48 hours to see if coverage is available to pay for the proposed service or placement and notify the department of the results. If insurance coverage is available, you must cooperate with your insurance carrier and comply with their requirements for direct payment to the provider."

II. To be legally sufficient, the petition must set forth with particularity, but not be limited to, the date, time, manner and place of the conduct alleged and should state the statutory provision alleged to have been violated.

II–a. Any petition filed shall include language demonstrating whether appropriate voluntary services have been attempted, the nature of voluntary services attempted, and the reason court compulsion is necessary. The petition also shall include information regarding the department's determination as to whether voluntary services are appropriate for the child or family under RSA 169–D:5–c. Refusal of the child to participate in the development of a voluntary services plan may constitute sufficient information that voluntary service and support options have been unsuccessful.

III. If the parents of a child are filing the petition, they shall include information which shows that the child and family have sought to resolve the expressed problem through available community alternatives, that the problem still remains, and that court intervention is needed.

IV. [Repealed.]

V. Except as provided in paragraph VI, when a school official is filing the petition, information shall be included which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, that the school district has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so; that the problem remains, and that court intervention is needed.

VI. When a school official is filing a petition involving a child with a disability pursuant to RSA 186–C, he or she shall include information which demonstrates that the legally liable school district:

(a) Has determined that the child has a disability; and

(b) Has reviewed for appropriateness the child's current individualized education program (IEP) and placement, and has made modifications where appropriate.

VII. Using local law enforcement personnel, the court shall serve both parents, and any other individual chargeable by law for the child's support, with a copy of any petition filed under this section. The court shall request the appropriate contact information from the party filing the petition.

VIII. The department shall develop a brochure that describes the liability and reimbursement process under RSA 169–D:29. The brochure shall be available to the public and shall be distributed at the earliest available opportunity to parents and others chargeable by law for the minor's support who are requesting or receiving voluntary or court ordered services. The brochure shall contain a description of the liability and reimbursement process under RSA 169–D:29, examples of typical services that may be provided through voluntary or court ordered services, the cost or range of costs for these services, and a statement that although the court may order reimbursement pursuant to RSA 169–D:29, any reimbursement order will be based on the person's ability to pay. The department shall provide its juvenile probation and parole officers with information and training on the liability and reimbursement requirements of this chapter.

Source. 1979, 361:2. 1989, 285:7. 1990, 201:9. 1995, 308:75. 1999, 266:4. 2006, 291:1, 2. 2008, 274:11. 2009, 302:2. 2011, 224:280. 2012, 110:1, II. 2013, 249:4, 5, eff. Sept. 1, 2013. 2014, 57:1, 3, eff. Jan. 1, 2015.

169–D:5–a Notice of Petition to Department of Health and Human Services. Upon the filing of any petition under RSA 169–D:5, the court shall serve the department of health and human services with a copy of the petition and the department shall

be a party to and shall receive notice of all proceedings under this chapter from the court and all other parties.

Source. 1995, 308:76; 310:175, 181. 2004, 31:2, eff. Jan. 1, 2005.

169–D:5–b Consent Order.

I. At any time after the filing of the petition and prior to an order of adjudication pursuant to RSA 169–D:14, the court may suspend the proceedings upon its own motion or upon the motion of any party, and continue the case under terms and conditions established by the parties and approved by the court.

II. A consent order shall not be approved unless the department consents and the child and parents, guardian, or custodian are informed of the consequences of the order by the court and the court determines that the child and parents voluntarily and intelligently consent to the terms and conditions of the order.

Source. 1995, 308:76; 310:175, eff. Nov. 1, 1995.

169–D:5–c Voluntary Services. The department shall assess whether to offer the child and family, on a voluntary basis, any services permitted under RSA 169–D:17 except out-of-home placement of the child. The department may decline to offer services to a child or family if it concludes that the child does not meet the definition of child in need of services in RSA 169–D:2, II, or if the department otherwise determines that voluntary services are not appropriate for the child or family. The department shall document the basis for its decision. Notwithstanding RSA 541–A, the department's decision shall not be subject to appeal, nor shall the fact that the department declined to offer voluntary services preclude a person from filing a petition under RSA 169–D:5, I. Voluntary services provided under this section shall not exceed 9 months, unless the department determines that an extension for an additional, specified period of time is appropriate.

Source. 2013, 249:6, eff. Sept. 1, 2013.

169–D:6 Issuance of Summons and Notice.

I. (a) After a legally sufficient petition has been filed, unless the case is referred to the department pursuant to RSA 169–D:5 or a consent order is entered and approved, the court shall schedule an initial appearance and issue a summons, including a copy of the petition, to be served personally upon the person having custody or control of the child or with whom the child may be, requiring that person to appear with the child on the specified date and time.

(b) If personal service is not possible, service shall occur at the usual place of abode of the person having custody or control of the child or with whom the child may be, requiring that person to appear with the child at a specified place and time which time shall not be less than 24 hours after service. If the person so notified is not the parent or guardian of the child, then a parent or guardian shall be notified, provided they and their residence are known.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall state as follows: "Pursuant to RSA 169–D:29, parents and other individuals chargeable by law for the child's support and necessities may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186–C regarding children with disabilities grants children and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

Source. 1979, 361:2. 1983, 458:9. 1990, 140:2, X. 1995, 308:77. 1999, 199:1; 266:5. 2006, 291:3. 2008, 274:31. 2013, 249:7, eff. Sept. 1, 2013.

169–D:7 Failure to Appear; Warrant.

I. Any person summoned who, without reasonable cause, fails to appear with the child, may be proceeded against as in case of contempt of court.

II. If a summons cannot be served or the party served fails to obey the same, and in any case where it appears to the court that such summons will be ineffectual, a warrant may be issued for the child's appearance or for the appearance of anyone having custody or control of the child or for both.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:8 Temporary Custody. A child may be taken into temporary custody:

I. Pursuant to a court order; or

II. By a police officer or juvenile probation and parole officer when there are reasonable grounds to believe that a child has run away from his parents, guardian, or other custodian; or the circumstances are such as to endanger the child's health or welfare unless immediate action is taken.

Source. 1979, 361:2. 1987, 402:12. 2000, 294:9, eff. July 1, 2000.

169–D:9 Pre-adjudicatory Procedure.

I. Except in emergencies, the department, its agent, or any person or agency it designates shall determine whether voluntary service options are ap-

propriate for the child and family. A referral for this determination may be made by any person permitted to bring a petition under RSA 169–D:5, I. To achieve this purpose, the department may designate a multidisciplinary team to consider the facts and circumstances of the case, the needs of the child and family, and available diversion programs, services, and resources. This conference shall be attended by the child, if appropriate, his or her parents, legal guardians or custodians, and representatives of any public institution or agency having legal responsibility over the child, and may be attended by parties invited by the family and representatives of any public or private institutions or agencies having discretionary ability to coordinate and/or supply services to the child or family. If the child does not attend a multidisciplinary conference, an appropriate individual shall be designated to solicit the child's input and help the child understand available service options and supports.

II. If available, a multi-disciplinary conference may be held at any time before or after a petition is filed but shall be held before the child's initial appearance pursuant to RSA 169–D:11.

III. At any time before or after a petition is filed, the child, his or her caretakers, and the department may effect an individualized voluntary family services plan, which shall include:

(a) Identification of the circumstances which contributed to the need for services.

(b) A description of the services that are needed for the child, the child's caretakers, or other family members, the availability of such services within the community, and a plan for ensuring that any such services that are available will be secured and provided.

(c) The name of the person within each affected public service agency who is directly responsible for assuring that specific services identified in the plan are provided.

(d) An estimate of the time anticipated to be necessary to accomplish the goals set out in the plan.

(e) Any other provisions deemed appropriate by the parties.

(f) Designation of a responsible person or agency for oversight of the plan.

IV. A voluntary family services plan shall set forth in writing the terms and conditions agreed to by the child, the child's caretaker, and all parties responsible for implementation of the voluntary services plan. A written copy of the plan shall be submitted to each party or person responsible for implementation of the plan.

V. A voluntary services plan may be amended by agreement of the parties at any time. If a petition has been filed, the amended plan shall be submitted to the court.

VI. If a petition has been filed and the department determines voluntary services are appropriate, a voluntary family services plan shall be submitted to the court. The voluntary services plan shall stay the proceedings for a period not to exceed 90 days from the date of implementation, unless the parties agree, in writing, to an extension for additional periods not to exceed 90 days.

VII. When the petitioning person or agency, the court, the department, or a member of the multidisciplinary team suspects that a child has a disability, an administrator at the responsible school district shall be notified. If appropriate, the school district shall refer the child for evaluation to determine if the child is in need of special education and related services.

VIII. A voluntary family services plan shall not be considered in an adjudicatory hearing pursuant to RSA 169–B or 169–D, or a criminal trial. Evidence of the existence of such agreement shall not be used against the child over objection in any juvenile adjudicatory hearing or criminal trial.

IX. Any incriminating statement made by the child during discussions or conferences incident to the voluntary family services plan shall not be used against the child, over objection, in adjudicatory hearing pursuant to RSA 169–B or 169–D, or a criminal trial. Any such statement may be reported as the basis for a referral to the department pursuant to RSA 169–C, if there is reasonable basis to believe that a child's physical or mental health or welfare is endangered by abuse or neglect.

X. A voluntary family services plan suspends the proceedings on the petition. If the child satisfies the terms of the voluntary family services plan, he or she shall be discharged from further services or supervision, and the pending complaint or petition shall be dismissed with prejudice.

Source. 1979, 361:2. 1999, 266:6. 2000, 294:9. 2008, 274:12. 2010, 175:5. 2011, 151:2. 2013, 249:8, eff. Sept. 1, 2013. 2014, 271:2, eff. July 28, 2014.

169–D:9–a Use of Alternative to Secure Detention. An officer may, with court approval, release a child to an alternative to secure detention as defined in RSA 169–B:2, pending the arrival of the parent, guardian, or custodian. The alternative program

may release the child to the parent, guardian, or custodian upon their arrival. Any court, police, or juvenile probation and parole officer, acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of release to an alternative to secure detention.

Source. 1988, 197:7. 2000, 294:9, eff. July 1, 2000.

169–D:9–b Prohibited Manner of Detention. Notwithstanding any other provisions of law, no child detained under this chapter shall be held for any period of time in a public or private facility, which includes construction fixtures designed to physically restrict the movements and activities of persons in custody, including but not limited to locked rooms and buildings, fences, or other physical structures. This section shall not be construed to prohibit detention in facilities where physical restriction of movement or activity is provided solely through facility staff.

Source. 1988, 197:7. 1992, 18:6, eff. Jan. 1, 1993.

169–D:9–c Detention in Certain Facilities; CHINS and Juvenile Delinquents.

I. Facilities which are not physically restricted may receive for placement minors who have been adjudicated as children in need of services or minors who have been adjudicated as juvenile delinquents.

II. Physically restricted facilities shall receive for commitment and detention only those minors who have been adjudicated juvenile delinquents pursuant to RSA 169–B or who are awaiting the court's disposition regarding allegations of juvenile delinquency. Physically restricted facilities which are primarily used for psychiatric treatment or evaluation shall not be limited only to such minors.

Source. 1990, 201:10, eff. June 26, 1990.

169–D:10 Release Prior to Initial Appearance.

I. An officer taking a child into custody pursuant to RSA 169–D:8 shall release the child to a parent, guardian or custodian pending initial appearance; however, if a parent, guardian or custodian is not available upon taking the child into custody, the court shall be notified, thereupon the child's release shall be determined by the court.

II. Pending the initial appearance, the court shall release the child to one of the following, which in the court's opinion is the least restrictive and most appropriate:

(a) A parent or guardian;

(b) A relative or suitable adult;

(c) Where there are reasonable grounds to believe that the child is a runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d), the custody of department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility with expenses chargeable as provided in RSA 169–D:29; or

(d) [Repealed.]

(e) An alcohol crisis center certified to accept juveniles.

III. Where there are reasonable grounds to believe that the child is a runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d) and there is no shelter care/detention bed available, nor an appropriate parent, guardian, or custodian as defined in paragraph II of this section available, the court or the officer taking the child into temporary custody shall notify the department. If the child cannot be referred to an alternative to secure detention, the court shall make an order authorizing the department to place the child. The department shall then promptly arrange for placement of the child.

Source. 1979, 361:2. 1982, 39:15. 1988, 197:13. 1989, 285:8. 1995, 310:175. 2001, 117:6. 2007, 325:12, 15, III. 2013, 249:9, eff. Sept. 1, 2013.

169–D:10–a Removal of Child From Home. No child subject to a petition brought under this chapter shall be removed from his home unless:

I. Clear and convincing evidence is presented to the court to show it is against the child's best interest to remain in the home under the circumstances presented in such petition;

II. A case plan for return of the child to the home has been recommended by the department, which in its recommendation shall address parent and child responsibility, and ordered by the court; provided, however, that in cases brought by a parent, guardian or custodian, the parent, guardian or custodian shall consent to the order.

Source. 1990, 201:11. 1995, 310:175, eff. Nov. 1, 1995.

169–D:10–b Child's Welfare; Findings Regarding Removal.

I. The court shall, in its first court ruling that sanctions, even temporarily, the removal of a minor from the home, determine whether continuation in the home is contrary to the minor's welfare.

II. The court shall, within 60 days of a minor's removal from the home, determine and issue written

findings as to whether reasonable efforts were made or were not required to prevent the minor's removal. In determining whether reasonable efforts were made to prevent the minor's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

Source. 2007, 236:19, eff. Jan. 1, 2008.

169–D:11 Initial Appearance.

I. An initial appearance shall be held not less than 24 hours nor more than 7 days from the filing of a legally sufficient petition.

II. At the initial appearance, the court shall:

(a) Advise the child in writing and orally of any formal charges;

(b) Appoint counsel pursuant to RSA 169–D:12;

(c) Establish any conditions for release;

(d) Set a hearing date; and

(e) Inquire of the child and a parent or guardian of the child if the child has been:

(1) Determined to have an intellectual disability;

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

(3) Identified as eligible for special education services.

II–a. However, no plea shall be taken until the child has had the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169–D:12.

III. After hearing, the court may, with the consent of the child, dispose of the petition by ordering the child to participate in a court approved diversion program or other intervention program.

Source. 1979, 361:2. 2010, 175:6. 2013, 249:10, eff. Sept. 1, 2013. 2014, 271:1, eff. July 28, 2014.

169–D:12 Appointment of Counsel; Waiver of Counsel.

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

II. The court may accept a waiver of counsel from a child alleged to be in need of services only when:

(a) The parent, guardian, or custodian did not file the petition;

(b) Both the child and parent, guardian, or custodian agree to waive counsel; and

(c) In the court's opinion, the waiver is made competently, voluntarily, and with full understanding of the consequences.

Source. 1979, 361:2. 1995, 308:78. 1996, 248:4. 2008, 274:13, eff. July 1, 2008.

169–D:13 Release Pending Adjudicatory Hearing.

I. Following the initial appearance, a child alleged to be in need of services may be ordered by the court subject to such conditions as the court may order, to be:

(a) Retained in the custody of a parent, guardian, or custodian; or

(b) Released in the supervision and care of a relative; or

(c) Where the petition alleges that the child is a habitual runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d), released to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility with expenses chargeable as provided in RSA 169–D:29.

(d) [Repealed.]

I–a. Where the petition alleges that the child is a habitual truant under RSA 169–D:2, II(a), that the child repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian under RSA 169–D:2, II(b), or that the child repeatedly or habitually engages in conduct that constitutes violation level offenses under RSA 169–D:2, II(c), the court shall not order the out-of-home placement of the child.

II. The adjudicatory hearing shall be held within 21 days of the initial appearance.

III. All orders issued pursuant to this section shall set forth the findings as to the form of release or any conditions in writing and shall state any custody provisions under paragraph I.

Source. 1979, 361:2. 1982, 39:16. 2001, 117:7. 2007, 325:13, 15, IV. 2013, 249:11, eff. Sept. 1, 2013.

169–D:13–a Notification of Right to Request Records. The court shall notify parties of their right to request in advance of any hearing under this chapter that a record of such hearing shall be preserved and made available to the parties.

Source. 1996, 248:5, eff. Jan. 2, 1997.

169–D:14 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court, separate from the trial of criminal cases.

I–a. A record of the adjudicatory hearing shall be preserved unless expressly waived in writing by the parties, and parties shall be notified in writing of their right to appeal.

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

III. If the court finds the child is in need of services, it shall, unless a report done on the same child less than 3 months previously is on file, order the department of health and human services or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school record and the mental, physical and social history of the child including sibling relationships and residences for the purpose of preserving relationships between siblings who are separated as a result of court ordered placement. Evaluations performed at the Philbrook center may occur only upon receiving prior approval for such evaluation from the commissioner of the department of health and human services or designee. When ordered by the court, such investigation shall include a physical and mental examination of the child, parents, guardian, or person having custody. The court may order a substance abuse evaluation of the child, parents, guardian, or person having custody. Any substance abuse evaluation of the parent, guardian, or person having custody of the child shall be conducted by a provider contracted with the bureau of substance abuse services, or a provider paid by the parent, guardian, or person having custody of the child. The cost of said evaluation shall be paid by private insurance, if available, or otherwise by the person undergoing the evaluation, to whom the evaluation shall be provided free or at a reduced cost if the person is of limited means. The court shall inform the parents, guardian, or person having custody and child of their right to object to the physical examination, mental health evaluation, or substance abuse evaluation. Objections shall be submitted in writing to the court having jurisdiction within 5 business days after notification of the time and place of the examination or evaluation. The court may excuse the child, parents, guardian, or person having custody upon good cause shown. No disposition order shall be made by the court without first reviewing the investigation report, if ordered.

IV. The court shall share the report with the parties. The report will be used only after a finding that the child is in need of services and will be used only as a guide for the court in determining an appropriate disposition for the child.

V. The court shall hold a final dispositional hearing within 30 days of the adjudicatory hearing unless continued for good cause. No dispositional hearing for a child placed outside the child's home may be continued more than once for good cause or for a period longer than 14 days, except by agreement of all the parties.

VI. Whenever a court contemplates a placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. In cases where immediate court action is required to protect the health or safety of the child or of the community, the court may act without providing for an appearance by the school district, but shall make reasonable efforts to solicit and consider input from the school district before making a placement decision.

Source. 1979, 361:2. 1985, 195:6. 1987, 402:13. 1990, 3:49. 1994, 212:2. 1995, 310:181, 182. 1996, 248:6. 1998, 203:4. 1999, 266:7, 8. 2004, 41:3. 2007, 295:5, eff. Sept. 11, 2007.

169–D:15 Burden of Proof. The petitioner has the burden to prove the allegations in support of the petition beyond a reasonable doubt.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:16 Release Pending Final Disposition. Following the adjudicatory hearing, custody pending the dispositional hearing shall be determined in accordance with RSA 169–D:13.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:17 Dispositional Hearing.

I. If the court finds the child is in need of services, it shall order the least restrictive and most appropriate disposition considering the facts in the case, the investigation report, and the dispositional recommendations of the parties and counsel. The dispositional recommendation of the department of

health and human services shall include the costs of the recommended services, placements, and programs. Such disposition may include:

(a) Permitting the child to remain with a parent, guardian, relative, or custodian, subject to such limitations and conditions as the court may prescribe, including:

(1) Ordering the child or parent, guardian, relative, or custodian, or both, to accept individual or family counseling;

(2) Placing the child on conditional release for a term of 2 years or less.

(b)(1) Releasing the child in the supervision and care of a relative or suitable adult; or

(2)(A) Where the petition alleges that the child is a habitual runaway under RSA 169–D:2, II(b) or that the child is a child in need of services under RSA 169–D:2, II(d), releasing the child to the custody of the department of health and human services for placement in a foster home, as defined in RSA 169–C:3, XIII, a group home, a crisis home, or a shelter care facility with expenses charged in accordance with RSA 169–D:29.

(B) Notwithstanding subparagraph (A), where the petition alleges that the child is a habitual truant under RSA 169–D:2, II(a), that the child repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian under RSA 169–D:2, II(b), or that the child repeatedly or habitually engages in conduct that constitutes violation level offenses under RSA 169–D:2, II(c), the court shall not order the out-of-home placement of the child.

(c) Imposing a fine or restitution, or both, on a child who has committed an offense which, if committed by an adult, would be a violation under the criminal code of this state; or has committed an offense which, if committed by a person 16 years of age or older, would be a violation under the motor vehicle code of this state; or has violated an ordinance or bylaw of a city or town. Such fine shall not exceed the fine which may be imposed against an adult for the same offense.

(d) Ordering the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this subparagraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

(e) Requiring any child to attend structured after-school or evening programs which address some of the child's compliance issues, as well as supervise the child during the time of the day in which the child most values his or her freedom and the time which is most often used to perform unruly acts. The cost of said programs shall be paid by private insurance, if available, or otherwise by the child, parent, guardian, or person having custody of the child, or may be available to the child free of charge based on the limited means of the family or based on the program's receipt of other funding. Payment shall be made pursuant to RSA 169–D:29 only for those programs that have been certified pursuant to RSA 170–G:4, XVIII.

II. Any child placed under this section with someone other than a relative shall be placed in a residential care facility licensed pursuant to RSA 170–E. If a child is placed out of state, the provisions of RSA 170–A shall be followed.

II–a. When a minor is in an out-of-home placement, the court shall adopt a concurrent plan other than reunification for the minor. The other options for a permanency plan include termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

II–b. When a dispositional order places a minor in an out-of-home placement pursuant to RSA 169–B:19, I(e) or (f), prior to concluding the dispositional hearing the court shall set a date for a permanency hearing pursuant to RSA 169–D:21–a.

II–c. A dispositional order for inpatient treatment at an alcohol or drug treatment facility may only be issued following a finding that the child requires substance use disorder services pursuant to an evaluation by any licensed health care professional making the decision based on American Society of Addiction Medicine criteria.

III. The court may order the child or the family or both to undergo physical treatment or treatment

by a mental health center or any other psychiatrist, psychologist, psychiatric social worker or family therapist as determined by the court.

IV. All dispositional orders issued pursuant to this section shall include written findings as to the basis for the disposition and such conditions as the court imposes, and a specific plan of the services to be provided, including but not limited to those listed in paragraphs I, II and III.

V. (a) The court may punish a child or his parent or parents for contempt of court for refusal to participate in the specific dispositional plan as ordered by the court pursuant to paragraph IV.

(b) Any child or his parent or parents prosecuted for contempt under this paragraph shall be afforded notice of the essential facts constituting the criminal contempt charged, a hearing, counsel, and shall be adjudged guilty of criminal contempt only upon proof beyond a reasonable doubt.

(c) A child found guilty of contempt may be immediately detained in home detention or placed in a shelter care facility.

VI. If the judge orders services, placements, or programs different from the recommendations of the department, the judge shall include a statement of the costs of the services, placements, and programs so ordered.

VII. Prior to any placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

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

Source. 1979, 361:2. 1981, 401:1. 1982, 39:17. 1983, 416:9. 1987, 402:11. 1989, 285:9. 1990, 201:12; 257:7. 1992, 284:4. 1994, 81:3; 212:2. 1995, 181:4; 308:79, 80; 310:175, 181. 1999, 266:9. 2001, 117:2; 286:19. 2007, 236:20; 295:6; 325:14, 17. 2008, 213:1; 274:14. 2011, 224:29. 2013, 249:12, eff. Sept. 1, 2013. 2017, 156:171, eff. July 1, 2017.

169–D:17–a Out-of-District Placement. In the case of an out-of-district placement, the appropriate court shall notify the department of education on the date that the court order is signed, stating the initial length of time for which such placement is made. This section shall apply to the original order and all subsequent modifications of that order.

Source. 1991, 324:3, eff. Aug. 27, 1991.

169–D:17–b Presumption in Favor of In-State Placements. There shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that there is no appropriate in-state placement available.

Source. 1995, 308:81, eff. July 1, 1995.

169–D:17–c Court Order for Services, Placements, and Programs Required for Minors From Certain Providers Qualified for Third-Party Payment. The court, wherever and to the extent possible, shall order services, placements, and programs by providers certified pursuant to RSA 170–G:4, XVI-II who qualify for third-party payment under any insurance covering the minor.

Source. 1996, 286:12, eff. June 10, 1996.

169–D:18 Disposition of Child With a Disability.

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

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

the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

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

IV. In an administrative due process hearing conducted by the department of education pursuant to RSA 186–C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that:

(a) At least 20 days prior to providing any records to the hearing officer, the school district files notice of its intention to do so with the court and all parties to the proceedings, and no party objects to the release of records.

(b) The notice filed by a school district under this provision shall include, on a separate sheet of paper, the following statement in bold typeface: "Persons subject to juvenile proceedings have important rights to the confidentiality of juvenile court proceedings. This notice requests the disclosure of some of that information. If you object to the disclosure of information, you must file a written objection with the court no later than 10 days after the filing of the school district's notice. If you fail to object in writing, the court may allow private information to be revealed to the New Hampshire Department of Education hearing officer."; and

(c) Any objection by a party shall be filed with the court no later than 10 days after the filing of the school district's notice with the court, unless such time is extended by the court for good cause.

V. The court may, on its own initiative and no later than 13 days after the filing of the school district's notice to the court, issue an order directing the school district to show cause why the information should be disclosed to the hearing officer. Upon receipt of an objection or issuance of a show cause order, the court shall schedule an expedited hearing on the matter to determine if the requested records may be released. The court may rule without a hearing if the school district and a parent or legal guardian or the juvenile, if he or she has reached the age of majority, agree in writing to waive a hearing. Upon the filing of an objection or show cause order, the school district may file a reply explaining why the school district believes that the information should be disclosed to the hearing officer. In determining whether to authorize the disclosure of the information requested by the school district, the court shall balance the importance of disclosure of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the court, the child's parent or legal guardian, or the juvenile if he or she has reached the age of majority, except that a court conducting an appellate review of an administrative due process hearing shall have access to the same information released to a hearing officer pursuant to this paragraph.

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

Source. 1979, 361:2. 1983, 458:3. 1986, 223:14. 1987, 402:23. 1990, 140:2, X. 2008, 274:15, eff. July 1, 2008.

169–D:18–a Determination of Competence.

I. At any point during the proceedings, the court may, either on its own motion or that of any of the parties, order the child to submit to a mental health evaluation for the purpose of determining whether the child is competent to have committed the offenses or acts alleged in the petition. The evaluation shall be completed within 60 days of the date of such order and shall be conducted by an agency other than the Philbrook center which is approved by the commissioner of health and human services, or conducted by a psychologist licensed in New Hampshire or a qualified psychiatrist, or by the Philbrook center only upon receiving prior approval for admission of the child for such evaluation by the commissioner of the department of health and human services. The evaluation shall be submitted to the court in writing prior to the hearing on the merits.

II. The court shall inform the child of his right to object to the evaluation; if he does object, he shall do so in writing to the court within 5 days of the court's order for the evaluation. The court shall hold a hearing to consider the objection, and may, for good cause, excuse the child from the evaluation.

III. Whenever such an evaluation has been made previously for consideration at a prior proceeding, it shall be jointly reviewed by the court and the evaluat-

ing agency before the case is heard. The evaluator shall keep records of having conducted the evaluation, but no reports or records shall be made available, other than to the court and parties, except upon the written consent of the child or his legal representative, parent or guardian or pursuant to RSA 169–B:35. The expense of such evaluation is to be borne as provided in RSA 169–B:40.

Source. 1990, 201:13. 1994, 212:2. 1995, 310:182. 1998, 234:6, eff. Oct. 31, 1998.

169–D:19 Modification of Dispositional Orders. Upon the motion of a child, parent, custodian, guardian, counsel, or the department alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing and pursuant to RSA 169–D:17 may modify a dispositional order; provided that the court may dismiss the motion if the allegations are not substantiated in the hearing.

Source. 1979, 361:2. 1995, 308:82; 310:175, eff. Nov. 1, 1995.

169–D:20 Appeals. An appeal, under this chapter, may be taken to the superior court by the child, parent, guardian or custodian, within 30 days of the final dispositional order, but an appeal shall not suspend the order or decision of the court unless the court so orders. The superior court shall hear the matter de novo, and shall give an appeal under this chapter priority on the court calendar.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:21 Periodic Review of Disposition Required.

I. The court shall conduct periodic review hearings to review the disposition of a child under RSA 169–D:17. The court may review a case at any time.

II. At this hearing, the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

Source. 1979, 361:2. 2007, 236:21, eff. Jan. 1, 2008.

169–D:21–a Permanency Hearings.

I. For a child who enters an out-of-home placement prior to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 14 months of the child's entry into out-of-home placement or within 12 months of the court's adjudicatory finding, whichever is earlier. For a child who enters an out-of-home placement subsequent to an adjudicatory finding and who is in an out-of-home placement for 12 or more months, the court shall hold and complete an initial permanency hearing within 12 months of the child's entry into out-of-home placement. For a child who is in out-of-home placement following the initial permanency hearing, the court shall hold and complete a subsequent permanency hearing within 12 months of the initial permanency hearing and every 12 months thereafter as long as the child is in an out-of-home placement.

II. At a permanency hearing the court shall consider whether the parent or parents and child have met the responsibilities pursuant to the dispositional orders issued by the court. If compliance with the dispositional orders pursuant to RSA 169–D:17 is not met, the court may adopt a permanency plan other than reunification for the child. Other options for a permanency plan include:

(a) Termination of parental rights or parental surrender when an adoption is contemplated;

(b) Guardianship with a fit and willing relative or another appropriate party; or

(c) Another planned permanent living arrangement.

III. At a permanency hearing the court shall determine whether the department has made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

Source. 2007, 236:22. 2008, 213:2, eff. Aug. 15, 2008.

169–D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title XIII, or a law relating to fireworks under RSA 160–B or RSA 160–C, and shall not be construed as applying to any minor charged with the violation of any law relating to the possession, sale, or distribution of tobacco products to or by a person under 18 years of age.

Source. 1979, 361:2. 1995, 308:83. 1999, 348:16, eff. Jan. 21, 2000.

169–D:23 Religious Preference. The court and officials in placing children shall, as far as practicable, place them in the care and custody of some individual holding the same religious belief as the child or parents of the said child, or with some association which is controlled by persons of like religious faith. No child under the supervision of any state institution

shall be denied the free exercise of his religion or that of his parents, whether living or dead, nor the liberty of worshipping God according thereto.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:24 Court Sessions. All hearings shall be held separate from the trial of criminal cases and such hearings shall be held wherever possible in rooms not used for such trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:25 Case and Court Records.

I. All case records, defined in RSA 170–G:8–a, relative to children in need of services, shall be confidential and access shall be provided pursuant to RSA 170–G:8–a.

II. The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by juvenile probation and parole officers, a parent, a guardian, a custodian, the relevant county, the minor's attorney and others entrusted with the supervision of the child. Additional access to court records may be granted by court order or upon the written consent of the minor. Once a child in need of services reaches 18 years of age, all court and police records shall be destroyed.

Source. 1979, 361:2. 1987, 402:14. 1993, 266:5; 355:6. 2000, 294:10, eff. July 1, 2000.

169–D:26 Penalty for Disclosure of Records. It shall be unlawful for any person to disclose court records, or any part thereof, to persons other than those entitled to access under RSA 169–D:25, except by court order. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

Source. 1979, 361:2. 1993, 355:7, eff. Sept. 1, 1993.

169–D:27 Publication Restricted. It shall be unlawful for any newspaper to publish, or any radio or television station to broadcast or make public the name or address or any other particular information serving to identify any child taken into custody, without the express permission of the court; and it shall be unlawful for any newspaper to publish, or any radio or television station to make public, any of the proceedings of any court hearing.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:28 Penalty for Forbidden Publication. The publisher of any newspaper or the manager, owner or person in control of a radio or television station or agent or employee of any of the above who may violate any provision of RSA 169–D:27 shall be guilty of a misdemeanor.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:29 Liability of Expenses and Hearing on Liability.

I. (a)(1) When an order creating liability for expenses is issued by the court under this chapter or when a voluntary service plan is developed and provided for a minor and the minor's family by the department, any expenses incurred for services, placements, and programs the providers of which are certified pursuant to RSA 170–G:4, XVIII, shall be payable by the department of health and human services.

(2) When an order creating liability for expenses is issued by the court under this chapter or when a voluntary service plan is developed and provided for a minor, any expenses incurred for approved diversion services shall be paid by the parent or guardian.

(b) Subparagraph (a) shall not apply to expenses incurred for special education and related services, or to expenses incurred for evaluation, care, and treatment of the child at the Philbrook center or to expenses incurred for the cost of accompanied transportation.

(c) The state shall have a right of action over for such expenses against the parents or the people chargeable by law for the child's support and necessities. Upon written request, the department shall provide the parents or other persons chargeable by law for the minor's support and necessities with a statement of the costs of any services, placements, or programs incurred in the case to date. The parents or other persons chargeable by law for the minor's support and necessities shall promptly notify the department of any insurance benefits that may be available to pay for all or a portion of the services provided. Upon receipt of notice of a proposed service, the parents or other persons chargeable by law for the minor's support and necessities shall contact their insurance carrier within 48 hours to determine if coverage is available to pay for the particular service and shall notify the department of the results. If insurance coverage is available, the parents or other persons chargeable by law for the minor's support and necessities shall cooperate with the insurance carrier and shall comply with the insurance carrier's requirements for direct payment to the provider. The court shall require the individual chargeable

by law for the child's support and necessities to submit a financial statement annually to the court upon which the court shall make an order as to reimbursement to the state as may be reasonable and just, based on the person's ability to pay. Such financial statement shall include, but not be limited to, any benefits received from the Social Security Administration or insurance benefits available to the individual. The court shall include disposition of these benefits in its order as to reimbursement. Such reimbursement shall be established on a per month or per week basis and shall continue from the time the services begin until 4 years beyond the time such services end, unless such reimbursement is fully paid prior to the end of the 4-year period. The court's jurisdiction to order reimbursement shall continue until the court-ordered obligation to reimburse has been fulfilled. If the court does not issue a reimbursement order, the court shall issue written findings explaining why such reimbursement is not ordered.

(d) Liability for placement expenses for any court ordered placement of any minor mother under this chapter shall include liability for placement expenses for the child or children of such minor mother if the minor mother and child or children are placed at the same facility.

(e) Payments due under this section for the care of children in foster homes shall commence within 60 days of the child's placement in the foster home and shall be made every 30 days thereafter.

(f) If at any point during the reimbursement period, the child or recipient of services dies, no future payments from the parent or person chargeable by law for the child's support and necessities shall be required, provided that proof of death has been provided to the department of health and human services, and the reimbursement obligation shall be dismissed for payments beyond the date of death of the child or recipient. Accrued unpaid reimbursements in arrears shall continue to be paid.

II. Upon the issuance of the order in paragraph I, the court shall send notice to the state. The state may, within 30 days from receipt of notice, request a hearing on the issues of the cost or appropriateness of services, or recovery. At such hearing, the court shall provide all financial information, including names and addresses of persons chargeable by law for the child's support and necessities, to the state.

III. The office of reimbursements acting on behalf of Laconia developmental services and the New Hampshire hospital is authorized to compromise or reduce any expense to be charged to the state.

IV. The department may enter into an agreement with a county to collect, on behalf of the department, payments from persons or entities which are ordered to reimburse the state under paragraph I, or which are chargeable by law for the minor's support and necessities. An agreement may authorize the county to deduct reasonable administrative costs from the amounts collected. The balance of any amounts collected by the county pursuant to this paragraph shall be forwarded to the department.

V. If the person responsible for paying reimbursements to the department under paragraph IV is financially able to pay such reimbursements but fails to make such payments, the department may apply to the district court for a lien on such person's real or personal property for the amount of reimbursements due.

VI. Upon request by the adoptive parent of a child whose birth parents relinquished their parental rights to the department or the parental rights of whose birth parents were terminated pursuant to a petition brought by the department, the state, acting through the commissioner, may waive its right of action against such adoptive parent for all or a portion of the expenses of services, placements, and programs provided pursuant to RSA 169–B, 169–C or 169–D after the adoption. The department shall adopt rules under RSA 541–A to establish the procedure to be followed to obtain a waiver of parental reimbursement pursuant to this paragraph.

(a) For the adoptive parent or prospective adoptive parent of a child in the custody of the state whose birth parents have consented to the adoption, relinquished their parental rights to the department, or the parental rights of whose birth parents were terminated pursuant to a petition brought by the department, authorized agency, or foster parent, pursuant to RSA 170–C:4, the state shall waive its right of action against such adoptive parent or prospective adoptive parent for the expenses of services, placements, and programs provided pursuant to RSA 169–B, 169–C, or 169–D after the adoption.

(b) If the department determines that the adoptive parent has been convicted of sexual or physical abuse of the adopted child pursuant to RSA 631 or 632–A, or the adoptive parent has misappropriated adoption subsidy moneys, the adoptive parent shall be responsible for payment for subsequent services, placements, and programs provided pursuant

to RSA 169–B, 169–C, or 169–D after the adoption. A determination of misappropriation is subject to the provisions of RSA 126–A:5, VIII.

Source. 1979, 361:2. 1981, 555:3. 1982, 25:4. 1983, 458:6. 1985, 96:6; 380:39. 1987, 402:33, 34. 1988, 107:5; 153:3, 6. 1989, 75:3; 229:3; 286:3. 1990, 3:50; 203:3. 1991, 265:4. 1993, 266:6. 1994, 212:2. 1995, 220:4; 308:84, 85; 310:175, 181–183. 1996, 286:15, 18. 1997, 305:3. 2007, 263:22. 2008, 274:33. 2009, 144:35. 2010, 175:7, eff. Jan. 1, 2011. 2014, 57:2, eff. Jan. 1, 2015. 2017, 219:1, eff. July 10, 2017.

169–D:30 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Source. 1979, 361:2, eff. Aug. 22, 1979.

169–D:31 Data Collection; Reporting Requirement.

I. The department shall establish a system to collect data related to:

(a) The person or entity who referred the child for services and/or filed the petition.

(b) The racial and ethnic identity of the child.

(c) The insurance status and coverage of child served.

(d) The length of time a child receives services under this chapter, including the time prior and subsequent to the filing of a petition.

(e) The identity of any public or private organization to whom the department has referred a child or family.

(f) Any other information, including outcome data, that may assist the department and the court in evaluating the availability and effectiveness of services for children who receive assistance under this chapter.

(g) The number of cases in which the department determined that voluntary services under RSA 169–D:5–c were not appropriate, and the basis for those decisions.

(h) The type of services offered and/or provided to a child on a voluntary basis and the type of services ordered by the court after adjudication and disposition.

II. The department shall, upon request, make available to members of the public, compilations of the data which do not contain identifying information.

III. Beginning on or before December 30, 2013, the department shall provide quarterly reports regarding cases handled pursuant to this chapter to the chair of the house children and family law committee, the chair of the senate health, education and human services committee, or to the chairs of their successor committees, as well as the chair of the joint fiscal committee. The reports shall include:

(a) The number of cases assessed pursuant to RSA 169–D:5–c.

(b) The number of cases declined for voluntary services and the bases for the declinations.

(c) The number of cases accepted for voluntary services and their ultimate disposition.

(d) The number of petitions filed pursuant to RSA 169–D:5, I, and their dispositions.

(e) The number of voluntary and court-based cases pending in each definition category of RSA 169–D:2, II at the beginning and end of the quarter.

(f) The type and cost of services provided in cases accepted for voluntary services and cases handled through the court, in each definition category of RSA 169–D:2, II.

Source. 2013, 249:13, eff. Sept. 1, 2013.

CHAPTER 170–E

CHILD DAY CARE, RESIDENTIAL CARE, AND CHILD-PLACING AGENCIES

Child Day Care Licensing

Child Day Care Licensing

170–E:1 Purpose. The purpose of this subdivision is to provide for the licensing of child day care agencies.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:2 Definitions. In this chapter:

I. "Applicant" means a person, institution or agency who intends to receive for child day care one or more children unrelated to the operator and who indicates that intent to the department by filling out the forms prescribed by rule adopted by the commissioner pursuant to RSA 541–A.

II. "Child" means any person under 18 years of age.

III. "Child day care" means the care and supervision of a child away from the child's home and apart from the child's parents.

IV. "Child day care agency" means any person, corporation, partnership, voluntary association or other organization, either established for profit or otherwise, which regularly receives for child day care one or more children, unrelated to the operator or staff of the agency. The total number of hours in which a child may remain in child day care shall not exceed 13 hours per day, except in emergencies. The types of child day care agencies are defined as follows:

(a) "Family day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except children who are 10 years of age or older. In addition to the 6 children, up to 3 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.

(b) "Family group day care home" means an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for 7 to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to 5 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.

(c) "Group child day care center" means a child day care agency in which child day care is provided for preschool children and up to 5 school-age children, whether or not the service is known as day nursery, nursery school, kindergarten, cooperative, child development center, day care center, center for the developmentally disabled, progressive school, Montessori school, or by any other name.

(d) "Day care nursery" means a child day care agency in which child day care is provided for any

part of a day, for 5 or more children under the age of 3 years.

(e) "Night care agency" means a center or family home in which child day care is provided during the evening and night hours. A child day care agency may be licensed for day care, night care, or both.

(f) "Preschool program" means a child day care agency providing care and a structured program for children 3 years of age and older who are not attending a full day school program. The total amount of hours a child may be enrolled in a preschool program shall not exceed 5 hours per day.

(g) "School-age program" means a child day care agency providing child day care for up to 5 hours per school day, before or after, or before and after, regular school hours, and all day during school holidays and vacations, and which is not licensed under RSA 149, for 6 or more children who are 4 years and 8 months of age or older. The number of children shall include all children present during the period of the program, including those children related to the caregiver.

(h) "Dual licensure" means the issuance of 2 licenses by the department of health and human services to operate both a child day care agency and a family foster care agency, as provided by RSA 170–E:8, II.

V. "Commissioner" means the commissioner of the department of health and human services.

VI. "Corrective action plan" means a written proposal setting forth the procedures by which a child day care agency will come into compliance with the standards set by rules adopted by the commissioner under RSA 541–A, and subject to the approval of the department. The proposal shall include the time needed to assure compliance and the steps proposed by the agency to reach compliance.

VII. "Department" means the department of health and human services.

VIII. "Guardian" means the guardian of the person of a minor, as defined in RSA 463.

IX. "License" means an authorization granted by the commissioner to provide one or more types of child day care.

X. "Monitoring visit" means a visit made to the child day care agency by department personnel for the purpose of assessing compliance with the standards set by rule adopted by the commissioner pursuant to RSA 541–A.

XI. "Permit" means the initial authorization to operate issued to an operator of a child day care agency, which shall not be renewable except for good cause shown.

XI–a. "Recreational program" means any before and/or after school, vacation, or summer youth program for children 6 years of age or older offered by a school or religious group, the Boys and Girls Clubs of America, Girls, Incorporated, the YMCA, or the YWCA, provided that the program:

(a) Does not operate in a private home;

(b) Notifies parents or guardians that the program is not subject to licensure under RSA 170–E:4;

(c) Has policies and procedures to address the filing of grievances by parents and guardians; and

(d) Is a member in good standing and in compliance with the national organization's minimum standards and procedures.

XII. "Regularly" or "on a regular basis" means supervision and care up to and including 7 days a week, whether paid or unpaid, for the following as defined in RSA 170–E:2, IV: (a) family day care home, (b) family group day care home, (c) group child day care center, (d) day care nursery, (e) night care agency, (f) preschool program, and (g) school-age program.

XIII. "Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, uncle, aunt, niece and nephew, first cousin, or second cousin.

Source. 1990, 257:8. 2005, 156:1, eff. Aug. 20, 2005.

170–E:3 Exemptions; Child Endangerment Prohibited.

I. The definitions in RSA 170–E:2, IV shall not apply to the following:

(a) Kindergartens, nursery schools, or any other daytime programs operated by a public or private elementary or secondary school system or institution of higher learning.

(b) Programs offering instruction to children, including but not limited to athletics, crafts, music, or dance, the purpose of which is the teaching of a skill.

(c) Private homes in which any number of the provider's own children, whether related biologically or through adoption, and up to 3 additional children are cared for regularly for any part of the day, but less than 24 hours, unless the caregiver

elects to comply with the provisions of this chapter and be licensed.

(d) Child care services offered in conjunction with religious services attended by the parent or offered solely for the purpose of religious instruction.

(e) Facilities operated as a complimentary and limited service for the benefit of the general public in connection with a shopping center, ski area, bowling alley, or other similar operation where the parents or custodians of the serviced children are on the premises or in the immediate vicinity and are readily available.

(f) Municipal recreation programs, including after-school and summer recreation programs.

(g) Any recreational program as defined in RSA 170–E:2, XI–a.

(h) Private homes in which the only children in care are the provider's own children, children related to the provider, and children residing with the provider.

II. Persons administering programs exempted from licensing pursuant to this section shall be subject to the provisions of RSA 170–E:4, II.

III. Whenever a child day care that is license exempt under subparagraphs I(c), (e), (f), or (g) accepts a new child into the program, the provider shall inform the child's parent or legal guardian that the program is not licensed and is operating as a legally license exempt program.

IV. If a licensed child day care agency ceases operating as a licensed program and continues to provide child care services as a legally license exempt provider, it shall notify the department of the date it ceased being licensed, return its license to the department, and notify the parent or legal guardian of all children in the program or who enroll in the program that it is no longer licensed by the department.

Source. 1990, 257:8. 1994, 375:1. 1995, 114:1. 1998, 119:1. 2004, 235:1. 2005, 156:2, eff. Aug. 20, 2005. 2016, 161:6, eff. June 3, 2016.

170–E:3–a Criminal Records and Central Registry Check of Child Day Care Providers Exempt From Licensing. Any child day care providers exempt from licensing under RSA 170–E:3 which receive state funds or subsidies in payment for the provision of child day care shall, as a condition of receiving state funds or subsidies, provide their names, birth names, birth dates and addresses, and the same information for any individual residing in the child day care provider's household who may be responsible for the care of, or is in regular contact with children, to the department prior to the receipt of state funds or subsidies on or before July 1, 1999, and every 3 years thereafter. The department shall conduct criminal records and central registry checks on these names in accordance with the provisions of RSA 170–E:7.

Source. 1998, 147:1, eff. Jan. 1, 1999.

170–E:4 License Required; Prohibition Against Child Endangerment.

I. No person shall establish, maintain, operate or conduct any child day care agency without a license or permit issued by the department under this subdivision. The requirements of this chapter applicable to licensed child day care agencies shall apply with equal force to any child day care agency required to be licensed under this chapter that is not so licensed.

II. No child care provider, whether licensed as a child day care agency, required to be licensed as a child day care agency under paragraph I, or exempted from licensing pursuant to RSA 170–E:3, I, shall care for a child in a manner which endangers the health, safety or welfare of the child. For purposes of this paragraph, endangerment shall mean the negligent violation of a duty of care or protection owed to such child or negligently inducing such child to engage in conduct which endangers his or her health or safety. Licensees in violation of this paragraph shall be subject to the provisions of RSA 170–E:12. Persons exempted from licensing who are in violation of this paragraph shall be enjoined by a court of competent jurisdiction in accordance with the provisions of RSA 170–E:22 from caring for such child and may be enjoined, as the court may determine, from caring for other children. Persons operating a child day care agency without a license in violation of paragraph I who engage in negligent conduct that endangers the health, safety, or welfare of the children in their care shall be subject to the criminal penalties in RSA 170–E:21 and may be enjoined from caring for children in accordance with the provisions of RSA 170–E:22.

Source. 1990, 257:8, eff. Jan. 1, 1991. 2016, 161:2, 9, eff. June 3, 2016.

170–E:5 Assistance From Department. The department, in applying the standards adopted by rule under this subdivision, shall offer consultation through employed staff or other qualified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a license.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:5–a Child Care Resource and Referral Services. The department of health and human ser-

vices shall develop and implement a plan, such plan to be fully funded by federal moneys for child care resource and referral services, which shall have the following responsibilities and duties to the public:

I. Provide referrals to a variety of licensed child care options which meet the parent's or guardian's child care needs.

II. Provide information on child care subsidies, including public and private program eligibility requirements and on tax credits and employer options.

III. Provide counselling on selecting quality child care and early childhood issues.

IV. Provide information on training opportunities for parents, guardians, and child care providers.

V. Provide assistance to state human service agencies in seeking child care for such agencies' clients.

VI. Provide information to parents, guardians and providers through workshops, provider groups, and library resources.

VII. Provide assistance in seeking funding for local providers to develop and improve child care services.

VIII. Provide start-up assistance to prospective center and family day care providers.

IX. Provide information on child care supply and demand data.

X. Provide technical assistance to employers and public and private sector decision-makers to support their efforts to expand and improve quality child care in New Hampshire.

XI. Establish a resource library for parents, providers, employers and the public which includes information on child development, child care options, licensing, model programs, employer options, and other related topics.

XII. Recruitment of, and technical assistance to, existing and prospective local child care providers to encourage the development of special needs child care, protective child care, subsidized child care, mildly ill child care and second-shift child care.

Source. 1991, 327:2, eff. Sept. 1, 1991.

170–E:5–b Nonprofit Child Day Care Loan Program.

I. There is established the child day care loan program to provide low interest loans for nonprofit child day care providers. The primary purposes of these low interest loans include:

(a) To construct wheelchair and handicap access ramps, van conversions, and bathroom renovations to accommodate children with disabilities.

(b) To pay for expansion or construction costs to serve more children under the state voucher program for low-income families to meet the expected increase of families receiving temporary assistance to needy families entering the work force.

(c) To renovate or upgrade current facilities to maintain or exceed code requirements.

(d) To renovate or expand facilities to serve priority populations, such as infants and toddlers, and families in need of night, weekend, drop-in, and mildly-ill care.

(e) To allow after-school programs to expand and purchase startup supplies, including storage, for school-age children.

(f) To enable child day care providers to secure a more stable environment and continuity of services through ownership or extended lease arrangements.

(g) To allow the purchase or lease of vans to transport children.

(h) To fund any other program-related costs as necessary.

II. Criteria for consideration of loan applicants shall include the provider's commitment to enroll low-income children, children subsidized through the Child Care and Development Fund, and children with disabilities, or legally-operating providers who provide services to these populations. In addition, applicants shall:

(a) Be fiscally sound as shown in a financial statement.

(b) Meet or exceed state and local operating and zoning regulations, including public health, fire, and safety requirements, or present a local exemption from regulations.

(c) Demonstrate a commitment to providing quality child day care through one or more of the following:

(1) Local child care resource and referral relationship.

(2) Family day care support group participation.

(3) Enrollment in the United States Department of Agriculture food program (Child and Adult Food Program).

(4) Documentation of training in the Child Care Basics program or other training approved by the department of health and human services.

(d) Address a geographic or community need for projected child day care services.

III. (a) The department of health and human services may, after consultation with the state child care advisory committee established in RSA 126–A:17, adopt rules pursuant to RSA 541–A, relative to the implementation and administration of the child day care loan program under this section.

(b) The department shall have the responsibility for notifying providers of the availability of the loans and shall provide guidelines for loan application. Notification shall be made publicly, as well as through child care associations and the child care resource and referral network of New Hampshire.

(c) The department of health and human services shall have the authority to designate a statewide, nonprofit community development financial institution as recipient of the funds, or a portion of the funds, to be used as a loan loss reserve or interest subsidy, or both.

(d) The department may elect to contract with a statewide, nonprofit community development financial institution for provision of the following services:

(1) To establish programmatic and credit criteria.

(2) To establish a mechanism for making lending decisions related to project feasibility.

(3) To maintain documentation on the borrower's organization, collateral, and on-going repayment ability.

(4) To collect and report the number of day care slots retained, created, or improved and the number of low-income families served through the child day care loan program or related activities.

IV. The terms and conditions of the loan shall be contained in a binding agreement between the child day care provider and the lender and may include provisions for a lien on the property. Loans subsidized by an interest-rate subsidy shall carry a term of no more than 15 years and shall, to the extent possible and consistent with this section, be determined to match the useful life of the improvements funded by the loan. The department shall annually, on or before July 1, account for any subsidy or loss reserve expended, as well as for the repayment status of all loans made under this program.

Source. 1998, 303:2, eff. June 26, 1998.

170–E:6 Applications; Compliance With Local Codes Required. Any person who intends to operate a child day care agency as defined in RSA 170–E:2, IV, shall apply for a license to operate one or more types of child day care agencies. Application for a license to operate a child day care agency shall be made to the department in the manner and on forms prescribed by rules adopted by the commissioner pursuant to RSA 541–A. Such forms shall provide for the names, birth names, birth dates, and addresses of all persons having responsibility for care of or regular contact with children at the agency. The applicant shall obtain approvals in accordance with state and local requirements pertaining to health, safety and zoning, as applicable. School age programs located in currently operating public or private schools shall be exempt from the requirement to provide documentation of approval pertaining to fire, health, and zoning.

Source. 1990, 257:8. 1999, 326:1, eff. Jan. 1, 2000.

170–E:6–a Registration of Day Care Providers Receiving State Funds.

I. Any person who provides child day care services and receives state funds for such services, but is not required to be licensed under RSA 170–E:4 as a child day care agency, shall register with the department of health and human services.

II. The department of health and human services shall maintain a registry of all providers of child day care services who are not required to be licensed under RSA 170–E:4, but who receive state funds for their services.

Source. 1998, 256:1, eff. Jan. 1, 1999.

170–E:6–b Insurance Disclosures. Every person required to be licensed as a child day care agency under RSA 170–E:4 and every child day care provider required to be registered under RSA 170–E:6–a shall either maintain liability insurance or provide a disclosure to parents that the facility is uninsured.

Source. 1998, 256:1, eff. Jan. 1, 1999. 2016, 161:3, eff. June 3, 2016.

170–E:7 State Registry and Criminal Records Check; Revocation of Registration and Withholding of State Funds.

I. Child day care providers who are required to be licensed or registered according to the provisions of this chapter shall, prior to the date an individual is responsible for the care of, or has regular contact with children, and upon adding new household members or other individuals who will have regular contact with children, submit to the department, the names, birth names, birth dates, and addresses during the preceding 5 years of such individuals and other information required by the department as

prescribed by rules adopted by the commissioner under RSA 541–A.

I–a. The persons described in paragraph I shall submit directly to the department of safety a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any, to the department. The person shall complete a Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System through a qualified law enforcement agency or an authorized employee of the department of safety. The department of safety shall complete the criminal history records check and forward such record, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

II. (a) For every name submitted on an application, in the registration process, and for each individual for whom information is required to be submitted pursuant to paragraph I, the department shall search for such persons against the New Hampshire sex offender and abuse and neglect registries, the sex offender and abuse and neglect registries of each state where the individual resided in the past 5 years, and the National Sex Offender Registry.

(b) The department of safety shall submit the notarized criminal history record information authorization form to the New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(c) The costs of criminal history record checks shall be borne by the child day care provider; provided, that the child day care provider may require an applicant to pay the actual costs of the criminal history check of the employee.

II–a. An individual shall not be required to submit a request under paragraph I–a if:

(a) In the previous 5 years, the individual submitted a state criminal records release form and fingerprints and completed a criminal records check under this section;

(b) The individual is currently employed by a child care provider within the state, or has been separated from employment from a child care provider within the state for a period of not more than 180 consecutive days; and

(c) The department made a determination that when the individual completed the criminal records check within the previous 5 years as described in this section, the individual was eligible for employment as provided in paragraphs III and IV.

III. The department shall make a determination regarding the individual's eligibility for employment no later than 45 days from submission of all required information as described in paragraphs I and I–a. If any individual whose name has been submitted for a check under this section is registered or required to be registered on a state sex offender registry or repository, or the National Sex Offender Registry, or has been convicted of a felony consisting of murder, child abuse or neglect, an offense involving child sexual abuse images, trafficking, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or a drug-related offense committed during the previous 5 years, or any other violent or sexually-related misdemeanor against a child, including child abuse, child endangerment, sexual assault, or a misdemeanor involving child sexual abuse images, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall:

(a) If the individual is the applicant or owner, revoke or deny the license or permit, or withhold state funds if the child day care provider is not required to be licensed.

(b) If the individual is a board member, household member, or child day care personnel, or any other individual having regular contact with the enrolled children, inform the child day care agency or registered provider that the individual is ineligible for employment and give the agency or registered provider an opportunity to take immediate corrective action to remove the individual from the agency, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the individual will not be on the premises of the child day care

program and shall have no contact with children enrolled in the child day care program.

(c) Suspend, deny, or revoke the license or permit, and withhold state funding, if the child day care program refuses to take corrective action as indicated in subparagraph (b), or subsequently fails to comply with the corrective action plan approved by the department.

(d) Upon a finding of criminal activity as described in this paragraph, withhold state funding to registered child day care providers that are exempt from the licensing requirements of RSA 170–E:4 if the provider refuses to take corrective action as indicated in subparagraph (b), or fails to comply with the corrective action plan approved by the department.

IV. If any individual whose name has been submitted for this check has been convicted of a felony offense deemed directly or indirectly harmful to children in child day care, crimes against minors or adults, except crimes as provided in paragraph III, or is the subject of a founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license, permit, or registration pending the development and implementation of a corrective action plan approved by the department. In addition, the department may, upon a finding of criminal activity or a founded complaint of child abuse or neglect as described in this paragraph, withhold state funding to registered child day care providers that are exempt from the licensing requirements of RSA 170–E:4 pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the individual poses a present threat to the safety of children. The investigation shall include an opportunity for the individual to present evidence on his behalf to show that the individual does not pose a threat to the safety of children.

IV–a. After the department has made a determination that an individual required to complete a criminal record check under paragraph I does not pose a present threat to the safety of children, the department may issue a child care employment eligibility card, which shall be valid for 5 years provided that no disqualifying convictions are subsequently submitted, and the individual remains eligible as described in subparagraph II–a(b). The state may require additional background checks to be completed based upon conviction information submitted.

IV–b. Child day care providers who are required to be licensed or registered according to the provisions of this chapter shall, for every individual submitted for a check under paragraph I who is not required to complete the criminal background check pursuant to paragraph II–a, have on file a signed statement from the individual stating since the day the individual's background check was completed, that he or she:

(a) Has not been convicted of any crimes; and

(b) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect, or exploitation.

IV–c. Child care providers, whether registered or licensed, and individuals as described in paragraph I, shall complete the background check process described in this section no later than 5 years from the previous background check submission.

IV–d. The fee for a child care employment eligibility card issued under paragraph IV–a shall be $50 and the card shall be valid for 5 years from the date of issuance. A replacement card may be requested for a $15 fee.

V. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

Source. 1990, 257:8. 1994, 212:2. 1995, 310:134. 1998, 147:2, 3; 256:2; 390:1. 1999, 326:2. 2000, 157:1. 2006, 289:8. 2009, 144:255. 2011, 100:1, eff. July 26, 2011. 2016, 158:1–5, eff. Oct. 1, 2016. 2017, 91:3, eff. Aug. 6, 2017.

170–E:8 Issuance.

I. Licenses shall be issued in such form and manner as prescribed by rules adopted by the commissioner under RSA 541–A and shall be valid for 3 years from the date issued unless revoked or suspended by the department or voluntarily surrendered by the licensee. Licenses shall not be transferable and shall be surrendered in the event of change of ownership.

II. The department may provide dual licensure to operate a child day care agency and a family foster care agency. Such licensure shall be granted only upon application and shall be contingent upon a determination that the standards of both programs have been met without compromising any licensing requirements.

III. The department shall make monitoring visits a minimum of once yearly during each licensing period. At least one such visit during the licensing period shall be unannounced. Clear and comprehen-

sive records shall be maintained by the department on each licensed agency showing the dates and findings of each such visit. Such records shall be made available to the child day care agency. If the child day care agency is found not to be in compliance with the statute or with rules adopted by the commissioner, a corrective action plan shall be submitted to the department. Failure to submit an acceptable plan shall result in license suspension, denial, or revocation.

IV. The department may, in lieu of a license, issue a permit to a newly established facility for child day care for the purpose of demonstrating compliance with this subdivision and the rules adopted under it during actual operation. At the end of the permit period, the department shall renew the permit for good cause, issue a license for the balance of the license period, or deny the license.

Source. 1990, 257:8. 1999, 326:3, eff. Jan. 1, 2000.

170–E:9 License Renewal.

I. A licensed child day care agency shall file for renewal of its license or permit no later than 3 months prior to the expiration date of the license or permit on forms prescribed by rules adopted by the commissioner under RSA 541–A.

II. The department shall reexamine every child day care agency for renewal of its license or permit, including examination of the premises, program and such records of the agency as the department considers necessary to determine that minimum standards for licensing continue to be met. If the department is satisfied that the agency continues to comply with the minimum standards established by rule for that category of care, it shall renew the license to operate.

III. The commissioner may designate an agency or person to carry out the reexamination specified in paragraph II.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:10 Record of Licenses and Investigatory and Monitoring Visits.

I. The department shall keep in a central depository records of licenses issued under this subdivision and all investigatory and monitoring reports, and final decisions relative to licensure that have been made relative to licensees. When a license is issued to a child day care agency, the department shall give notice to the health officer and fire department of the city or town in which the licensee is located stating the granting of such license and its terms. A like notice shall be given of any suspension or revocation of such license.

II. The license itself, the findings of investigatory and monitoring visits, and final decisions relative to licensure of the child day care agency shall be considered public information, posted on the department's website, and available for review by members of the public; information submitted in the application process, however, shall be private, confidential, and not available for review.

III. At least 5 business days before posting the results or findings of an investigatory visit, monitoring visit, or a final decision relative to licensure on the department's website, the department shall provide the child day care agency with the results or findings by email or, if the child day care agency has not provided an email address, by United States mail. If the child day care agency submits a reasonable response to the department's findings, the child day care agency's response shall be posted with the department's findings on the website.

Source. 1990, 257:8, eff. Jan. 1, 1991. 2014, 128:1, eff. Aug. 15, 2014.

170–E:10–a Informal Dispute Resolution.

I. The department shall offer an opportunity for informal dispute resolution to any child day care agency that disagrees with the results or findings of a monitoring visit. The child day care agency shall submit a written request for informal dispute resolution no later than 14 days from the date the findings were issued by the department. Within 30 days of receipt of a request for informal dispute resolution and receipt of information from the child day care agency, the department shall review the evidence presented and provide written notice of its decision to the child day care agency.

II. Informal dispute resolution shall not be available to any child day care agency against which the department has initiated action to suspend, revoke, deny, or refuse to renew a license or permit under this chapter.

Source. 2014, 128:2, eff. Aug. 15, 2014.

170–E:11 Rulemaking. The commissioner shall adopt rules, under RSA 541–A, relative to:

I. Minimum standards for licensing which apply to the various types of child day care agencies. The department shall seek the advice and assistance of persons representative of the various types of child day care agencies in adopting rules. The standards prescribed shall include:

(a) The operation and conduct of the agency and the responsibility it assumes for child day care.

(b) The character, qualifications, mental and physical ability and competence of the applicant as well as all persons directly responsible for the care and welfare of children served, or of persons who will be providing necessary care for children and maintaining prescribed standards, or of persons who will do both.

(c) The number of individuals or staff required to insure adequate supervision and care of the children received.

(d) The appropriateness, safety, environmental health and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes, to provide for the physical comfort, health and care of children received; provided that, health and safety requirements with regard to school-age children shall be no more stringent than those required for the public schools.

(e) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the health and the physical and mental development of children served.

(f) Provisions to safeguard the legal rights of children served.

(g) Maintenance of records pertaining to the admission, progress, health and discharge of children.

(h) Filing of reports with the department, including format, frequency and content of such reports.

(i) Discipline of children.

(j) Protection and fostering of the particular religious faith of the children served, where applicable.

(k) Provisions to provide for a report of any new staff, paid or unpaid, or resident of the facility which shall include the name, birth name, date of birth and previous addresses of the person, or other information as required by rules of the department.

(*l*) The process and forms for application and renewal of licenses.

(m) The process and forms for requesting waivers to minimum standards and for placing conditions on licenses.

II. The confidentiality of information collected pursuant to RSA 170–E:7, 170–E:10, 170–E:17, III and 170–E:19.

III. The procedures for the appeals processes provided by RSA 170–E:13, II and III.

IV. Policy and procedures concerning monitoring visits, investigation of complaints and disciplinary proceedings, including corrective action plans, against licensees.

V. Policy and procedures concerning suspension or revocation of licenses.

VI. A schedule of administrative fines which may be imposed under RSA 170–E:21–a for a violation of this chapter or the rules adopted pursuant to it.

VII. Procedures for notice and hearing prior to the imposition of an administrative fine imposed under RSA 170–E:21–a.

VIII. Administration and enforcement of the registration process and maintenance of the registry established under RSA 170–E:6–a.

Source. 1990, 257:8. 1991, 355:45. 1998, 256:3, 4, eff. Jan. 1, 1999.

170–E:12 License or Permit Suspension, Revocation, or Denial. The department may suspend, revoke, deny or refuse to renew any license or permit if the licensee or permit holder:

I. Neglects or abuses children in his care;

II. Does not comply with this subdivision or the rules adopted under this subdivision relative to the supervision of children in his care;

III. Violates any provision of this subdivision, or is unable to meet and maintain standards adopted by the commissioner;

IV. Substantially or repeatedly violates any provisions of the license or permit issued;

V. Furnishes or makes any misleading or any false statement or report to the department;

VI. Refuses or fails to submit any reports or to make available to the department any records required by it in making an investigation of the facility for licensing purposes;

VII. Refuses or fails to submit to an investigation or to the required visits by the department;

VIII. Refuses or fails to admit authorized representatives of the department at any time child care is being provided for the purpose of investigation or visit;

IX. Fails to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child day care as required under standards prescribed by rules adopted by the commissioner under RSA 541–A or as otherwise required by any law, rule, ordinance, or term of the license applicable to the location of such facility;

X. Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it;

XI. Meets the conditions specified in RSA 170–E:7, III;

XII. Fails to comply with the corrective action plan submitted by the child day care agency and approved by the department; or

XIII. Loses health, safety or zoning approval.

Source. 1990, 257:8. 1999, 326:4, eff. Jan. 1, 2000.

170–E:13 Notice and Hearing.

I. Should the department determine to suspend, revoke, deny, or refuse to renew a license or permit, it shall send to the applicant, licensee or permittee, by registered mail, an order setting forth the particular reasons for the determination. The suspension, revocation or denial shall become final 10 days after receipt of such order unless the applicant, licensee or permittee requests a hearing under paragraph II of this section.

II. Any applicant, licensee or permittee aggrieved by a decision of the department to suspend, revoke, deny or refuse to renew a license or permit may appeal to the commissioner. For purposes of carrying out the provisions of this section, the commissioner may, in accordance with the rules adopted by the department of personnel pursuant to RSA 541–A, appoint a hearings officer or officers, as necessary, to preside over such hearings. A hearings officer may affirm, deny or modify the decision of the department. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to procedures for the appeal process provided under this paragraph.

III. When the department decides to suspend, revoke, deny, or refuse to renew a license or permit, and it expressly finds that the continued operation of a child day care agency violates any minimum standard prescribed by law or rule, or otherwise jeopardizes the health, safety, morals or welfare of children served by the agency, the department shall include in its order issued under paragraph I an order of closure directing that the operation of the agency terminate immediately. In this event, the agency shall not operate during the pendency of any proceeding for the review of the decision of the department, except under court order.

IV. Rehearings and appeals from a decision of the hearings officer shall be in accordance with rules adopted under RSA 541–A.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:14 Appeal. Any person aggrieved by any decision rendered after a rehearing held or an appeal brought under RSA 170–E:13, IV may appeal the decision to the superior court.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:15 Operation Without a License. Whenever the department is advised, or has reason to believe, that any person is operating a child day care agency without a license or permit, or in violation of any of the provisions of this subdivision, it may make an investigation to ascertain the facts. If it finds that such person is operating or has operated without a license or permit, or in violation of any of the provisions of this subdivision, the department shall issue by certified mail a notice informing such person of the violation and requesting that it cease operating within 24 hours of the date notice is received. The department may report the results of its investigation to the attorney general or to the appropriate county attorney for prosecution.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:16 Advertising. A child day care agency licensed or operating under a permit issued by the department may publish advertisements of the services for which it is specifically licensed or issued a permit under this subdivision. No person who is required to obtain a license or permit under this subdivision may advertise or cause to be published an advertisement soliciting a child for child day care unless the person has obtained the requisite license or permit. A child care provider that is legally operating as a license exempt provider under RSA 170–E:3 shall not hold itself out in any way or advertise that it is licensed by the department, including using forms developed by the department for use by licensed child day care agencies.

Source. 1990, 257:8, eff. Jan. 1, 1991. 2016, 161:7, eff. June 3, 2016.

170–E:17 Investigation.

I. If the department has reason to believe that state or federal funds solicited and received by a corporation for conduct of a child day care agency are not being used for the purpose for which the funds were awarded, or are being fraudulently used by the corporation or its members, or purportedly are being used for a facility or agency which is actually defunct, or are being used by or for an agency which no longer carries a valid license or permit, the department shall report these facts to the attorney general and request an investigation of the corporation to determine if the corporation should be dissolved or

whether other action should be taken against the corporation or its members.

II. The department shall conduct an investigation of any complaint of violations of any licensing or operating standards against permitted or licensed child day care agencies. All investigations shall be conducted at reasonable times, with the cooperation of other state or municipal authorities, if required, and may include unannounced visits. The commissioner shall request an annual narrative summary of complaints received by the department.

III. Records compiled during an investigation shall be confidential and shall not be made public by the department.

Source. 1990, 257:8. 1995, 310:135, eff. Nov. 1, 1995.

170–E:18 Oaths; Subpoenas.

I. The department shall have the power to administer oaths in any disciplinary proceedings.

II. Upon request of the commissioner, the attorney general shall be authorized, for good cause shown, to subpoena witnesses and to compel, by subpoena duces tecum, the production of papers and records in any disciplinary proceedings under this subdivision.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:19 Records. Every child day care agency shall keep and maintain such records as the department shall prescribe by rule pertaining to the admission, progress, health and discharge of children under the care of the child day care agency and shall report relative to such matters to the department whenever called for, upon forms prescribed by rule. All records regarding children and all facts learned about children and their relatives shall be kept confidential both by the child day care agency and by the department.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:20 Notice of Death. If any child under the control of any licensed child day care agency dies, the licensee shall give notice of such event to the department within 24 hours.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:21 Penalty.

I. Any natural person shall be guilty of a class A misdemeanor, and any other person shall be guilty of a class B felony, who conducts, operates, or acts as a child day care agency without a license or permit to do so in violation of RSA 170–E:4, I.

II. Any person shall be guilty of a misdemeanor who:

(a) Makes materially false statements to obtain or retain a license or permit.

(b) Fails to keep the records and make the reports required under this subdivision.

(c) Is required to obtain a license or permit under this subdivision and who advertises or causes to be published an advertisement soliciting a child for child day care which is not authorized by any license or permit held.

(d) Violates any other provision of this subdivision or any rule adopted under RSA 541–A by the commissioner for the enforcement of this subdivision.

(e) Holds themselves out in any way or advertises that they are licensed if they do not hold a license issued by the department.

II–a. Any person who operates a licensed or unlicensed child day care agency in violation of RSA 170–E:4, and, as a direct result of that persons' negligent operation, a child suffers permanent impairment to brain function, permanent paralysis, or other permanent debilitating injury, or death, shall be guilty of a class B felony.

III. Each day a violation continues to exist shall constitute a separate offense.

Source. 1990, 257:8. 2006, 76:2, eff. July 1, 2006. 2016, 161:4, 5, 8, eff. June 3, 2016.

170–E:21–a Administrative Fines. The commissioner of the department of health and human services, after notice and hearing, pursuant to rules adopted under RSA 541–A, may impose an administrative fine not to exceed $2,000 for each offense upon any person who violates any provision of this chapter or rules adopted under this chapter. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The commissioner shall adopt rules in accordance with RSA 541–A relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the general fund.

Source. 1991, 355:46, eff. July 1, 1991.

170–E:22 Injunctive Relief. Any person may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this subdivision or of the rules adopted under

RSA 170–E:11; and the court shall adjudge relief, by way of injunction, which may be mandatory or otherwise as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purpose of this subdivision and the rules adopted under it. In a prosecution under this subdivision, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:23 Confidentiality and Investigations. State registry files and all other related confidential information kept by any state agency may be used by the department for the purpose of investigation and licensure. The department shall strictly observe the confidentiality requirements of the agency from which it receives information.

Source. 1990, 257:8, eff. Jan. 1, 1991.

Residential Care and Child-Placing Agency Licensing

170–E:24 Purpose. The purpose of this subdivision is to provide for the licensing of residential care and child-placing agencies.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:25 Definitions. In this subdivision:

I. "Child" means any person under 21 years of age.

II. "Child care agency" means any person, corporation, partnership, voluntary association or other organization either established for profit or otherwise, who regularly receives for care one or more children, unrelated to the operator of the agency, apart from the parents, in any facility as defined in this subdivision and maintained for the care of children. The types of child care agencies are defined as follows:

(a)(1) "Foster family home" means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for child care who are related to the residents.

(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.

(b) "Group home" means a child care agency which regularly provides specialized care for at least 5 but no more than 12 children who can benefit from residential living either on a short-term or long-term basis.

(c) "Specialized care" means a child care agency which regularly provides general care for children who are diagnosed as mentally ill, intellectually disabled, or physically disabled and who are determined to be in need of special mental treatment or nursing care, or both.

(d) "Homeless youth program" means a program, including any housing facilities utilized by such program, which receives any child for the purpose of providing services to facilitate independent living including all of the following program components: individual assessment, referral, housing, and case management. Such services may be provided directly by the agency or through one or more contracts for services.

III. "Child care institution" means a residential child care agency where more than 12 children are received and maintained for 24-hour care for the purpose of providing them with care or training, or both. The term "child care institution" shall not include:

(a) Any state operated institution for child care or juvenile detention established by law.

(b) Any institution, home, place or facility operating under a license pursuant to RSA 151:2.

(c) Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public elementary schools or high schools, or both, and which operates on a regular academic school year basis, and which is approved by the department of education.

(d) Any bona fide summer camp.

IV. "Child-placing agency" means any firm, corporation or association which:

(a) Receives any child for the purpose of providing services related to arranging for the placement of children in a foster family home, group home, or child care institution; or

(b) Receives any child for the purpose of providing services related to arranging for the placement of children in adoption.

V. "Commissioner" means the commissioner of the department of health and human services.

VI. "Corrective action plan" means a written proposal setting forth the procedures by which a child care agency, child care institution, or child-placing agency will come into compliance with the standards set by rule adopted by the commissioner under RSA 541–A and subject to the approval of the department. The proposal shall include the time needed to assure compliance and the steps proposed by the agency to reach compliance.

VII. "Department" means the department of health and human services.

VIII. "Experiential/wilderness facility" means a child care institution which regularly provides specialized care and training in daily living for more than 12 children but fewer than 57 children, and meets the standards established by the commissioner by rule under RSA 170–E:34, I(a).

IX. "Guardian" means the guardian of the person of a minor, as defined in RSA 463.

X. "Independent living home" means a child care agency which regularly provides specialized services in adult living preparation in an experiential residential setting for persons 16 years of age or older who have a legal relationship with the department of health and human services and who can benefit from independent living training.

XI. "License" means a complete license issued to an operator of a child care agency, child care institution or child-placing agency, authorizing the licensee to operate in accordance with the term and conditions of the license, this subdivision, and the rules of the department.

XII. "Permit" means an issuance to an operator of a child care agency or child-placing agency which shall not be renewable except for good cause shown and which may be granted for a period not exceeding 6 months to agencies whose services the department finds are needed, but which are temporarily unable to conform to the qualification for a license.

XIII. "Regularly" or "on a regular basis" means supervision and care up to and including 7 days a week service, whether continuous or not, for all types of child care subject to the provisions of this subdivision.

XIV. "Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, uncle, aunt, niece, nephew, first cousin or second cousin.

XV. "Respite care" means substitute care provided by a person or agency which is licensed as a child care or child-placing agency.

Source. 1990, 257:8. 1992, 11:3. 1994, 212:2. 1995, 310:181. 2001, 188:1. 2006, 92:1. 2008, 52:12, eff. July 11, 2008.

170–E:26 Exemptions; Child Endangerment Prohibited.

I. The definitions in RSA 170–E:25, II and III shall not apply to the following:

(a) Families housing exchange students or up to 4 children in summer exchange programs.

(b) Nonresident families visiting the state for purposes of a vacation who have in their care foster children from their home state and have written approval of the out-of-state agency which supervises the foster children.

II. Families exempted from licensing pursuant to this section shall be subject to the provisions of RSA 170–E:27, II.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:27 License Required; Prohibition Against Child Endangerment.

I. No person may establish, maintain, operate or conduct any agency for child care or for child-placing without a license or permit issued by the department under this subdivision.

II. No person, whether licensed as a child care agency or institution or child-placing agency, or exempted from licensing pursuant to RSA 170–E:26, I, shall care for a child in a manner which endangers the health, safety or welfare of the child. For purposes of this paragraph, endangerment shall mean the negligent violation of a duty of care or protection owed to such child or negligently inducing such child to engage in conduct which endangers his health or safety. Licensees in violation of this paragraph shall be subject to the provisions of RSA 170–E:35. Persons exempted from licensing who are in violation of this paragraph shall be enjoined by a court of competent jurisdiction in accordance with the provisions of RSA 170–E:46 from caring for such child and may be enjoined, as the court may determine, from caring for other children. The court in its order for injunctive relief shall provide for removal and placement of the child who is the subject of the order with an organization licensed pursuant to this subdivision.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:27–a Homeless Youth Programs; Special Provisions. Any child care agency which receives children for the purpose of providing a home-

less youth program, as defined in RSA 170–E:25, II(d), shall be subject to the following provisions:

I. When a child 16 or 17 years of age contacts a homeless youth program requesting emergency shelter or homeless services, the program shall:

(a) Assess the child's essential needs, physical and mental health condition, and the circumstances that led the child to seek services.

(b) Upon completion of the assessment, but in no case later than 72 hours from the child's initial request for services, attempt to notify the child's parent or legal guardian that such child is present at the agency's facility. If compelling circumstances become evident during assessment which justify not notifying the parent or legal guardian, the program shall instead notify the department according to RSA 169–C:29. In this paragraph, the term "compelling circumstances" means circumstances which indicate that notifying the parent or legal guardian would subject the child to risk of abuse or neglect as defined in RSA 169–C:3.

(c) Notify the department no later than 30 days after the child's initial request for services if the program is unable to make contact with either of the child's parents or the legal guardian after reasonable attempts to do so.

II. Nothing in this section shall alter the legal relationship between parent or legal guardian and child, and in the absence of a court order directing otherwise, the program shall release the child to the custody of his or her parent or legal guardian upon request by the parent or guardian.

III. If the child is discharged from the program or voluntarily terminates participation in the program, the program shall immediately notify the parents or legal guardian; or the department if the parent or legal guardian has never consented to the child's placement in the program.

IV. A parent or legal guardian who consents in writing to the child's participation in a licensed homeless youth program shall not be deemed neglectful under RSA 169–C:3, XIX.

V. The agency may charge the child a reasonable fee for the services provided the child is working and/or has other regular income and such fee is within his or her ability to pay.

Source. 2001, 188:2, eff. Sept. 3, 2001.

170–E:28 Applications; Compliance With State and Local Codes Required.

I. Any entity which intends to receive children, or arranges for child care or child placement of one or more children unrelated to the operator, shall apply for a license to operate one or more of the types of facilities for child care. Application for a license to operate a child care agency or institution or a child-placing agency shall be made to the department in the manner and on forms prescribed by rules adopted by the commissioner under RSA 541–A. Such forms shall provide for the birth names, birth dates and addresses of all persons having responsibility for care or placement of children or regular contact with children at the institution or agency. The agency or institution shall obtain approvals in accordance with state and local requirements pertaining to health, safety and zoning as applicable; and, if the department is satisfied that the person, institution, agency, or program conforms to standards prescribed for the type of child care or child placement for which application is made, the department shall issue a license in proper form designating on that license the type of child care or child placement, the name and address of the person or institution, the duration of the license and, except for child-placing agencies, the age range, the gender, and the number of children to be served.

II. Either the state fire marshal or the local fire department shall review compliance of the foster family home with applicable state fire safety laws and local ordinances. In conducting the review, the state fire marshal or local fire department shall apply the appropriate single family or multi-unit dwelling provisions of the applicable code.

Source. 1990, 257:8. 2001, 77:1, eff. Aug. 18, 2001.

170–E:29 State Registry and Criminal Records Check for Foster Family Homes, Institutions, and Child-Placing Agencies.

I. Foster family homes, institutions, and child-placing agencies shall, within 30 days of adding new staff members responsible for care of or in regular contact with children, submit the names, birth dates, and addresses of such staff members to the department.

II. Except in the case of an initial application for a foster family home, the department shall, for every name submitted on the application and for each new staff member, or at each renewal, review the names, birth names, birth dates, and current and previous addresses of such persons against the state registry of founded abuse and neglect reports. The department shall submit the names, birth names, birth dates, and addresses to the state police files to obtain information about criminal convictions.

II–a. In the case of an initial application for a foster family home, the department shall conduct a background check of the prospective foster parents and any other adult living in the home. The background check shall consist of a fingerprint-based criminal record check of national crime information databases for the prospective foster parents and any other adults living in the home, as well as a central registry check for the prospective foster parents and any other adult living in the home.

(a) For the criminal record check required under this paragraph, the department shall submit the prospective foster parents' fingerprints and the fingerprints of any other adults living in the home to the department of safety, division of state police, for forwarding to the Federal Bureau of Investigation. Upon completion of the criminal record check, the division of state police shall forward the results to the department.

(b) The central registry check shall include a check of the department's central registry of founded reports of child abuse and neglect under RSA 169–C:35 and shall include a check of the child abuse and neglect registries in any other state in which the prospective foster parents or other adult living in the home has resided in the preceding 5 years. Information obtained from another state pursuant to this subparagraph shall be used only for the purposes of conducting the background checks.

III. If any individual whose name has been submitted for a check under this section has been convicted of a violent or sexually-related crime against a child, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall deny the license, pending the development and implementation of a corrective action plan approved by the department.

IV. If any individual whose name has been submitted for this check has been convicted of crimes against minors or adults, except crimes as provided in paragraph III, or is the subject of a founded complaint of child abuse or neglect, the department may deny the license or permit, revoke a license, or suspend a license pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the individual poses a present threat to the safety of children. The investigation shall include an opportunity for the individual to present evidence on his behalf to show that he does not pose a threat to the safety of children.

V. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

Source. 1990, 257:8. 1994, 212:2. 1995, 310:136. 2007, 325:4, 5. 2013, 216:1, eff. Sept. 8, 2013. 2017, 136:2, eff. June 16, 2017.

170–E:29–a State Registry and Criminal Records Check for Child Care Institutions and Child Care Agencies.

I. Child care institutions and child care agencies, with the exception of foster family homes, that are required to be licensed according to the provisions of this chapter shall, prior to making a final offer of employment to a person who will be responsible for the care of, or who will have regular contact with children, and upon adding a new household member, or other persons who will have regular contact with children, submit to the department, the names, birth names, birth dates, and addresses during the preceding 5 years of such persons and other information required by the department as prescribed by rules adopted by the commissioner under RSA 541–A.

I–a. The persons described in paragraph I shall submit directly to the department of safety a notarized criminal history record information authorization form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any, to the department. The persons shall complete a Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System through a qualified law enforcement agency or an authorized employee of the department of safety. The department of safety shall complete the criminal history records check and forward such record, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

II. (a) For every name submitted on an application and for each person for whom information is required to be submitted pursuant to paragraph I, the department shall search for such persons against the New Hampshire sex offender and abuse and

neglect registries, the sex offender and abuse and neglect registries of each state where the individual resided in the past 5 years, and the National Sex Offender Registry.

(b) The department of safety shall submit the criminal history records release form to the New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(c) The costs of criminal history record checks shall be borne by the licensee; provided, that the licensee may require an applicant to pay the actual costs of the criminal history check of the employee.

III. Notwithstanding paragraph I, a licensee may make a final offer of employment and allow a person to begin working in the program while the results of the state and national criminal background check is pending provided that, prior to beginning employment, the applicant completes a statement stating that he or she:

(a) Does not have any felony conviction in this or any other state.

(b) Has not been convicted of a sexual assault, assault including simple assault, any other violent crime, abuse, neglect, or any other crime that shows that they may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult.

(c) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect or exploitation of children.

IV. The results of the criminal background check shall be valid for 5 years. Prior to the expiration of that 5-year period, a person responsible for the care of, or who has regular contact with children in child care institutions or child care agencies, or household members, or other persons who will have regular contact with children, shall undergo a background check pursuant to this section.

IV–a. If a person who is or has been employed or volunteered at a child care institution or child care agency is offered employment or volunteers at another child care institution or child care agency or a child day care agency, the person shall not be required to undergo the criminal records check described in paragraph I–a if the previous criminal records check was completed within the last 5 years and the person was determined by the department to be eligible for employment. Before entering employment or volunteering with the new agency, the person shall complete a statement as set forth in paragraph III.

V. The department shall make a determination regarding the individual's eligibility for employment no later than 45 days from submission of all required information as described in paragraphs I and I–a. If any person whose name has been submitted for a check under this section is registered or required to be registered on a state sex offender registry or repository, or the National Sex Offender Registry, or has been convicted of a felony consisting of murder, child abuse or neglect, an offense involving child sexual abuse images, trafficking, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or a drug-related offense committed during the previous 5 years, or any other violent or sexually related misdemeanor or against a child, including child abuse, child endangerment, sexual assault, or a misdemeanor involving child sexual abuse images, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall:

(a) If the person is the applicant or owner, revoke or deny the license.

(b) If the person is a board member, household member, or child care institution or child care agency personnel, or any other person having regular contact with the enrolled children inform the child care institution or child care agency that the person is ineligible for employment and give the program an opportunity to take immediate corrective action to remove the person from the program, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the person will not be on the premises of the child care institution or child care agency and shall have no contact with children enrolled in the child care institution or child care agency.

(c) Suspend, deny, or revoke the license or permit if the child care institution or child care agency refuses to take corrective action as indicated in subparagraph (b), or subsequently fails to comply with the corrective action plan approved by the department.

VI. If any person whose name has been submitted for this check has been convicted of a felony

offense or violent crime deemed directly or indirectly harmful to children in child residential care, crimes against minors or adults, except crimes as provided in paragraph V, or is the subject of a founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license or permit pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the person is ineligible for employment. The investigation shall include an opportunity for the person to present evidence on his or her behalf to show that the person does not pose a threat to the safety of children.

VII. (a) Once the department has made a determination that the individual required to complete a criminal record check under paragraph I–a is eligible for employment, the department shall issue a child care employment eligibility card, which shall be valid for 5 years provided that no disqualifying convictions are subsequently submitted, and the individual remains eligible as described in RSA 170–E:7, II–a(b). The state may require additional background checks to be completed based upon conviction information submitted.

(b) The fee for a child care employment eligibility card shall be $50, and the card shall be valid for 5 years from the date of issuance. The fee for a replacement card shall be $15.

VIII. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

Source. 2013, 216:2, eff. Sept. 8, 2013. 2016, 158:6, eff. Oct. 1, 2016. 2017, 91:4, eff. Aug. 6, 2017.

170–E:30 Child Care Institution; Child-Placing Agency; Information Required. In addition to the steps required in RSA 170–E:29, the department, upon receiving an application and authorization filed by a child care institution or child-placing agency in proper order, shall, in cooperation with the operator, examine the facility or agency, and investigate the program and person or persons responsible for the care of children. When the facility or agency is administered through an executive board, board of trustees, board of directors, or other governing body, the names, addresses, and any connection of individuals on such bodies with the facility or agency shall be included. The institution or child-placing agency shall obtain and provide receipts of approval of state and local requirements pertaining to health, safety and zoning, as applicable. If the department is satisfied that the institution or child-placing agency conforms to the standards prescribed for the type of facility or agency to be operated, a license shall be issued. The commissioner or his designee may inspect the facility or agency at any time.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:31 Issuance.

I. Licenses shall be issued in such form and manner as prescribed by rules adopted by the commissioner under RSA 541–A and, for foster family homes and specialized care, shall be valid for 2 years from the date issued, unless revoked by the department, or voluntarily surrendered by the licensee, or subject to conditions attached to the license which provide for a shorter license period than 2 years.

II. The department may provide dual licensure to a facility or child-placing agency. Such licensure shall be granted only upon application and shall be contingent upon a determination, by the appropriate licensing units consulting with each other, that the standards of both programs have been met without compromising any licensing requirements. If the licensing units are unable to agree, the final decision shall be made by the commissioner.

III. Licensure for child care institutions and child-placing agencies shall be valid as follows:

(a) Group homes and child care institutions: 3 years from the effective date of the license.

(b) Child-placing agencies: 4 years from the effective date of the license.

IV. The department shall make monitoring visits a minimum of once yearly each licensing period. At least one such visit during the licensing period shall not be announced in advance; however, such unannounced visit is optional for foster family homes. Clear and comprehensive records shall be maintained by the department on each licensed facility showing the dates and findings of each such visit. Such records shall be made available to the facility. If the facility is found not to be in compliance either with the statute or the rules adopted by the commissioner, a corrective action plan shall be submitted to the department. Failure to submit an acceptable plan shall result in license suspension or revocation.

V. The department may issue a 6-month permit to a newly established facility for child care, or to an established facility which has changed its physical location, to allow that facility reasonable time to become eligible for full licensure. The 6-month permit may be issued immediately upon completion of the necessary licensing inspections. If the language

on such permit allows it, the facility may begin operation immediately without waiting for the state office to complete the processing of the application.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:32 License Renewal.

I. A licensed child care agency, child care institution, or child-placing agency shall file for renewal of its license 3 months prior to the expiration date of the license on forms prescribed by rules adopted by the commissioner under RSA 541–A.

II. The department, a duly licensed child-placing agency, or a person designated by the department as its agent, shall reexamine every child care facility for renewal of its license, including examination of the premises, program, and such records of the facility as the department considers necessary to determine that minimum standards for licensing continue to be met. If the department is satisfied that the person, institution, or child-placing agency continues to maintain the minimum standards established by rule for that category of child care or child-placing, it shall renew the license to operate.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:33 Record of Licenses.

I. The department shall keep in a central depository records of licenses issued under this subdivision and all monitoring reports that have been made relative to licensees. When a license is issued to a person or institution, the department shall give notice to the health officer and the fire department of the city or town in which the licensee is located stating the granting of such license and its terms. A like notice shall be given of any suspension or revocation of such license.

II. The license itself shall be considered public information and available for review by members of the public; information submitted in the application process, however, shall be private, confidential and not available for review.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:34 Rulemaking; Consultation.

I. The commissioner shall adopt rules, under RSA 541–A, relative to:

(a) Minimum standards for licensing which apply to the various types of facilities for child care and child placement. The department shall seek the advice and assistance of persons representative of the various types of child care and child-placing agencies in establishing such standards. The standards prescribed shall include:

(1) The operation and conduct of the person, institution, or child-placing agency and the responsibility it assumes for child care or child placement, or both.

(2) The character, qualifications, mental and physical ability and competence of the applicant as well as all persons directly responsible for the care and welfare of children served, or of persons who will be providing necessary care for children and maintaining prescribed standards, or of persons who will do both.

(3) The number of individuals or staff required to insure adequate supervision and care of the children provided the particular type of care.

(4) The appropriateness, safety, environmental health and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes, to provide for the physical comfort, health and care of children received.

(5) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the health and the physical and mental development of children served.

(6) Provisions to safeguard the legal rights of children served.

(7) Maintenance of records pertaining to the admission, progress, health and discharge of children.

(7–a) Provisions for the permanent retention of records pertaining to the placement of children for adoption, including maintenance of such records in the event that a licensed agency ceases to operate as a licensed child-placing agency.

(8) Filing of reports with the department, including format, frequency and content of such reports.

(9) Discipline of children.

(10) Protection and fostering of the particular religious faith of the children served, where applicable.

(11) Provisions to provide for a report of any new staff, paid or unpaid, or resident of the facility which shall include the name, birth name, date of birth and previous addresses of the person, or other information as required by rules of the department.

(12) Duties and responsibilities of the board of directors or other governing body of the facility or child-placing agency with respect to compli-

ance with this subdivision and the standards relating to this subdivision as established by the department.

(13) Retention of records and, in the event the facility or child-placing agency is no longer functioning, transfer of records.

(b) Minimum standards for facilities for specialized care, where there are children diagnosed as mentally ill, intellectually disabled, or physically disabled, who are determined to be in need of special mental treatment or nursing care, or both, when the facility is not subject to licensure under RSA 151. The department shall seek the advice and recommendation of the department of education, as appropriate, regarding the residential treatment, education, and nursing care provided by the facility.

(c) The confidentiality of information gathered pursuant to RSA 170–E:28, 170–E:29, 170–E:33 and RSA 170–E:42.

(d) The procedures for the appeals processes provided by RSA 170–E:36, II and IV.

(e) Policy and procedures concerning the investigation of licensees and all disciplinary proceedings, including corrective action plans, against licensees.

(f) Compensation to foster family homes for the costs of caring for each child placed in their home.

(g) The release of information to persons receiving the child which pertains to the life and safety of the child either about to be placed or already in placement, and which may pertain to the life and safety of the persons who are receiving or who have received the child for placement, including any physical and mental health issues, history of abuse or neglect, behaviors that may be expected, and recommended ways of handling the child's problems. For purposes of this subparagraph, placement shall mean out-of-home placements, including placements for adoption.

(h) Establishing, maintaining, and directing a system of child care resource and referral pursuant to RSA 170–E:5–a.

II. The department, in applying the standards adopted by rule under paragraph I, shall offer consultation through employed staff or other qualified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a licensee.

Source. 1990, 257:8. 1991, 327:3. 1995, 310:138. 1996, 234:4. 2004, 98:1. 2008, 52:13, eff. July 11, 2008.

170–E:35 License or Permit Suspension, Revocation, or Denial. The department may suspend, revoke, deny, or refuse to renew any license, or revoke or refuse to issue a full license to any permit holder, whether or not the person, institution or agency is approved by a child-placing agency, if the licensee or permit holder:

I. Neglects or abuses children in his care;

II. Does not comply with this subdivision or the rules adopted under this subdivision relative to the supervision of children in his care;

III. Violates any provision of this subdivision, or is unable to meet and maintain standards adopted by the commissioner;

IV. Substantially or repeatedly violates any provisions of the license or permit issued;

V. Furnishes or makes any misleading or any false statement or report to the department or to the child-placing agency;

VI. Refuses or fails to submit any reports or to make available to the department any records required by it in making an investigation of the facility for licensing purposes;

VII. Refuses or fails to submit to an investigation or to the required visits by the department;

VIII. Refuses or fails to admit authorized representatives of the department at any reasonable time for the purpose of investigation or visit;

IX. Fails to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by rules adopted by the commissioner under RSA 541–A or as otherwise required by any law, rule, ordinance, or term of the license applicable to the location of such facility;

X. Refuses to display its license or permit or to make it readily available to view, if requested;

XI. Fails to exhibit, meet or maintain financial or other resources, or both, adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, education and other essentials in the proper care, rearing, training and placement of children, so long as such lack of financial resources is not due primarily to delays in state payments for care;

XII. Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it;

XIII. Continues to employ a person without taking corrective action, after receipt of written notification from the department that the person poses a risk to children, such notification including the basis for

the department's determination that the risk exists; or

XIV. Fails to comply with the corrective action plan jointly developed between the department and the person, institution or agency.

XV. Demonstrates a repeated failure to cooperate with the department, other service providers, or the parents of a child who is placed with the child care agency, as necessary to implement the child's case plan or the department's treatment decisions.

Source. 1990, 257:8. 2010, 70:1, eff. July 18, 2010.

170–E:36 Notice and Hearing.

I. Should the department determine to suspend, revoke or deny, or refuse to renew a license or permit, it shall send to the applicant, licensee or permittee, by registered mail, a notice which sets forth the particular reasons for the determination. The suspension, revocation, or denial shall become final 10 days after receipt of such notice unless the applicant, licensee or permittee requests a hearing under paragraph II of this section.

II. Any applicant, licensee or permittee aggrieved by a decision of the department to suspend, revoke, deny, or refuse to renew a license or permit may appeal to the commissioner through an administrative hearings process. For purposes of carrying out the provisions of this section, the commissioner may, in accordance with the rules adopted by the department of personnel pursuant to RSA 541–A, appoint a hearings officer or officers, as necessary, to preside over such hearings. A hearings officer may affirm, deny or modify the decision of the department. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to procedures for the appeals process provided under this paragraph.

III. When the department decides to suspend, revoke, deny, or refuse to renew a license or permit, and it expressly finds that the continued operation of a child care facility or child-placing agency violates any minimum standard prescribed by law or rule, or otherwise jeopardizes the health, safety, morals, well-being or welfare of children served by the facility or child-placing agency, the department shall include in its notice an order of closure directing that the operation of the facility or child-placing agency terminate immediately. In this event, the facility or child-placing agency shall not operate during the pendency of any proceeding for the review of the decision of the department, except under court order.

IV. Rehearings and appeals from a decision of the hearings officer shall be in accordance with rules adopted under RSA 541–A.

V. On or before December 31, 2010, and each year thereafter, the department shall submit a report to the chair of the house standing committee on children and family law relative to the number of license or permit suspensions, revocations, denials, and appeals for that year.

Source. 1990, 257:8. 2010, 70:2, eff. July 18, 2010.

170–E:37 Appeal. Any person aggrieved by any decision rendered after a rehearing held or an appeal brought under RSA 170–E:36, IV may appeal the decision to the superior court.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:38 Operation Without a License. Whenever the department is advised, or has reason to believe, that any entity is operating a child care facility or child-placing agency without a license or permit, it may make an investigation to ascertain the facts. If it finds that the child care facility or child-placing agency is operating or has operated without a license or permit, the department may report the results of its investigation to the attorney general or to the appropriate county attorney for prosecution.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:39 Advertising. A child care agency, child care institution, or child-placing agency licensed or operating under a permit issued by the department may publish advertisements of the services for which it is specifically licensed or issued a permit under this subdivision. No person who is required to obtain a license or permit under this subdivision may advertise or cause to be published an advertisement soliciting or offering care for a child for care or placement unless the person has obtained the requisite license or permit.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:40 Investigation.

I. If the department has reason to believe that state or federal funds solicited and received by a corporation for conduct of a child care facility or child-placing agency are not being used for the purpose for which the funds were awarded, or are being fraudulently used by the corporation or its members, or purportedly are being used for a facility or child-placing agency which is actually defunct, or are being used for a facility or child-placing agency which no longer carries a valid license or permit, the department shall report these facts to the attorney general and request an investigation of the corporation to

determine if the corporation should be dissolved or whether other action should be taken against the corporation or its members.

II. The department shall conduct an investigation of any complaint of violations of any licensing or operating standards against permitted or licensed child care or child-placing agencies. All investigations shall be conducted at reasonable times, with the cooperation of other state or municipal authorities, if required, and may include unannounced visits. The commissioner shall request an annual narrative summary of complaints received by the department.

III. Records compiled during an investigation shall be confidential and shall not be made public by the department.

Source. 1990, 257:8. 1995, 310:137, eff. Nov. 1, 1995.

170–E:41 Oaths; Subpoenas.

I. The department shall have the power to administer oaths in any disciplinary proceedings.

II. Upon request of the commissioner, the attorney general shall be authorized, for good cause shown, to subpoena witnesses and to compel, by subpoena duces tecum, the production of papers and records in any disciplinary proceedings under this subdivision.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:42 Records. Every child care facility and child-placing agency shall keep and maintain such records as the department prescribes pertaining to the admission, progress, health, and discharge or placement, or both, of children under the care of the facility or child-placing agency, and shall report relative to such matters to the department whenever called for, upon forms prescribed by rule. All records regarding children and all facts learned about children and their relatives shall be kept confidential by the child care facility, the child-placing agency, and the department.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:43 Notice of Death. If any child under the control of any licensed child care agency or institution dies, the licensee shall give notice of such event to the department within 24 hours thereafter stating the date and cause of death, to the extent known, duration of the most recent illness, and the names and addresses of the attending physician and undertaker.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:44 Reports to the Department of Health and Human Services.

I. Any child care facility or child-placing agency receiving a child for care or supervision from a foreign state or country shall report that child to the department of health and human services in the same manner as it is required for reporting other children pursuant to RSA 170–A:1.

II. A person other than a licensed child care institution or child-placing agency shall not receive a child from a foreign state or country without prior notice to and approval of the department of health and human services. Any placement of children shall conform to RSA 170–A and RSA 170–B:28.

III. The department of health and human services may require a guarantee that a child accepted for care or supervision from a foreign state or country will not become a public charge upon this state.

IV. The department of health and human services may enter into agreements with public or voluntary social agencies headquartered in states adjacent to this state regarding the placement of children in licensed foster family homes within the boundaries of this state if the agencies meet the standards and criteria required for license as a child-placing agency in this state. The agreements may allow foreign agencies to place and supervise children for whom they have responsibility with this state without regard to paragraph I. These agreements shall, however, include a requirement that the agencies cooperate fully with the department in its inquiry or investigation into the activities and standards of those agencies, and provide that the department of health and human services may, at any time upon 15 days' written notice to an agency by registered mail, void the agreement and require the observance of paragraph I.

V. The department of health and human services shall perform its duties under this section with the approval of the commissioner.

Source. 1990, 257:8. 1994, 212:2. 1995, 310:175, 181. 2004, 255:5, eff. Jan. 2, 2005.

170–E:45 Penalty.

I. Any person shall be guilty of a misdemeanor who:

(a) Conducts, operates or acts as a child care facility or child-placing agency without a license or permit to do so in violation of RSA 170–E:27, I;

(b) Makes materially false statements in order to obtain or retain a license or permit;

(c) Fails to keep the records and make the reports required under this subdivision;

(d) Is required to obtain a license or permit under this subdivision and who advertises or causes to be published an advertisement for a service which is not authorized by any license or permit held;

(e) Violates any other provision of this subdivision or any rule adopted under RSA 541–A by the commissioner for the enforcement of this subdivision;

(f) Fails to comply with the requirements for notifying parents, legal guardians, or the department under RSA 170–E:27–a, I.

II. Foster family homes which have not been licensed but which have been asked to receive children by the department or another child-placing agency on an emergency basis shall not be subject to the penalty provided in subparagraph I(a). The exemption provided in this paragraph is valid for a period of 30 days from the date of placement of the child in the home.

III. Each day a violation continues to exist shall constitute a separate offense.

Source. 1990, 257:8. 1995, 310:175. 2001, 188:3, eff. Sept. 3, 2001.

170–E:46 Injunctive Relief. Any person may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this subdivision or of the rules adopted under RSA 170–E:34; and the court shall adjudge relief, by way of injunction, which may be mandatory or otherwise as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purpose of this subdivision and the rules adopted under it. In a prosecution under this subdivision, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:47 License Remains in Effect. Any license issued under this subdivision remains valid until its expiration date, unless revoked by the department, or until the date established by conditions placed on the license.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:48 Retaliation Prohibited. A child care agency or child-placing agency license holder shall not retaliate, through discharge, harassment, or other discrimination, against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it. Such retaliation shall constitute grounds for license revocation.

Source. 1990, 257:8, eff. Jan. 1, 1991.

170–E:49 Confidentiality and Investigations. The department may request and shall receive cooperation from other state agencies in connection with investigations and licensure. Because certain information kept by other state agencies and requested by the department may be confidential, the department shall strictly observe the confidentiality requirements of the agency from which it receives information.

Source. 1990, 257:8, eff. Jan. 1, 1991.

Credentialing of Personnel in Early Care and Education Programs

170–E:50 Credentialing of Personnel in Early Care and Education Programs; Rulemaking.

I. The commissioner shall adopt rules, under RSA 541–A, relative to accepting applications and issuing a credential to early care and education personnel including, but not limited to child care, preschool, and Head Start program personnel who have requested such a credential and who have satisfied the education and training requirements set forth in the child care program licensing rules established by the department of health and human services. Each application for a credential shall be accompanied by a fee which shall be credited to the general fund. The commissioner shall adopt rules, under RSA 541–A, establishing a fee for this purpose.

II. The department of health and human services shall incorporate this program, funded by the fee established in paragraph I of this section, into the next biennial department budget after the effective date of this section.

Source. 1999, 185:1, eff. Aug. 31, 1999.

CHAPTER 171–A

SERVICES FOR THE DEVELOPMENTALLY DISABLED

171–A:1 Purpose and Policy. The purpose of this chapter is to enable the department of health and human services to establish, maintain, implement and coordinate a comprehensive service delivery system for developmentally disabled persons. The policy of this state is that persons with developmental disabilities and their families be provided services that emphasize community living and programs to support individuals and families, beginning with early intervention, and that such services and programs shall be based on the following:

I. Participation of people with developmental disabilities and their families in decisions concerning necessary, desirable, and appropriate services, recognizing that they are best able to determine their own needs.

II. Services that offer comprehensive, responsive, and flexible support as individual and family needs evolve over time.

III. Individual and family services based on full participation in the community, sharing ordinary places, developing meaningful relationships, and learning things that are useful, as well as enhancing the social and economic status of persons served.

IV. Services that are relevant to the individual's age, abilities, and life goals, including support for gainful employment that maximizes the individual's potential for self-sufficiency and independence.

V. Services based on individual choice, satisfaction, safety, and positive outcomes.

VI. Services provided by competent, appropriately trained and compensated staff.

Source. 1975, 242:1. 1979, 322:2, I. 1987, 206:2. 1995, 310:181. 2006, 229:1, eff. July 31, 2006.

171–A:1–a Full Funding of Services Budget; Limits of Waiting Lists.

I. The department of health and human services and area agencies shall provide services to eligible persons under this chapter and persons eligible for the brain injury program under RSA 137–K in a timely manner. The department and area agencies shall provide services in such a manner that:

(a) For persons in school and already eligible for services from the area agencies, funds shall be allocated to them 90 days prior to their graduating or exiting the school system or earlier so that any new or modified services needed are available and provided upon such school graduation or exit.

(b) For newly found eligible adults, the period between the time of completion of an individual service agreement pursuant to RSA 171–A:12 and the allocation by the department of the funds needed to carry out the services required by the agreement shall not exceed 90 days.

(c) For persons already receiving services who experience significant life changes, such as a significant change in their medical conditions, the period of time for initiation of new services shall not exceed 90 days from the amendment of the individual service agreement except by mutual agreement between the area agency and the person specifying a time limited extension.

(d) Notwithstanding subparagraphs I(a)–(c) of this section, for fiscal years 2008 and 2009, the timelines set forth in each such subparagraph may be exceeded, provided that best efforts shall be made to meet the timelines for children graduating or exiting school and for other individuals the department determines most in need and to minimize delays with respect to others within the limits of available funding and to provide them interim services when the timelines have been exceeded by 60 days for fiscal year 2008 and 30 days for fiscal year 2009.

II. Beginning with the fiscal year ending June 30, 2010, and thereafter, the department of health and human services shall incorporate the cost of fully funding services to eligible persons, in accordance with the requirements of paragraph I, and as otherwise required under RSA 171–A, and the legislature shall appropriate sufficient funds to meet such costs and requirements.

Source. 1997, 151:2. 2007, 363:2, eff. July 1, 2007.

171–A:1–b Oversight Committee; Establishment.

[Repealed 1998, 248:2, eff. July 1, 2002.]

History

Former RSA 171–A:1–b, which was derived from 1998, 248:1 and 2001, 10:1, related to an oversight committee.

171–A:1–c Oversight Committee; Establishment.

[Repealed 2010, 268:5, II, eff. Sept. 4, 2010.]

History

Former RSA 171–A:1–c, which was derived from 2003, 10:1 and 2007, 363:7, related to the establishment of an oversight committee.

171–A:1–d Improvements in Capacity of Service Delivery System.

[Repealed 2010, 268:5, III, eff. Sept. 4, 2010.]

History

Former RSA 171–A:1–d, which was derived from 2007, 363:3, related to improvements in the capacity of the service delivery system.

171–A:2 Definitions. In this chapter:

I. "Administrator" means the superintendent or chief administrative officer of any facility or of any program or service for the developmentally disabled conducted under the supervision of the commissioner or any employee he so designates as his deputy.

I–a. "Area" means a geographic region established by rules adopted by the commissioner for the purpose of providing services to developmentally disabled persons.

I–b. "Area agency" means an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide services to developmentally disabled persons in the area.

I–c. "Area board" means the governing body or board of directors of an area agency.

I–d. "Assistive technology" means assistive technology as defined by 29 U.S.C. section 3002(3).

II. "Client" means any developmentally disabled person receiving services provided under this chapter.

III. "Commissioner" means the commissioner of health and human services.

IV. "Department" means the department of health and human services.

V. "Developmental disability" means a disability:

(a) Which is attributable to an intellectual disability, cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for persons with an intellectual disability; and

(b) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe disability to such individual's ability to function normally in society.

V–a. "Direct support staff" means any person employed by an area agency or contract provider in which at least 50 percent of the person's time is providing direct care or support to a client.

VI, VII. [Omitted.]

VIII. [Repealed.]

IX. "Habilitation" means the process by which program personnel assist clients to acquire and maintain those life skills which enable them to cope more effectively with the demands of their own persons and of their environment, to be economically self-sufficient and to raise the level of their physical, mental and social efficiency. Habilitation includes but is not limited to programs of formal, structured education and treatment.

X. "Individual service agreement" means a written document for a client's services and supports which is specifically tailored to meet the needs of each client.

XI. "Informed decision" means a choice made by a client or potential client or, where appropriate, his legal guardian that is reasonably certain to have been made subsequent to a rational consideration on his part of the advantages and disadvantages of each course of action open to him.

XI–a. "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period. A person with an intellectual disability may be considered mentally ill provided that no person with an intellectual disability shall be considered mentally ill solely by virtue of his or her intellectual disability.

XII. "Least restrictive environment" means the program or service which least inhibits a client's freedom of movement, informed decisions and participation in the community, while achieving the purposes of habilitation and treatment.

XIII. "Mental illness" means mental illness as defined in RSA 135–C:2, X.

XIV. [Repealed.]

XV. [Repealed.]

XV–a. [Repealed.]

XV–aa. "Receiving facility" means any facility designated by the commissioner pursuant to RSA 171–A:20.

XV–b. [Repealed.]

XVI. "Service delivery system" means a comprehensive array of services for the diagnosis, evaluation, habilitation and rehabilitation of developmentally disabled persons, including but not limited to, service coordination, community living arrangements, employment and day services and supports to families of individuals with developmental disabilities.

XVII. "Treatment" means the prevention, amelioration and improvement of a client's disabilities and illnesses.

Source. 1975, 242:1. 1979, 322:2–5, 9, IX, 19. 1981, 492:20. 1983, 291:1, I. 1987, 206:2, 3. 1988, 107:5. 1990, 140:2, XI. 1994, 248:4; 408:3. 1995, 310:128, 172. 2001, 101:1, 2, 18, I, II. 2007, 363:4, 5. 2008, 52:14, 15, 21, eff. July 11, 2008.

171–A:3 Rulemaking. The commissioner of the department of health and human services shall adopt rules pursuant to RSA 541–A to implement this chapter.

Source. 1975, 242:1. 1981, 492:21. 1995, 310:172, eff. Nov. 1, 1995.

171–A:4 State Service Delivery System. The department shall maintain a state service delivery system for the care, habilitation, rehabilitation, treatment and training of developmentally disabled persons. Such service delivery system shall be under the supervision of the commissioner.

Source. 1975, 242:1. 1979, 322:2, I. 1987, 206:2. 1988, 107:5. 1995, 310:172, 175. 2001, 101:3, eff. Aug. 20, 2001.

171–A:5 Voluntary Entry Into Service Delivery System.

I. Applications for service shall be made by the developmentally disabled person seeking such service, and all placements shall be voluntary. If the client is under the age of 18, the application for service may be initiated by a parent or legal guardian. If the client is over the age of 18 and has been found to be incapacitated by the probate court, the application for service may be initiated by the court-appointed guardian.

II. Notwithstanding paragraph I, a person may be involuntarily admitted to the service delivery system pursuant to RSA 171–B.

Source. 1975, 242:1. 1979, 322:2, I, II. 1987, 206:2. 1994, 408:4. 1995, 310:175. 2001, 101:4, eff. Aug. 20, 2001.

171–A:6 Entry Into the Service Delivery System.

I. A person seeking service shall make application in accordance with rules adopted by the commissioner to the area agency in his or her appropriate geographic region as designated by rule pursuant to RSA 171–A:2, I–b.

II. A comprehensive screening evaluation, coordinated by the staff of the area agency, shall determine the scope of the person's disability and the locus and nature of services to be provided and shall include an assistive technology evaluation both as part of the person's initial evaluation and at least on an annual basis thereafter when the person is screened for an assistive technology evaluation. The commissioner shall adopt rules pursuant to RSA 541–A relative to the evaluation. The initial evaluation shall include, but not be limited to, a physical examination and individual intellectual assessment and functional behavior scales and shall take into account the provisions of and services established under RSA 186–A.

III. A recommendation for services by the area agency shall utilize the criterion of the least restrictive environment for the client and shall be made to the service which best meets the needs of the client. Preliminary evaluations shall be completed and preliminary recommendations for services made within 21 days after application for service.

IV. In an emergency situation and in the discretion of the commissioner, temporary service arrangements may be made prior to the completion of the screening evaluation.

V. The commissioner shall adopt rules pursuant to RSA 541–A establishing hearing procedures to determine the appropriateness of a service recommendation which is challenged by the client, his or her attorney or family.

Source. 1975, 242:1. 1979, 322:2, II. 1981, 492:22, 23. 1995, 310:172. 2001, 101:5. 2007, 363:6, eff. July 1, 2007.

171–A:7 Withdrawal From Service Delivery System. Except for a person admitted involuntarily pursuant to RSA 171–B, a client at any time may seek a change in services or withdraw entirely from the service delivery system. A parent or legal guardian may seek a change of services for or withdraw entirely a minor or ward in his or her custody at any time, unless such minor has reached the age of majority. The administrator shall notify the area agency of any such withdrawal and may, if appropriate, indicate in the client's record that such withdrawal was against professional advice.

Source. 1975, 242:1. 1979, 322:2, II. 1994, 408:5. 2001, 101:6, eff. Aug. 20, 2001.

171–A:8 Termination of Service.

I. The administrator may terminate service to a client at any time that such termination is deemed in the best interest of the client or when the client can function independently without such service or when the client has received optimal benefit from such service.

II. In every instance of termination, the administrator shall refer the client to the area agency which, in turn, shall recommend an appropriate service, or be responsible for contacting the client at regular intervals after termination for as long as deemed necessary.

III. Prior to any termination of service, the administrator shall give 30 days' notice to the client, if over 18 years of age, or to the parent or guardian, if the client is a minor or has been found to be legally incapacitated. Consent of the parent or guardian is required prior to termination if the client is a minor or has been declared legally incapacitated. Service may be terminated sooner than 30 days with the consent of the client, his or her parent or guardian.

IV. The client or, where appropriate, his parent or legal guardian, may seek review of the decision to terminate from the commissioner. The decision of the commissioner shall be final.

V. Notwithstanding this section, the administrator shall not terminate service to a person involuntarily admitted pursuant to RSA 171–B without prior approval of the commissioner, except:

(a) Upon transfer of the person to another receiving facility or to the secure psychiatric unit; or

(b) Upon expiration of the order of commitment.

Source. 1975, 242:1. 1979, 322:6. 1994, 408:6. 1995, 310:172. 2001, 101:7, eff. Aug. 20, 2001.

171–A:8–a Transfer of Involuntary Admittees; Rules.

I. A receiving facility to which a person is ordered for involuntary admission or to which such person has been transferred may transfer the person to another receiving facility if the receiving facility to which the person is to be transferred can better provide the degree of security or treatment required by the person. All transfers shall require the approval of the chief administrator of the state developmental services system. The commissioner shall adopt rules pursuant to RSA 541–A, relative to transfer criteria and procedures for the challenge of transfer decisions by the persons so transferred.

II. Transfers to the secure psychiatric unit of involuntary admittees may be made pursuant to RSA 171–B:15.

Source. 1994, 408:7. 1995, 310:129, eff. Nov. 1, 1995.

Restraint and Seclusion

171–A:9 Residential Services.

I. The commissioner shall adopt rules pursuant to RSA 541–A relative to clients in residential services, including but not limited to such matters as restraint and seclusion.

II. Restraint or seclusion may be used only in cases of emergency such as the occurrence or serious threat of extreme violence, personal injury or attempted suicide.

Source. 1975, 242:1. 1981, 492:24. 1995, 310:172. 2001, 101:8, eff. Aug. 20, 2001.

171–A:10 Residential Services; Legal Counsel and Guardianship.

I. [Repealed.]

II. Whenever a client over the age of 18 years is considered incapable of managing his or her own affairs and is at risk of substantial harm to person or estate as a result, and the person does not have a legal guardian, the administrator shall take such steps as are appropriate to safeguard the person as may be consistent with RSA 464–A and 547–B, in-

cluding the nomination of a guardian when no less restrictive alternative is available.

III. [Repealed.]

Source. 1975, 242:1. 1977, 587:1. 1979, 322:2, II, 20. 1983, 409:4. 1988, 107:5. 1995, 310:27. 2001, 101:9, 10, 18, III, eff. Aug. 20, 2001.

171–A:11 Periodic Review.

I. The needs and services of every client in the service delivery system shall be subject to a periodic review under the supervision of the administrator, which shall include but not be limited to:

(a) A thorough clinical examination including an annual health assessment;

(b) An assessment of the client's capacity to make informed decisions; and

(c) Consideration of less restrictive alternatives for service, particularly for those clients in residential services.

II. Such periodic review shall take place at least once during the first 6 months of service and annually thereafter. The administrator shall give written notice to the client and his or her nearest relative or legal guardian at least 10 days prior to a periodic review. The results of each periodic review shall become part of the client's clinical record, and recommendations resulting from such review shall be shared with the client, and, where appropriate, with his or her guardian, parent or nearest relative.

III. Following any review or at any other time, the administrator may recommend termination of service or may refer the client to a more appropriate service pursuant to RSA 171–A:8.

IV. The commissioner shall adopt rules pursuant to RSA 541–A relative to the conduct of the review and the personnel who shall carry out the review.

Source. 1975, 242:1. 1981, 492:25. 1995, 310:172. 2001, 101:11, eff. Aug. 20, 2001.

171–A:12 Individual Service Agreement.

I. There shall be an individual service agreement for every client in the service delivery system who receives services. A service coordinator designated by the area agency serving the client shall develop a preliminary written individual service agreement based upon a comprehensive screening evaluation established under RSA 171–A:6 for such client within 14 days after the initial service planning meeting. The individual service agreement shall be continually reviewed by the area agency and shall be modified if necessary. The commissioner shall adopt rules pursuant to RSA 541–A relative to the development of such individual service agreements.

II. Each individual service agreement shall include but not be limited to:

(a) A statement of the nature of the specific strengths, interests, capacities, disabilities, and specific needs of the client;

(b) A description of intermediate and long-range habilitation and treatment goals chosen by the individual and his or her guardian with a projected timetable for their attainment;

(c) A statement of specific services to be provided and the amount, frequency, and duration of each service;

(d) Specification of the providers to furnish each service identified in the agreement; and

(e) Criteria for transfer to less restrictive settings for habilitation, including criteria for termination of service and a projected date for termination of service from the service.

Source. 1975, 242:1. 1981, 492:26. 1995, 310:172. 2001, 101:12, eff. Aug. 20, 2001.

171–A:13 Service Guarantees. Every developmentally disabled client has a right to adequate and humane habilitation and treatment including such psychological, medical, vocational, social, educational or rehabilitative services as his condition requires to bring about an improvement in condition within the limits of modern knowledge.

Source. 1975, 242:1. 1979, 322:2, I. 1987, 206:2, eff. July 1, 1987.

171–A:14 Rights of Developmentally Disabled Persons.

I. No person shall be deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to vote, to marry or to make a will solely by reason of his or her developmental disability or of his or her participation in the service delivery system, nor shall department rules restrict such rights. The client's right to individual dignity shall be respected at all times and upon all occasions.

II. A client in a residential service shall be provided with stationery and postage in reasonable amounts and shall have free and unrestricted mailing privileges.

III. A client shall have the right to be visited at all reasonable times unless the administrator determines that such a visit would adversely affect the client. Any denial of visiting rights and the reasons for such denial shall be entered in the client's record

and may be subject to the review of the human rights committee established under RSA 171–A:17.

IV. A client in a residential service shall have the right to wear his or her own clothes, to keep and use his or her own personal possessions including toilet articles, to keep and be allowed to spend his or her own money, to have access to individual storage space for private use, to have reasonable access to telephones to make and receive confidential calls and any other rights specified by rules of the department; provided, however, that any of these rights may be denied for good cause by the administrator or designee. Any denial of these rights and the reasons for such denial shall be entered in the client's record and may be subject to the review of the human rights committee established under RSA 171–A:17.

V. The commissioner may adopt rules pursuant to RSA 541–A relative to the protection of the rights, dignity, autonomy and integrity of clients, including specific procedures to protect the rights established in this chapter.

Source. 1975, 242:1. 1979, 322:2, I. 1981, 492:27. 1987, 206:2. 1995, 310:172, 175. 2001, 101:13, eff. Aug. 20, 2001.

171–A:15 Rights of Clients to be Provided. Written materials describing the rights of clients as set forth in this chapter and in the rules of the department shall be provided to each client and his or her guardian, if any. Such materials shall be presented in clearly understandable language and form.

Source. 1975, 242:1. 1995, 310:175. 2001, 101:14, eff. Aug. 20, 2001.

171–A:16. Client Employment.

[Repealed 2001, 101:18, IV, eff. Aug. 20, 2001.]

History

Former RSA 171–A:16, which was derived from 1975, 242:1 and 1988, 107:5, related to client employment.

171–A:17 Human Rights Committee.

I. The commissioner shall establish, in each area agency, a human rights committee of 5 or more persons. The majority of the members of each human rights committee shall be persons who represent the interests of developmentally disabled clients and who are not employees of the department.

II. The duties of the human rights committee shall include, but not be limited to, the following for each program or service with which the committee is concerned:

(a) Evaluating the treatment and habilitation provided;

(b) Regularly monitoring the implementation of individual service agreements;

(c) Monitoring the use of restrictive or intrusive interventions designed to address challenging behavior;

(d) Fostering the capacity of individuals served by the area agency to exercise more choice and control in their lives; and

(e) Promoting advocacy programs on behalf of the clients.

Source. 1975, 242:1. 1979, 322:8. 1981, 492:28. 1987, 206:2. 1995, 310:172. 2001, 101:15, eff. Aug. 20, 2001.

Miscellaneous

171–A:18 Area Agency Responsibilities and Operations.

I. The commissioner may designate by rules adopted pursuant to RSA 541–A for each area one area agency which shall be responsible for administering area-wide programs and services for developmentally disabled persons. Each area agency so designated shall be the primary recipient of funds that may be dispensed by the commissioner for use in establishing, operating or administering such programs and services. The programs and services for which an area agency is responsible include, but are not limited to, diagnosis and evaluation, service coordination, community living arrangements, employment and day services, and programs designed to enhance personal and social competence.

II. The commissioner may enter into contracts with, make grants to, or otherwise make funds available to each area agency for the provision of programs and services to developmentally disabled persons. Subject to the written approval of the commissioner, an area agency may enter into contracts with individuals or organizations for the expenditure of portions of such funds on programs or services for developmentally disabled persons.

III. Each area board shall appoint an executive director who shall be accountable to the board for administering the area-wide programs and services for developmentally disabled persons. The executive director shall serve at the pleasure of the area board and shall serve as a full-time employee of the area board.

IV. The commissioner shall, in accordance with RSA 541–A, adopt rules establishing standards for the provision of services by area agencies to developmentally disabled persons. The commissioner shall further adopt rules establishing standards relating to the professional qualifications of the executive di-

rector of the area board and to the size and composition of area boards in order to assure that membership is representative of the area as a whole and reflects the concerns and interests of developmentally disabled persons and their families. The commissioner shall also adopt rules establishing a reapproval process and shall require area agencies to be subject to reapproval every 5 years.

V. With such frequency as may be determined by the commissioner, each area agency shall prepare and submit to the department for approval a plan for provision of programs and services to developmentally disabled persons who live in the area.

VI. A community mental health program established pursuant to RSA 135–C may also be designated an area agency by the commissioner, providing that the area agency is in full compliance with the requirements of this chapter and with all standards and rules adopted pursuant thereto.

VII. The department of health and human services shall assume all or any part of the responsibilities provided for in paragraphs I and II at any time during which an area agency is not designated.

Source. 1979, 322:7. 1981, 492:29. 1987, 206:2. 1988, 107:5. 1995, 310:130, 172, 175, 181. 1998, 168:2. 2001, 101:16, eff. Aug. 20, 2001.

171–A:19 Client and Legal Services Section. A client and legal services section shall be established in the department. Its functions and responsibilities shall include but not be limited to:

I. Assisting the commissioner in responding to inquiries and complaints by or on behalf of mentally ill or developmentally disabled persons.

II. Assisting the commissioner in securing needed services and information for mentally ill persons, developmentally disabled persons, or their respective families.

III. Assisting the commissioner in assuring that the human rights of mentally ill persons and of developmentally disabled clients in the service delivery system are protected.

Source. 1979, 322:7. 1987, 206:2. 1995, 310:172, 181. 2001, 101:17, eff. Aug. 20, 2001.

171–A:19–a Committee for the Protection of Human Subjects.

I. There is hereby established within the department an institutional review board which shall be known as the committee for the protection of human subjects. The committee shall oversee research conducted in department-funded programs that serve people with mental illness, developmental disabilities, and substance abuse or dependence disorders. No research shall be conducted in these programs until it has been reviewed and approved by the committee.

II. The committee shall have, at a minimum, 7 members with varying backgrounds to promote complete and adequate review of research activities. The commissioner shall appoint the members. The committee shall be sufficiently qualified through the experience, expertise, and diversity of its members to promote respect for its advice and counsel in protecting human subjects in research and safeguarding the privacy and confidentiality of medical records information that is used for the purposes of research. In addition to possessing the professional competence necessary to review specific research activities, the committee shall be able to ascertain the acceptability of proposed research in terms of applicable laws and regulations and standards of professional conduct and practice. The committee shall therefore include persons knowledgeable in these areas. Members of the committee shall be appointed to 3-year terms.

III. The committee shall include at least one member whose primary area of expertise is scientific and one member whose primary area of expertise is non-scientific.

IV. The committee shall include at least 2 members who are not otherwise affiliated with the department and who are not part of the immediate family of a person who is affiliated with the department.

V. The committee shall include at least 2 members who are consumers or family members of consumers.

VI. No member of the committee shall participate in initial or continuing review of any research project in which the member has a conflicting interest, except to provide information requested by the committee.

VII. The committee may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond or in addition to that possessed by the members of the committee. These individuals may only offer advice and guidance and shall not participate in the decision as to whether or not to approve the research.

VIII. The committee shall choose a chairperson and vice-chairperson from its membership. The commissioner may assign department staff to assist the committee as needed.

IX. The commissioner may establish fees, through rules adopted under RSA 541–A, as deemed necessary, after consultation with the committee, to offset departmental costs of providing assistance to

the committee pursuant to paragraph VIII. Fee revenue shall not be deposited into the general fund, but may be used by the department to offset such costs.

Source. 2005, 183:1. 2007, 263:94, eff. July 1, 2007.

171–A:19–b Rulemaking. The commissioner may adopt rules, pursuant to RSA 541–A, relative to the operation of the committee for the protection of human subjects, established in RSA 171–A:19–a, the procedures, conditions, and criteria for the conduct and approval of research, and fees charged by the committee.

Source. 2005, 183:1. 2007, 263:95, eff. July 1, 2007.

Involuntary Admission

171–A:20 Receiving Facility; Rules. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to the criteria and procedures for designation of receiving facilities which receive persons for involuntary admissions under RSA 171–B. A receiving facility may be designated by the commissioner for one or more purposes, including, but not limited to:

I. Receiving persons for involuntary admission directly pursuant to a court order; and

II. Receiving involuntarily admitted persons by transfer with the approval of the commissioner or designee.

Source. 1994, 408:8. 1995, 310:172, eff. Nov. 1, 1995.

171–A:21 Discharge by Administrator.

I. When any person has been involuntarily admitted to a receiving facility pursuant to RSA 171–B or conditionally discharged pursuant to paragraph II of this section, the administrator of the receiving facility most recently providing services to the person may grant an absolute discharge to the person with the consent of the chief administrator of the state developmental services system or designee who has reviewed the person's situation, provided that the chief administrator or designee determines that an absolute discharge shall not create a potentially serious likelihood of danger to others or a potentially serious likelihood of substantial damage to real property. The administrator shall, in writing, immediately notify the court entering the original order of commitment and the attorney general that the person has been given an absolute discharge from the receiving facility. Upon receipt of the notice, the court shall make the notice part of the person's file and shall enter the discharge and date of discharge upon the docket.

II. The administrator of the facility may, with prior approval of the chief administrator of the state developmental services system or designee, grant a person, whose condition is not considered appropriate for absolute discharge, a conditional discharge.

Source. 1994, 408:8. 1995, 310:131, eff. Nov. 1, 1995.

171–A:22 Conditions of Conditional Discharge.

I. The administrator of a receiving facility may, with prior approval of the chief administrator of the state developmental services system or designee, grant a conditional discharge to any person who consents, by an informed decision, to participate in continuing services from an area agency, who agrees to be subject to any rules adopted by the chief administrator relative to conditional discharge, and who agrees to comply with the conditions of the discharge. The administrator of the facility or designee shall prepare, deliver a copy of, and read and explain to the person being conditionally discharged a written statement in clear and understandable language of the conditions of conditional discharge and a warning that violation of those conditions may result in revocation of the conditional discharge pursuant to RSA 171–A:23.

II. A conditional discharge shall not exceed the period of time remaining on the order of involuntary admission and shall become absolute at the end of its term, unless extended by the court.

Source. 1994, 408:8. 1995, 310:132, eff. Nov. 1, 1995.

171–A:23 Revocation of Conditional Discharge.

I. If an administrator at an area agency providing continuing services to a person conditionally discharged pursuant to RSA 171–A:22 or the administrator's designee reasonably believes that:

(a) The person has violated a condition of the discharge; or

(b) A condition or behavior exists as a result of which the person may pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, the administrator or designee may conduct a review of the acts, behavior or condition of the person to determine if the conditional discharge shall be revoked. The review may be conducted only after the person has been given written and verbal notice of the belief, and the reasons for such belief, that a violation of the conditional discharge has occurred or other circumstance or condition exists which may result in a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, and the

person has been given an opportunity to provide information to the administrator or designee as to why the revocation should not occur.

II. If the person refuses or is otherwise unavailable for the review under paragraph I, the administrator or other representative of the area agency may sign a complaint for delivery of the person for the review. The complaint and the written notice required by paragraph I shall be provided to a law enforcement officer who shall take custody of the person and immediately deliver such person to the place specified in the complaint.

III. If the administrator or designee, following the review, finds that either the person has violated a condition of the discharge or a condition or behavior exists as a result of which the person may pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, he or she may temporarily revoke the conditional discharge. If the conditional discharge is temporarily revoked, the administrator or designee shall inform the person affected verbally and in writing, giving the reasons for the revocation and shall identify the receiving facility to which the person is to be delivered.

IV. A law enforcement officer shall take custody of the person whose conditional discharge was temporarily revoked under paragraph II and deliver the person, together with a copy of the notice and the reasons for the temporary revocation, to the receiving facility identified by the administrator or designee where the reasons for temporary revocation of the discharge shall be reviewed. Following such review, if the administrator of the receiving facility or designee finds that either the person conditionally discharged has violated a condition of the discharge or a condition or behavior exists as a result of which the person may pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, the administrator or designee may revoke absolutely the conditional discharge and shall provide to the person written and verbal notice of the reasons for the absolute revocation. Following such revocation the person shall be subject to the terms and conditions of the order of involuntary admission from which conditional discharge was granted as if the conditional discharge had not been granted.

V. If the administrator or designee performing a review under paragraph III or paragraph IV finds no basis for temporary or absolute revocation of the discharge, the person shall be returned by the program or facility which has custody of the person to the location where the person was initially taken into custody or to another location agreed to by the person.

Source. 1994, 408:8, eff. Jan. 1, 1995.

171–A:24 Review by Chief Administrator; Appeal; Rules. A person whose conditional discharge is revoked pursuant to RSA 171–A:23 may appeal the decision to the chief administrator of the state developmental services system. The person shall be entitled to a hearing on the appeal, before the chief administrator of the state developmental services system or designee, within 5 days, excluding weekends and holidays, of the receipt of request for the hearing in accordance with rules adopted by the chief administrator pursuant to RSA 541–A. Such rules shall include provision for legal counsel and for waiver of the hearing.

Source. 1994, 408:8. 1995, 310:133, eff. Nov. 1, 1995.

171–A:25 Action for Discharge. Any person subject to an order for involuntary admission pursuant to RSA 171–B:12 may file in probate court a petition setting forth such person's name, the underlying circumstances and date of the prior order of the court ordering such person's involuntary admission, a request for discharge from involuntary admission, and the reasons for such request. The petition shall be accompanied by the certificate of a physician, psychiatrist, or psychologist with experience and training in developmental and intellectual disabilities stating that the person is no longer in need of involuntary admission and setting forth the facts upon which such opinion is based. Upon receipt of the petition and the certificate, the court shall conduct a hearing pursuant to RSA 171–B.

Source. 1994, 408:8. 2008, 52:16, eff. July 11, 2008.

171–A:26 Habeas Corpus. RSA 171–A:25 shall not be construed to deprive any person of the benefits of the writ of habeas corpus. If the court issuing the writ of habeas corpus grants relief, the court shall enter an order discharging the person and shall transmit a certified copy of it to the probate court entering the original order of involuntary admission. Upon receipt of the certified copy, the probate court shall enter an order finding that such person has been discharged by order of the court.

Source. 1994, 408:8, eff. Jan. 1, 1995.

171–A:27 Custody and Transportation.

I. Any law enforcement officer shall take custody of persons who are subject to proceedings for involuntary admission under the following circumstances:

(a) Upon issuance by an administrator or designee of a complaint for delivery for review pursuant to RSA 171–A:23, II;

(b) Upon a determination to revoke a conditional discharge temporarily pursuant to RSA 171–A:23, III; or

(c) As necessary to ensure the presence of the person at hearings or examinations conducted under RSA 171–A or 171–B, to effect a transfer between receiving facilities, or to carry out any other lawful order of a court.

II. A law enforcement officer shall also transport any person taken into custody to the appropriate receiving facility, court, place of examination, or other location.

Source. 1994, 408:8, eff. Jan. 1, 1995.

171–A:28 Duty to Transport. Upon request, the office of the sheriff of the county in which any person is located who is to be taken into custody in accordance with RSA 171–A:27 shall take such person into custody and transport that person to the appropriate destination.

Source. 1994, 408:8, eff. Jan. 1, 1995.

171–A:29 Rights Guaranteed. All rights guaranteed by RSA 171–A to persons with developmental disabilities shall be retained by persons involuntarily admitted under RSA 171–B except where safety or security mandates restriction of such rights. Any restriction of rights under this section may be appealed to the commissioner pursuant to rules adopted by the commissioner under RSA 171–A:3.

Source. 1994, 408:8. 1995, 310:172, eff. Nov. 1, 1995.

Autism Registry

171–A:30 Autism Registry.

I. There shall be established a state registry in the department which shall include a record of all reported cases of autism spectrum disorder (ASD) that occur in New Hampshire and other information relevant and appropriate to conduct thorough and complete epidemiologic surveys of ASD, to enable analysis of this problem, and to facilitate planning for services to children with ASD and their families. The department may enter into an agreement with an appropriate entity for the management of the registry; provided, that any records and data submitted to the department pursuant to this subdivision shall be the property of the department.

II. Physicians, psychologists, and any other licensed or certified health care provider who is qualified by training to make the diagnosis and who then makes the diagnosis that a child is affected with ASD shall report all new cases of this diagnosis to the department in a form and manner prescribed by the commissioner. The report shall be in writing and shall include the name and address of the person submitting the report and the child's date of birth, gender, and zip code at birth residence, and the specific diagnosis of the child diagnosed as having ASD. The department shall assign a unique identification code to identify the child diagnosed as having ASD. The code shall not include the name or address of the child.

III. All information required to be reported under this subdivision shall be confidential. A physician, psychologist, or health care provider providing information to the department in accordance with this section shall not be deemed to be, or held liable for, divulging confidential information.

IV. Nothing in this section shall be construed to compel a child who has been reported as affected with ASD to submit to medical or health examination or supervision by the department.

Source. 2006, 106:2, eff. Aug. 7, 2006.

171–A:31 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541–A, relative to:

I. Procedures for reporting cases of ASD under RSA 171–A:30.

II. Content of all forms required under this subdivision.

III. Confidentiality of records and information reported pursuant to this subdivision.

Source. 2006, 106:2, eff. Aug. 7, 2006.

New Hampshire Council on Autism Spectrum Disorders

171–A:32 New Hampshire Council on Autism Spectrum Disorders Established; Duties.

I. There is established a council on autism spectrum disorders to provide leadership in promoting comprehensive and quality education, health care, and services for individuals with autism spectrum disorders and their families. The members of the council shall be as follows:

(a) The governor, or designee.

(b) The commissioner of the department of education, or designee.

(c) The commissioner of the department of health and human services, or designee.

(d) The director of the division of public health services, department of health and human services, or designee.

(e) The bureau chief of the bureau of developmental services, department of health and human services, or designee.

(f) The bureau chief of the bureau of behavioral health, department of health and human services, or designee.

(g) The director of the division of instruction, department of education, or designee.

(h) The director of the division of career technology and adult learning, department of education, or designee.

(i) The director of the Institute on Disability, University of New Hampshire, or designee.

(j) A special education director, appointed by the New Hampshire Association of Special Education Administrators, Inc.

(k) The president of the New Hampshire Medical Society, or designee.

(*l*) A representative of the New Hampshire Developmental Disabilities Council, appointed by the council.

(m) A representative of the New Hampshire chapter of the national Autism Society, appointed by the chapter.

(n) An individual who has an autism spectrum disorder, appointed by the governor.

(*o*) A family member of a person who has an autism spectrum disorder, appointed by the governor.

(p) A representative of the Community Support Network, Inc., appointed by such organization.

(q) A representative of the New Hampshire Psychological Association, appointed by the association.

(r) The director of the office of Medicaid business and policy, department of health and human services, or designee.

(s) A representative of the Autistic Self Advocacy Network who is a New Hampshire stakeholder, appointed by the network.

(t) One additional member, appointed by the council.

(u) A person who has an autism spectrum disorder, appointed by the council.

(v) A representative of the New Hampshire Nurses' Association, appointed by the association.

(w) A licensed speech-language pathologist, appointed by the New Hampshire Speech-Language-Hearing Association, Inc.

II. The council shall:

(a) Provide leadership on training, policy, research, and coordination of supports and services for individuals and their families.

(b) Provide information to families and individuals with autism spectrum disorder about evidenced-based and promising practices for community-based education, support, and treatment.

(c) Collaborate with schools and other service systems to identify exemplary supports and services and promote successful practices throughout New Hampshire.

(d) Increase resources for individuals with autism spectrum disorders and their families by accessing federal and state grants and pursuing development opportunities through foundations, corporations, and planned giving.

(e) Serve as an information clearinghouse for individuals, families, and providers seeking diagnosticians, behavioral specialists, speech pathologists, occupational therapists, psychologists, and others who have expertise in working with individuals with autism spectrum disorders.

(f) Encourage the establishment of regional collaboratives with representation from educational, health care, and community service providers to ensure that individuals with autism spectrum disorders and their families receive necessary services.

(g) Make an annual report beginning on April 1, 2009 to the governor, the speaker of the house of representatives, the president of the senate, the commissioners of the department of health and human services and department of education, the members of the house committees on education, health, human services and elderly affairs, and finance, and the members of the senate committees on education, health and human services, and finance.

III. The department of health and human services shall provide administrative support to the council.

Source. 2008, 190:1. 2013, 11:1–3, eff. July 6, 2013.

Developmental Services Quality Council

171–A:33 Developmental Services Quality Council Established; Membership; Duties.

I. There is established the developmental services quality council to provide leadership for consistent,

systemic review and improvement of the quality of the developmental disability and acquired brain disorder services provided within New Hampshire's developmental services system. At least 51 percent of the members of the council shall be individuals with disabilities served by the system or parents of individuals served by the system. The members of the council shall be as follows:

(a) The commissioner of the department of health and human services, or designee.

(b) A representative of People First of New Hampshire, appointed by such organization.

(c) A representative of Advocates Building Lasting Equality in New Hampshire (ABLE NH), appointed by such organization.

(d) A representative of the New Hampshire council on autism spectrum disorders who shall be either the individual who has an autism spectrum disorder or the family member of a person who has an autism spectrum disorder, appointed by the council.

(e) A representative of the Brain Injury Association of New Hampshire, appointed by the association.

(f) Two representatives of the New Hampshire Developmental Disabilities Council, at least one of whom shall be a person with a developmental disability, appointed by the council.

(g) Three representatives of local Family Support Councils, appointed by the state Family Support Council.

(h) One direct support professional and one enhanced family care provider, appointed by the New Hampshire Developmental Disabilities Council.

(i) Three representatives of area agency boards of directors including at least 2 persons with a developmental disability or family members of such persons, appointed by the Community Support Network Incorporated.

(j) A representative of the Community Support Network Incorporated, appointed by such organization.

(k) A representative of the Private Provider Network, appointed by such organization.

(*l*) The director of the Institute on Disability, University of New Hampshire, or designee.

(m) A representative of the Disabilities Rights Center, appointed by the center.

II. The groups represented under paragraph I are encouraged to provide, according to their ability, the in-kind and other resources necessary for the council to succeed. The council may request information and analysis on quality from the department of health and human services, area agencies, and providers. The council shall have access to all non-confidential information on quality for services funded all or in part by public funds.

III. The council shall regularly review information on the quality of developmental services in New Hampshire and make recommendations for improving service quality and the quality assurance and continuous improvement systems, including but not limited to:

(a) Standards of quality and performance expected of area agencies and provider agencies.

(b) Types of data to be collected, analyzed, and disseminated to determine whether standards are being met.

(c) Quality assurance and oversight mechanisms to be used to gather data and information.

(d) Content, frequency, and recipients of quality evaluation and improvement reports.

(e) Expectations and procedures for following up on identified areas where improvements are needed.

(f) Structures, policies, rules, and practices, including staffing or organizational changes, to ensure that the developmental services system works as intended in RSA 171–A:1, including:

(1) Ways of supporting values-based and person-centered service planning and provision, as well as problem solving, innovation, and learning;

(2) Recognizing and disseminating what is working well (best/model practices); and

(3) Reviewing, interpreting, and disseminating data and information on a regular basis to bring about transparency for all stakeholders and the public.

IV. The council shall make an annual report beginning on November 1, 2010 that includes its recommendations and an assessment of the actions taken in response to previous recommendations to the governor, the speaker of the house of representatives, the president of the senate, the members of the house committee on health, human services and elderly affairs and the members of the senate committee on health and human services.

V. The meetings shall be convened by the commissioner of the department of health and human services, or designee, and shall meet regularly as determined by the council. The meetings shall be

open to the public and subject to the provisions of RSA 91–A, the right-to-know law. The council may establish bylaws for governing its meetings, decisions, and other operations.

Source. 2009, 104:1, eff. Aug. 14, 2009. 2014, 102:1, eff. Aug. 10, 2014.

TITLE XIII

ALCOHOLIC BEVERAGES

CHAPTER 179

ENFORCEMENT, REQUIREMENTS AND PENALTIES

179:23 Employment; Employment of Minors; Felon Exception.

I. No licensee shall employ any minor, with or without compensation, to serve or otherwise handle liquor or beverages, except that off-premises licensees may employ minors of not less than 15 years of age when beverages or wine is sold in the original container and delivered in the place of business of the seller, or at the vehicle of the buyer parked on or adjacent to the premises of the seller. To act as a cashier in a selling capacity a minor shall be at least 16 years of age, providing a person at least 18 years of age is in attendance and is designated in charge of the employees and business.

II. An on-premises licensee may employ any person not less than 18 years of age to serve or otherwise handle liquor and beverages while employed as a waiter, waitress, bartender, or hostess in a licensed premises. Minors not less than 15 years of age may be employed in dining areas and minors not less than 16 years of age may be employed in lounge areas to clean tables, remove empty containers and glasses, and assist in stocking. A person at least 18 years of age shall be in attendance and be designated in charge of the employees and business.

III. The provisions of this section shall in no way prohibit an on-premises or off-premises licensee from employing persons 18 years of age or older to sell, serve, or otherwise handle or be left in charge of the employees and the business.

IV. Each licensee shall designate one or more persons to be in charge of the premises. Each designated person in charge shall file an affidavit with the commission attesting to the fact such person is 18 years of age or older and has not been convicted of a felony. For the purposes of this section, any corporate officer or member of a limited liability company shall be deemed to be a person in charge of the licensed premises. For the purposes of this section, any person designated as a person in charge by a licensee shall be considered so designated for all licenses held by the licensee. The commission shall maintain records of all affidavits filed by licensees.

V. [Repealed.]

VI. [Repealed.]

Source. 1990, 255:1. 1992, 227:3. 1993, 88:1. 1998, 167:9. 2000, 253:1. 2003, 231:23, eff. July 1, 2003. 2017, 118:2, II, eff. Jan. 1, 2018.

TITLE XV

EDUCATION

CHAPTER 186

THE STATE SCHOOL ORGANIZATION

State Board of Education

State Board of Education

186:1 Organization.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:1, which was derived from 1919, 106:1; 1921, 85, I:1, 10; PL 116:1, 13; 1929, 178:1; RL 134:1, 13; 1943, 32:1; and 1950, 5, part 23:1, related to establishment of a department of education, and composition and compensation of the state board of education. See now RSA 21–N:2, I, 10.

186:2 Appointment; Chairman.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:2, which was derived from 1919, 106:2; 1921, 85, I:2; PL 116:2; 1929, 178:2; 1931, 168:1; and RL 134:2, related to appointment and terms of board members and chairman of the board. See now RSA 21–N:10, III.

186:3 Removal; Vacancies.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:3, which was derived from 1919, 106:3; 1921, 85, I:3; PL 116:4; and RL 134:4, related to removal of board members and filling of vacancies. See now RSA 21–N:10, IV.

186:4 Office; Meetings.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:4, which was derived from 1919, 106:4; 1921, 85, I:4; PL 116:4; and RL 134:4, related to office and meetings of board. See now RSA 21–N:10, V.

186:5 Powers. The state board shall have the same powers of management, supervision, and direction over all public schools in this state as the directors of a business corporation have over its business, except as otherwise limited by law. It may make all rules and regulations necessary for the management of its own business and for the conduct of its officers, employees, and agents, and to secure the efficient administration of the public schools and the administration of the work of Americanization, in teaching English to non-English-speaking adults and in furnishing instruction in the privileges, duties, and responsibilities of citizenship, which is hereby de-

clared to be an essential part of public school education. It shall be the duty of school boards and employees of school districts to comply with the rules and regulations of the state board.

Source. 1919, 106:5. 1921, 85, I:5. PL 116:5. RL 134:5.

186:6 Compliance With Federal Provisions. The state board may also make the regulations necessary to enable the state to comply with the provisions of any law of the United States intended to promote vocational or other education, to abolish illiteracy and Americanize immigrants, to equalize educational opportunities, to promote physical health and recreation, and to provide an adequate supply of trained teachers.

Source. 1919, 106:5. 1921, 85, I:5. PL 116:6. RL 134:6.

186:6–a Limitation of Education. Notwithstanding any other provision of law, the authority of the state department of education shall be limited to the problems associated with kindergarten and grades one through 12, provided, however, that the state board of education shall be authorized to accept, distribute and supervise funds for pre-kindergarten programs.

Source. 1963, 303:12. 1971, 371:3. 1989, 303:1. 1995, 182:22. 1998, 272:32, eff. Jan. 1, 1999.

186:7 Federal Funds; Cooperation. The state treasurer shall be custodian of any money that may be allotted to the state by the federal government for general educational purposes. He shall also be the custodian of all moneys received by the state from appropriations made by congress for vocational rehabilitation of persons disabled in industry or otherwise, together with moneys received for this purpose from other sources, and is authorized to make disbursements therefrom upon the order of the state board. The state board is authorized and directed to cooperate with the proper authorities of the United States in educational work and in carrying out the provisions of the federal civilian vocational rehabilitation act.

Source. 1917, 226:2. 1921, 85, I:5. 1925, 18:1. PL 116:7. 1931, 48:1. RL 134:7.

186:7–a Special Teacher Competence Fund. The state treasurer shall invest as a permanent fund the proceeds of the sale of the state lands affected under the authority of a joint resolution approved June 28, 1867 and the annual income thereof may be used by the state board of education for any activity calculated to increase the professional competence of the teachers of New Hampshire.

Source. 1969, 69:6, eff. June 3, 1969.

186:8 Rulemaking Authority; Standards; Employee Qualifications. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

I. Academic standards for all grades of the public schools.

II. Minimum standards for public school approval for all grades of the public schools.

III. Qualifications and duties for school superintendents, principals, school administrative unit professionals and other public school employees.

IV. Certification standards for educational personnel, including those listed in RSA 21–N:9, II(s), provided that the commissioner of the department of education may, through an agreement with another state when such state and New Hampshire are parties to an interstate agreement, provide for recertification based on another state's procedures if the other state's professional development plan is approved by the New Hampshire department of education.

V. Establishing requirements for teachers and teacher preparation programs to ensure that all teachers are prepared to teach to a broad range of students' needs, including, but not limited to, the needs of exceptional learners.

VI. Certification standards for advanced teaching credentials, including administering the master teacher credential as provided in RSA 189:14–f.

VII. Appeals from a school board on the matter of nonrenewal of teacher contracts, providing that the appeal to the state board of education shall be limited to the record developed at the school board hearing, except where the state board of education determines that new evidence is available which could not have been reasonably discovered at the time of the school board hearing and that such evidence may have materially affected the outcome of the school board hearing. In such cases, the state board of education shall render a final decision in the matter or remand it to the school board for a new hearing.

VIII. Requiring a high school pupil to attain competency in mathematics for each year in which he or she is in high school through graduation to ensure career and college readiness. A pupil may meet this requirement either by satisfactorily completing a minimum of 4 courses in mathematics or by satisfactorily completing a minimum of 3 mathematics courses and one non-mathematics content area course in which mathematics knowledge and skills are embedded and applied, as may be approved by the

school board. The rules shall be implemented in the 2015–16 school year.

Source. 1919, 106:5. 1921, 35, 1:5. PL 116:8. RL 134:8. 1951, 255:2. RSA 186:8. 1986, 41:7. 1998, 174:3; 314:2. 1999, 224:1. 2003, 204:1, eff. Aug. 29, 2003. 2014, 119:1, eff. June 16, 2014. 2016, 84:1, eff. July 18, 2016.

186:9 Commissioner of Education.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:9, which was derived from 1919, 106:6; 1921, 85, I:6; PL 116:9; and RL 134:9, related to appointment, term, removal and duties of commissioner of education.

186:9–a Deputy Commissioner of Education.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:9–a, which was derived from 1957, 90:1, related to appointment, duties and removal of deputy commissioner of education.

186:9–b Salary.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:9–b, which was derived from 1957, 90:1, related to salary of deputy commissioner of education. See now RSA 21–N:3, IV.

186:10 Officers and Employees.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:10, which was derived from 1919, 106:7; 1921, 85, I:7; PL 116:10; RL 134:10; and 1951, 255:2, related to appointment of officers and employees of state board of education.

186:10–a Hearing Officer. The state board of education upon nomination of the commissioner shall appoint a qualified hearing officer to preside over such preliminary hearings as may be held prior to formal hearings held by the state board, and to render decisions which shall be binding until the state board's formal hearings are held.

Source. 1977, 57:1. 1986, 41:30, eff. April 3, 1988.

186:11 Duties of State Board of Education. The state board of education shall, in addition to the duties assigned by RSA 21–N:11:

I. [Repealed.]

II. SUPERVISION. Supervise the expenditure of all moneys appropriated for public schools, and inspect all institutions in which or by which such moneys are used.

III. BUDGET: INFORMATION. Prepare a budget for such expenditures, give to the public information as to the educational conditions in different parts of the state and the opportunities open to pupils in the public schools, and all such further information in respect to educational matters as will promote the cause of education. For this purpose it may employ lecturers and publish and distribute books and pamphlets on education and educational subjects.

IV, V. [Repealed.]

VI. SCHOOL REGISTERS. Prescribe the form of the register to be kept concerning the schools, the form of blanks and inquiries for the returns to be made by the school boards, and seasonably send the same to the clerks of the several cities and towns for the use of the school boards therein.

VII. PUBLIC DOCUMENTS. Keep on file in its office and distribute all state documents in relation to public schools and education.

VIII. DISTRICT RETURNS. Preserve in accessible form the returns of school boards and of all other officers required to make returns to the board.

IX. INSTRUCTION AS TO CHILD ABUSE PREVENTION, YOUTH SUICIDE PREVENTION, INTOXICANTS, DRUGS, HIV/AIDS, AND SEXUALLY TRANSMITTED DISEASES.

(a) Direct the department to develop academic standards to serve as a guide and reference in health, physiology, and hygiene as they relate to the effects of alcohol and other drugs, child abuse, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system, and which are designed to help students lead longer, healthier lives.

(b) Provide information about HIV/AIDS to all public and private schools to facilitate the delivery of appropriate courses and programs.

(c) Review HIV/AIDS curriculum materials to assure relevancy in assisting students to become health-literate citizens and lead longer, healthier lives.

(d) Provide information about youth suicide prevention to all public and private schools to facilitate the delivery of appropriate courses and programs.

(e) Submit a report no later than December 1, 2010, and biennially thereafter, prepared in conjunction with the commissioner of the department of education, to the chairpersons of the house and senate education committees, the house health, human services and elderly affairs committee, and the senate health and human services committee, detailing the state's efforts in fulfilling the policies relating to health education in kindergarten through grade 12 as set forth in subparagraphs (a)–(d).

IX–a. [Repealed.]

IX–b. HEALTH AND SEX EDUCATION. Require school districts to adopt a policy allowing an exception to a particular unit of health or sex education instruction based on religious objections. Such policy shall include a provision for alternative learning sufficient to enable the child to meet state requirements for health education.

IX–c. REQUIRE SCHOOL DISTRICTS TO ADOPT A POLICY ALLOWING AN EXCEPTION TO SPECIFIC COURSE MATERIAL BASED ON A PARENT'S OR LEGAL GUARDIAN'S DETERMINATION THAT THE MATERIAL IS OBJECTIONABLE. Such policy shall include a provision requiring the parent or legal guardian to notify the school principal or designee in writing of the specific material to which they object and a provision requiring an alternative agreed upon by the school district and the parent, at the parent's expense, sufficient to enable the child to meet state requirements for education in the particular subject area. The policy shall also require the school district or classroom teacher to provide parents and legal guardians not less than 2 weeks advance notice of curriculum course material used for instruction of human sexuality or human sexual education. The policy shall address the method of delivering notification to a parent or legal guardian. To the extent practicable, a school district shall make curriculum course materials available to parents or legal guardians for review upon request. The name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the material shall not be public information and shall be excluded from access under RSA 91–A.

IX–d. REQUIRE SCHOOL DISTRICTS TO ADOPT A POLICY GOVERNING THE ADMINISTRATION OF NON-ACADEMIC SURVEYS OR QUESTIONNAIRES TO STUDENTS. The policy shall require school districts to notify a parent or legal guardian of a non-academic survey or questionnaire and its purpose. The policy shall provide that no student shall be required to volunteer for or submit to a non-academic survey or questionnaire, as defined in this paragraph, without written consent of a parent or legal guardian unless the student is an adult or an emancipated minor. The policy shall include an exception from the consent requirement for the youth risk behavior survey developed by the Centers for Disease Control and Prevention. The policy shall also allow a parent or legal guardian to opt-out of the youth risk behavior survey developed by the Centers for Disease Control and Prevention. The school district shall make such surveys or questionnaires available, at the school and on the school or school district's website, for review by a student's parent or legal guardian at least 10 days prior to distribution to students. In this paragraph, "non-academic survey or questionnaire" means surveys, questionnaires, or other documents designed to elicit information about a student's social behavior, family life, religion, politics, sexual orientation, sexual activity, drug use, or any other information not related to a student's academics.

X. Adopt rules, pursuant to RSA 541–A, relative to:

(a) Certification of teachers, supervisors, and administrators in the public schools. The state board shall also examine the qualifications of candidates for those positions and issue certificates to those who meet the requirements of said rules.

(b) Fees to be paid to the commissioner of education for the administration of proficiency exams and other competence evaluations and other related fees including, but not limited to, fees for late filing and duplicate credentials, and for the issuance of educational credentials. These fees must bear a reasonable relationship to the actual costs related to such activities. Funds collected from these fees shall be expended only for purposes of fulfilling the requirements of this paragraph. No portion of the funds collected from these fees shall lapse, nor be used for any other purpose than fulfilling the requirements of this paragraph, nor be transferred to any other appropriation.

(c) Approval of professional preparation programs.

(d) Procedures for the electronic certification of educational credentials.

(e) Establishment and enforcement of a code of ethics for certified educational personnel as provided in RSA 21–N:9, II(cc).

XI. [Repealed.]

XII. VOCATIONAL EDUCATION. Cooperate with the U.S. Department of Education for the purpose of carrying the Carl D. Perkins Vocational Education Act of 1984 and its successor acts into effect insofar as that act relates to this state.

XIII. EDUCATION FOR PERSONS WITH DISABILITIES. Prepare, develop and administer plans to provide educational facilities for persons with disabilities.

XIV. LECTURES. Lecture on educational subjects in as many cities and towns in this state as the time occupied by the commissioner's other duties will permit.

XV. TRUANT OFFICERS. Report frequently to the chairman of the several school boards the relative efficiency of the several truant officers in the state.

XVI. [Repealed.]

XVII. DISTRICT CONTRACTS. Examine contracts made by districts with academies, high schools and other literary institutions, for the purpose of deciding whether they are calculated to promote the cause of education.

XVIII. SCHOOL ATTENDANCE. Enforce the laws relative to school attendance and the employment of minors; and for this purpose the board and its deputies are vested with the power given by law to truant officers.

XIX. SCHOOL LAWS. Compile and issue, at the close of each session of the legislature, an edition of the school laws.

XX–XXIV. [Repealed.]

XXV. ASSISTANTS. Employ as many supervisors, inspectors, stenographers, accountants, clerks and agents as may be necessary to enable it to perform the duties imposed on it by law.

XXVI. CONFERENCES. Hold conferences from time to time with superintendents, other school administrative unit personnel, principals, and teachers, or their representatives, for the purpose of inspiring mutual cooperation in the carrying on of their work and of unifying educational aims and practices.

XXVII. PROGRAMS. Prepare, publish and distribute such school programs, outlines of work and courses of study as will best promote education interests of the state.

XXVIII. HEALTH. Have authority to employ a competent person or persons to examine and care for the health of pupils, subject to the provisions of RSA 200.

XXIX. Adopt rules, pursuant to RSA 541–A, relative to reasonable criteria for approving non-public schools for the purpose of compulsory attendance requirements. The rules may contain criteria for conditional approval as specified by the state board. The state board of education may, upon request, designate which schools meet those criteria, and may, upon the request of a non-public school, approve or disapprove its education program and curriculum.

XXIX–a. Adopt rules pursuant to RSA 541–A, relative to establishing a process for receiving, investigating, and resolving complaints from parents or legal guardians concerning school safety and school violence in nonpublic schools.

XXX. [Repealed.]

XXXI. DRIVER EDUCATION. Establish jointly with the department of safety, teacher qualifications, course content and standards, in connection with the driver education program conducted in secondary schools in this state; and adopt such rules as may be necessary to carry out the program and supervise the driver education program in the secondary schools of the state. Driver education instructors shall not be required to be certified as secondary school teachers. Although authority is shared by the departments of safety and education, those regulations, directions and procedures that have a direct or indirect relationship to a life or safety issue shall rest with the department of safety as the final and ultimate authority.

XXXII. LEARNING DISABILITY TEACHER. Establish the qualifications, conditions and exceptions for providing a learning disability teacher in each school district.

XXXIII. DISCRIMINATION. Ensure that there shall be no unlawful discrimination in any public school against any person on the basis of sex, race, creed, color, marital status, or national origin in educational programs, and that there shall be no denial to any person on the basis of sex, race, creed, color, marital status, national origin, or economic status of the benefits of educational programs or activities.

XXXIV. MISSING CHILD EDUCATION PROGRAM. Administer the missing child education program as established in RSA 193:31.

XXXV. CERTIFICATION STANDARDS for the CREDENTIAL OF MASTER TEACHER. Adopt rules creating the educational credential of master teacher based on the provisions of RSA 189:14–f.

XXXVI. PUPIL SAFETY AND VIOLENCE PREVENTION. Develop and distribute to school districts a technical assistance advisory for the purpose of providing guidance to school districts on the implementation of pupil safety and violence prevention policies as required under RSA 193–F.

XXXVII. SCHOOL RESOURCE OFFICERS. Require each school district in the state to which a school resource officer is assigned to develop and implement a policy which shall include, at a minimum, a requirement for a signed memorandum of understanding between the school district and the law enforcement agency from which the school resource officer is deployed.

Source. 1919, 106:9. 1921, 85, I:8. PL 116:11. 1929, 145:3. 1939, 8:1. RL 134:11. 1953, 243:1–4. RSA 186:11. 1957, 252:1, 2. 1961, 196:1–3. 1963, 117:2; 147:1; 303:7; 305:1–3. 1965, 199:1; 339:4. 1967, 448:1. 1969, 69:1–3. 1971, 371:4, 5; 443:4. 1973, 140:15; 209:2; 242:1. 1974, 28:1. 1975, 23:1; 207:1; 505:6. 1977, 432:1; 452:6. 1979, 53:1; 459:4, 9, 10. 1981, 318:1. 1985, 318:4. 1986, 41:8–10, 29, II. 1987, 161:1. 1988, 262:7. 1989, 266:37. 1990, 28:1; 140:2, III. 1992, 123:1. 1993, 322:9, I, II. 1996, 298:5, I. 1998, 174:4, 5; 314:3; 389:8, 9. 1999, 157:1. 2000, 190:2. 2003, 39:1; 186:2. 2005, 92:1, eff. Aug. 6, 2005. 2008, 251:1, 4, 5, eff. Aug. 23, 2008. 2009, 105:1, eff. June 15, 2009; 280:1, eff. Sept. 27, 2009. 2011, 271:1, eff. Jan. 1, 2012. 2014, 62:1, eff. July 26, 2014. 2015, 161:6, eff. Aug. 25, 2015. 2016, 14:1, eff. Jan. 1, 2017; 84:2, eff. July 18, 2016. 2017, 9:1, eff. June 16, 2017; 22:2, eff. June 24, 2017; 251:1, eff. Sept. 16, 2017.

National Defense Education Aid

186:11–a to 186:11–e Repealed.

[Repealed 1990, 28:11, eff. May 14, 1990.]

History

Former RSA 186:11–a through 186:11–e, which were derived from 1959, 292:1, and 1986, 41:11, related to the national defense education fund.

Appeals and Appropriations

186:12 Appeal From Commissioner's Orders.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:12, which was derived from 1919, 106:9; 1921, 85, I:9; PL 116:12; and RL 134:12, related to appeals to the state board from commissioner's orders.

186:13 Appropriations, How Used. All money appropriated by the legislature for general educational purposes, in addition to the literary fund and all other funds created for the purposes enumerated in this section, shall be used for the following purposes:

I. ILLITERACY. For the abolition of illiteracy and for the instruction of illiterates over 14 years of age in common school branches and in the privileges, duties, and responsibilities of citizenship.

II. AMERICANIZATION. For the Americanization of immigrants, for the teaching of those 14 years of age and over to speak and read English and to appreciate and respect the civic and social institutions of the United States, and for instruction in the duties of citizenship.

III. EQUALIZATION AND GENERAL AID. For equalizing educational opportunity and improving the public elementary and high schools.

IV. HEALTH. For promotion of the physical health and recreation of pupils, and for their medical and dental examination.

V. EXAMINATION, ETC. For the determination of mental and physical defects, for the employment of school nurses and the instruction of pupils in the principles of health and sanitation.

VI. INSTRUCTING TEACHERS. For preparing teachers for the schools, particularly for rural schools, for encouraging a more nearly universal preparation of prospective teachers, and for extending the facilities for the improvement of teachers already in the service.

VII. EXPENSES. For the expense of administration of the department of education.

VIII. FEDERAL AID. For making available the funds provided by federal law for vocational or other education.

IX. TUITION. For the payment of tuition as provided in this title.

X. EDUCATION FOR THE DEAF. For the expense of providing educational facilities for the deaf.

XI. (a) To share with local school districts, under Public Law 91–248, the cost of the national school lunch program, excluding state salary and administrative expenses, the state board of education shall from appropriated funds disburse such funds to schools in such manner that each school receives the same proportionate share of such funds as it receives of the federal funds apportioned to New Hampshire for the same federal fiscal year, under section 4 of the National School Lunch Act, as amended.

(b) To accomplish the requirements for school food service and nutrition education which each school board is required to implement under RSA 189:11–a, the state board of education may allocate from such matching funds, as required to be appropriated under Public Law 91–248, an amount not to exceed ½ of the appropriation. These funds are to be disbursed to school districts for the purchase of food service equipment and nutrition education learning materials as required to meet the requirements of RSA 189:11–a. Such disbursements are to be used first to meet the school district's share of non-food assistance matching under the federal program and to assist with the purchase of food service equipment in schools ineligible for federal non-food assistance funding; residual amounts available under this appropriation authority may be utilized to institute nutrition education programs, at the discretion of the state board of education.

(c) Subject to available appropriations, a chartered public school, nonpublic school approved by the department of education, or any residential facility for children, which meets state and federal school nutrition program requirements, may apply

for reimbursement pursuant to RSA 189:11–a, VII, for all approved meals.

XII. Revolving Fund. For a nonlapsing revolving fund to be known as the printed materials revolving fund which is hereby established to be administered by the department of education. The moneys in said fund shall be used for the purpose of printing materials for distribution. A reasonable charge shall be established for each copy of a document. Charges made shall be in the amount necessary to pay the cost of producing such documents. Receipts from the sale of any documents shall be credited to the fund established in this paragraph. The receipts from such charges shall be used for no other purpose than the subsequent printing of documents of the department of education. State agencies and members of the general court shall not be charged for printed materials which are paid for by the fund. Any available balance in this fund in excess of $50,000 on June 30 of each year shall be deposited in the general fund as unrestricted revenue.

Source. 1919, 106:11. 1921, 85, I:11. PL 116:14. 1929, 145:3. 1939, 8:2. RL 134:14. 1947, 198:1. RSA 186:13. 1971, 250:1. 1975, 347:1. 1986, 145:1. 1993, 227:1. 1996, 179:2. 2007, 76:1, eff. Aug. 10, 2007. 2008, 354:1, eff. Sept. 5, 2008.

186:13–a Coordinating Board of Advanced Education and Accreditation.

[Repealed 1973, 533:14, eff. July 1, 1973.]

History

Former RSA 186:13–a, which was derived from 1963, 303:6; 1967, 288:1, 1969, 214:1; and 1971, 540:1, related to the establishment, composition and functions of a coordinating board of advanced education.

Approval of Branches of Out-Of-State Institutions

186:13–b Branches or Extension Courses in This State.

[Repealed 2013, 164:7, II, eff. June 28, 2013.]

History

Former RSA 186:13–b, which was derived from 1965, 35:1; 1973, 533:2; and 2011, 224:129, related to approval of branches of out-of-state institutions or extension courses in this state.

186:13–c Penalty.

[Repealed 2013, 164:7, III, eff. June 28, 2013.]

History

Former RSA 186:13–c, which was derived from 1965, 35:1 and 1973, 533:3, related to penalties for establishing an unapproved branch of an out-of-state institution.

The Teachers Colleges

186:14 to 186:24 Repealed.

[Repealed 1963, 303:7, eff. July 1, 1963.]

History

Former RSA 186:14, which was derived from 1870, 6:1; 1872, 5:4; 1876, 26:1; GL 93:1; PS 95:1; 1909, 157:1; 1919, 106:8; 1921, 85, I:12; PL 116:15; RL 134:15; RSA 186:14; and 1961, 71:1, related to the administration of the Plymouth and Keene teachers colleges.

Former RSA 185:15, which was derived from 1909, 157:2; 1921, 85, I:13; PL 116:16; and RL 134:16, related to receipt of gifts and purchases of land or other property by the state board.

Former RSA 186:16, which was derived from 1909, 157:3, 6, 7; 1921, 85, I:14; PL 116:17; and RL 134:17, related to the maintenance of practice schools and the compensation of supervising teachers in those schools.

Former RSA 186:17, which was derived from 1870, 67:1; GL 93:3; PS 95:6; 1921, 85, I:15; PL 116:18; and RL 134:18, related to the duties of the presidents of the teachers colleges.

Former RSA 186:18, which was derived from 1872, 5:5; GL 93:1; PS 95:1; 1913, 83:7; 1921, 85, I:16; PL 116:19; and RL 134:19, related to the course of instruction in the teachers colleges.

Former RSA 186:18–a, which was derived from 1959, 26:1, related to extension courses.

Former RSA 186:19, which was derived from 1875, 26:1; GL 93:5; PS 95:6; 1921, 85, I:17; PL 116:20; and RL 134:20, related to diplomas.

Former RSA 186:20, which was derived from 1875, 26:1; GL 93:5; PS 95:7; 1921, 85, I:18; PL 116:21; 1927, 13:1; RL 134:21; and 1947, 167:1, related to tuition.

Former RSA 186:21, which was derived from 1953, 226:7, related to dormitory rentals at Keene Teachers College.

Former RSA 186:21–a, which was derived from 1957, 293:13, related to dormitory rentals at Plymouth Teachers College.

Former RSA 186:21–b, which was derived from 1957, 293:13, related to the bookstore and snack bar at Keene Teachers College.

Former RSA 186:22, which was derived from 1883, 73:2; PS 95:9; 1903, 59:1; 1921, 85, I:19; PL 116:22; and RL 134:22, related to the compensation for instruction, by the presidents and teachers, when required by the board.

Former RSA 186:23, which was derived from 1870, 6:8; GL 93:4; PS 95:10; 1895, 32:1; 1921, 85, I:20; PL 116:23; and RL 134:23, related to the biennial report of the board and its contents.

Former RSA 186:24, which was derived from 1953, 265:1, related to the annual salary of the presidents of the teachers colleges.

Examination of Candidates for Teachers

186:25 to 186:34 Repealed.

[Repealed 1969, 69:4, eff. June 3, 1969.]

History

Former RSA 186:25, which was derived from 1895, 49:1; 1921, 85, I:21; PL 116:24; and RL 134:24, related to public examination of teachers.

Former RSA 186:26, which was derived from 1895, 49:2; 1921, 85, I:22; PL 116:25; and RL 134:25, related to a certificate of qualifications for every teacher.

Former RSA 186:27, which was derived from 1911, 161:1; 1921, 85, I:23; PL 116:26; and RL 134:26, related to the issuance of a certificate of qualifications without examination.

Former RSA 186:28, which was derived from 1895, 49:3; 1921, 85, I:24; PL 116:27; and RL 134:27, related to a list of approved candidates which is to be kept by the board.

Former RSA 186:29, which was derived from 1895, 49:5; 1921, 85, I:25; PL 116:28; and RL 134:28, related to the appropriation of funds necessary to carry out the provisions of this subdivision.

Former RSA 186:30, which was derived from 1915, 156:1; 1921, 85, I:26; PL 116:29; RL 134:29; RSA 186:30; and 1959, 182:1, related to application for the position of teacher in the public schools.

Former RSA 186:31, which was derived from 1915, 156:2; 1921, 85, I:27; PL 116:30; and RL 134:30, related to the state board's

recommendation of teachers whom they feel are fit and qualified to teach.

Former RSA 186:32, which was derived from 1915, 156:3; 1921, 85, I:28: PL 116:31; and RL 134:31, related to the cost of carrying out the provisions in RSA 186:30 and 186:31.

Former RSA 186:33, which was derived from 1915, 156:4; 1921, 85, I:29; PL 116:32; and RL 134:32, related to unlawful fees or rewards used to obtain a position as a teacher.

Former RSA 186:34, which was derived from 1915, 156:5; 1921, 85, I:30; PL 116:33; and RL 134:33, related to the penalty for violation of RSA 186:33.

Teachers' Institutes

186:35 to 186:38 Repealed.

[Repealed 1969, 69:5, eff. June 3, 1969.]

History

Former RSA 186:35, which was derived from 1883, 73:1; PS 94:4; 1921, 85, I:31; PL 116:34; and RL 143:34, related to yearly teachers' institutes held in each county.

Former RSA 186:36, which was derived from 1883, 73:4; PS 94:6; 1921, 85, I:32; PL 116:35; and RL 134:35, related to a fund to support the annual teachers' institutes.

Former RSA 186:37, which was derived from 1883, 73:5; PS 94:7; 1921, 85, I:33; PL 116:36; and RL 134:36, related to expenses of the annual institutions which may be covered by the state treasurer.

Former RSA 186:38, which was derived from 1883, 73:6; PS 94:8; 1921, 85, I:34; PL 116:37; and RL 134:37, related to an audit of the expenses of the annual institutions.

Vocational Education

186:39 State Board of Education. The state board of education is hereby designated as the sole agency for the receipt of federal funds under the provisions of federal vocational education acts. The commissioner, department of education, shall administer programs for which the state may be entitled to receive such federal funds. The state is pledged to make available for the several purposes of said federal acts funds sufficient to meet the state's obligations from time to time and to meet all conditions necessary to entitle the state to accept the benefits thereof.

Source. 1917, 226:1. 1921, 85, I:35. 1925, 18:1. PL 116:38. RL 134:38. RSA 186:39. 1990, 28:2, eff. May 14, 1990.

186:40 Administration. The commissioner, department of education, is authorized to arrange with institutions and with school boards of towns or city districts in the state to furnish the necessary buildings, equipment, and additional funds required in carrying out the provisions of the federal acts, so far as those acts apply to this state; and school districts are authorized to enter into such contracts with the commissioner. The commissioner is further authorized to approve certain schools and educational institutions within the state as vocational training centers for the purpose of enlarging the opportunities for such training and putting into effect the provisions of RSA 186:39 and to make suitable arrangements with such schools and institutions to receive pupils for vocational training who may not reside in the town or school district where such school or institution is located.

Source. 1917, 226:4, 5. 1921, 85, I:36. PL 116:39. RL 134:39. 1943, 91:1. RSA 186:40. 1990, 28:3, eff. May 14, 1990.

186:40–a Technical Assistance. A primary responsibility of the department of education shall be to provide technical assistance and information to school districts to assist the districts to effectively and efficiently implement state and federal vocational education policies and programs. The department shall place less emphasis on regulation and shall give high priority to increasing and improving technical assistance efforts.

Source. 1985, 297:3, eff. June 14, 1985.

Handicapped Children

186:41 to 186:50 Repealed.

[Repealed 1965, 378:2, eff. July 1, 1965.]

History

Former RSA 186:41, which was derived from 1939, 156:1, and RL 143:40, related to the definition of "handicapped child".

Former RSA 186:42, which was derived from 1939, 156:1, and RL 143:41, related to enumeration of every handicapped child within each school district.

Former RSA 186:43, which was derived from 1939, 156:1, and RL 134:42, related to investigation of the needs of handicapped children by the state board of education.

Former RSA 186:44, which was derived from 1939, 156:1; RL 134:43; and 1949, 179:1, related to the education required for handicapped children.

Former RSA 186:45, which was derived from 1951, 147:1, related to the school district's liability for payment of tuition for handicapped students.

Former RSA 186:46, which was derived from 1939, 156:1 and RL 134:44, related to the employment of teachers to instruct handicapped children.

Former RSA 186:47, which was derived from 1939, 156:1 and RL 134:45, related to transportation of handicapped children.

Former RSA 186:48, which was derived from 1939, 156:1 and RL 134:46, related to federal assistance.

Former RSA 186:49, which was derived from 1939, 156:1 and RL 134:47, related to payment of expenses for administration of the education of handicapped children.

Former RSA 186:50, which was derived from 1939, 156:1 and RL 134:48, related to the limitations of the provisions of this subdivision.

Intellectually Retarded Children

186:50–a to 186:50–c Repealed.

[Repealed 1961, 226:3, eff. July 1, 1961.]

History

Former RSA 186:50–a to 186:50–c, which were derived from 1957, 196:1, related to intellectually retarded children. See now RSA 186–C.

186:50–d to 186:50–g Repealed.

[Repealed 1965, 378:2, eff. July 1, 1965.]

History

Former RSA 186:50–d to 186:50–g, which were derived from 1957, 196:1; RSA 186:50–a to 186:50–c; 1961. 226:1; and 1963, 185:1, related to intellectually retarded children. See now RSA 186–C.

Commissioner's Salary

186:51 Salary.

[Repealed 1986, 41:29, I, eff. April 3, 1988.]

History

Former RSA 186:51, which was derived from 1953, 265:1, related to commissioner's salary. See now RSA 21–N:3, IV.

Board of Nurse Examiners

186:52, 186:53 Repealed.

[Repealed 1991, 132:1, I, eff. July 19, 1991.]

History

Former RSA 186:52, 186:53, which were derived from 1950, 5, part 23:2, pars. 52, 53, related to the board of nurse examiners. See now RSA 326–B:3, 4.

Higher Education Loan Program

186:54 to 186:58 Repealed.

[Repealed 1991, 132:1, II, eff. July 19, 1991.]

History

Former RSA 186:54 to 186:58, which were derived from 1965, 266:1 and 1973, 72:12, related to the higher education loan program.

School Volunteer Programs

186:59 School Volunteer Programs Authorized. The commissioner of education is authorized to contract with appropriate private organizations to provide volunteer services to public schools. Such organizations would serve as centralized agencies for recruiting, orienting, training and placing volunteers in public schools. The commissioner of education shall request the attorney general to prepare a contract which will outline the obligations of the parties.

Source. 1973, 327:1, eff. July 1, 1973.

Professional Standards Board

186:60 Professional Standards Board.

I. There is hereby established a professional standards board to advise the state board of education regarding professional growth, certification and governance of the education profession in this state. The board shall consist of the following 21 members:

(a) The director of the division of program support, or designee, who shall be the executive secretary of the board;

(b) 9 members representing classroom teachers or education specialists, or both;

(c) 9 members representing higher education and education administration; and

(d) 2 members representing qualified lay persons.

II. The state board of education shall appoint the 20 members of the board specified in paragraph I(b), (c) and (d) from nominations submitted by the education profession and interested persons.

III. The appointed members of the board shall serve for 3-year terms and may not serve for more than 2 full terms.

IV. The appointed members of the board shall serve without compensation and shall be entitled to reimbursement by the state board of education for mileage and expenses incurred in performing required duties. The state board of education shall furnish the board with materials, secretarial assistance and meeting facilities.

V. The members of the board shall annually elect a chairman from among their membership. The chairman shall present budget requests to the state board of education.

VI. The board shall have the following powers and duties:

(a) The board shall recommend policies to the state board of education including, but not limited to, pre-service education, continuing education, professional growth, initial certification, recertification, para-professional training and certification, revocation of credentials, performance evaluation and staffing patterns. In making policy recommendations on the certification process, the board shall consider complaints it receives from persons who feel aggrieved by the process.

(b) The board shall meet at least 5 times annually.

(c) The board shall annually submit 2 reports to the state board of education concerning its activities and containing policy recommendations.

(d) The board shall maintain records and minutes of its meetings and shall file them in the office of teacher education and professional standards.

Source. 1975, 122:1. 1986, 41:12. 1994, 379:4, eff. June 9, 1994.

Adult Education

186:61 Establishment of Adult High School Education Program.

I. The state board of education shall establish and promote an educational program for adults to earn a high school diploma or its equivalent. This program shall be administered by the division of career technology and adult learning, department of education,

in accordance with the rules adopted by the state board.

II. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The issuance of high school diplomas to adults.

(b) The issuance of high school equivalency certificates based on uniform educational criteria.

(c) Designation of public schools and institutions of higher education to serve as testing centers for high school equivalency certificate examinations.

Source. 1975, 363:1. 1986, 41:13. 1994, 379:5, eff. June 9, 1994.

186:62 Establishment of Other Adult Education Programs.

I. The state board of education shall promote and encourage other programs of adult and continuing education. The board shall adopt rules, pursuant to RSA 541–A, relative to standards and accreditation of those adult and continuing education programs which involve certification of adult learners at the high school level.

II. These programs shall be administered by the division of career technology and adult learning. The division shall:

(a) Receive applications from school district officials seeking those funds which have been designated for adult education programs operating within school district auspices and grant funds to school districts for such programs.

(b) Accept grants, gifts and funds for such programs.

(c) Request, receive and expend federal funds for such programs.

III. It is the intent of this subdivision to:

(a) Encourage the development of adult and continuing education programs by persons and organizations operating both within and outside of the public school system and to encourage such persons and organizations to apply for federal or state funds which are available for the support of programs in adult education, continuing education, and community education.

(b) Encourage the use of public school facilities by various educational groups and organizations within the community, subject to those guidelines and policies which might be established by local school boards.

IV. This subdivision should not be construed to:

(a) Restrict through certification or other procedures the ability of individuals or organizations to act in a teaching capacity with respect to adult, continuing, or community education programs for which no diploma or certification is offered.

(b) Extend control over adult or continuing education programs organized by public or private institutions of higher or postsecondary education to the state board of education, except where such programs are already under its jurisdiction.

Source. 1975, 363:1. 1986, 41:14. 1994, 379:6, eff. June 9, 1994.

186:63 Funding of Educational Programs. Funding for the programs authorized by this subdivision shall be from monies appropriated by the state and the school districts for such programs and from such other funds as may be made available by the state board of education.

Source. 1975, 363:1, eff. Aug. 6, 1975.

Comprehensive Health Education

186:64 to 186:67 Repealed.

[Repealed 1986, 41:29, III, eff. April 3, 1988.]

History

Former RSA 186:64 to 186:67, which were derived from 1979, 221:1, related to the comprehensive health program in elementary and secondary public schools.

186:67–a Coordinated School Health Committee Established; Membership.

[Repealed 2009, 105:2, eff. June 15, 2009.]

History

Former RSA 186:67–a, which was derived from 1994, 276:1; 1995, 310:181; 2004, 34:1–3; and 2008, 251:2, related to the coordinated school health committee establishment and membership.

Military Recruiters Access

186:68 Military Recruiters; Access; Reporting.

I. Notwithstanding any other provision of law to the contrary, all public high schools and all institutions within the state university system, and all private high schools, colleges, and universities which receive state funds shall offer the same on-campus recruiting opportunities to representatives of state or United States armed services as they offer to nonmilitary recruiters.

II. (a) A public school subject to this section shall provide notice to each student and to the parent or guardian of each student enrolled at the school that, in accordance with federal law, the student or the parent or guardian of the student may request that the student's name, address, and telephone number not be released to military recruiters.

(b) The notice described under subparagraph (a) shall:

(1) Be included in a clear and conspicuous manner and in the same size type as the other statements on the card requesting emergency contact information that is distributed by the school to each student or parent or guardian of the student; and

(2) Request that the student or the parent or guardian of the student indicate if the student's name, address, and telephone number is not to be released to military recruiters by checking the box "Do not release contact information."

III. (a) In this paragraph, "ASVAB" means the Armed Services Vocational Aptitude Battery.

(b) Each public school that administers the ASVAB shall choose "option 8" as the score reporting option for military recruiter contact to prohibit the general release of any student information to military recruiters.

(c) Each public school that administers the ASVAB shall:

(1) Send a written notice to the ASVAB representative coordinating the school's administration of the ASVAB of the requirement set forth in subparagraph (b); and

(2) Notify students taking the ASVAB and the parent or guardian of students taking the ASVAB of the release of student information requirements set forth in subparagraphs (b) and (d).

(d) A student or a student's parent or guardian may choose to release the student's personal information and ASVAB scores to recruiting representatives of the military services by individually submitting the required forms to the military services authorizing the release of the information.

Source. 1983, 464:1, eff. Aug. 26, 1983. 2014, 220:1, eff. July 1, 2014.

School Improvement Program

186:69 School Improvement Program.

[Repealed 1996, 300:7, eff. July 1, 1996.]

History

Former RSA 186:69, which was derived from 1989, 408:108; 1991, 355:60; and 1994, 379:20, related to the school improvement program.

Reading Recovery Training Program

186:70 Reading Recovery Training Program.

I. There is established a reading recovery training program to provide reading recovery training to all eligible first-grade teachers so that reading recovery programs may be made available to all eligible first-grade pupils in those local school districts that choose to implement reading recovery programs.

II. The department of education shall administer the reading recovery training program in accordance with the program requirements outlined in the Guidelines and Standards for the North American Reading Recovery Council.

III. Each biennium, the department shall, subject to the extent of funds appropriated, provide for the training needs of the participating local districts and shall also provide continuing education to teachers who have completed the initial training.

IV. Local districts shall be responsible for all salaries, benefits, and materials for local reading recovery teachers during program training and implementation.

V. Unless excused by the department of education, a teacher who completes reading recovery training shall agree to provide reading recovery programs to New Hampshire pupils for at least 2 years following such training.

Source. 1997, 286:2, eff. July 1, 1997.

CHAPTER 186–A

PROGRAM OF SPECIAL EDUCATION

[Repealed 1981, 100:2, eff. June 30, 1981.]

History

Former RSA 186–A, comprising RSA 186–A:1 to 186–A:13, which was derived from 1965, 378:1; 1967, 351:1; 1969, 69:7, 72:1, 470:4; 1971, 199:1, 443:1 to 3; 1973, 125:1 to 5, 588:1; 1974, 37:1, 3, 4; and 1975, 434:1 to 3, related to the program of special education. See now RSA 186–C.

CHAPTER 186–B

EDUCATION AND TRAINING OF THE BLIND

186–B:1 Statement of Purpose. To enable the state to more effectively provide services to the blind of all ages in the state, it is the intent of this chapter to place the functions of education, training, vocational rehabilitation, and related services of the blind under one administration. By this transfer of functions, all of the responsibility for the education and training of all disabled children in the state becomes the responsibility of the department of education.

Source. 1970, 34:1. 1990, 140:2, X, eff. June 18, 1990.

186–B:2 Appointment of Blind Services Administrator.

[Repealed 1994, 379:24, I, eff. June 9, 1994.]

History

Former RSA 186–B:2, which was derived from 1970, 34:1 and 1986, 41:15, related to the appointment of an administrator of blind services.

186–B:3 Program for Blind Established.

I. The department of education shall establish a program for the education, training, and vocational rehabilitation for the blind of all ages, whether or not they are eligible for aid to the needy blind under the department of health and human services.

II. The department of education shall develop or cooperate with other agencies in providing services to the blind, including the locating of blind persons, vocational guidance and training of the blind, placement of blind persons in employment, instruction of the adult blind in their homes and other services to blind persons. In connection with assistance to needy blind persons the board of education shall give due consideration to the special needs associated with the condition of blindness and, in cooperation with the department of health and human services, shall: (a) adopt rules stating in terms of ophthalmic measurements the amount of visual acuity which an applicant may have and be eligible for assistance and providing for an examination by an ophthalmologist or physician skilled in diseases of the eye or by an optometrist, whichever the individual may select, in making the determination whether the individual is eligible and fixing the fee for such examination; (b) establish the procedure for securing competent medical examination; (c) designate or approve a suitable number of ophthalmologists or physicians skilled in diseases of the eye, and optometrists, who must be duly licensed or registered under the laws of this state and actively engaged in the practice of their professions, to examine applicants and recipients of aid to determine their eligibility for assistance; (d) fix the fees to be paid for medical examination from funds available to the department of health and human services.

Source. 1970, 34:1. 1983, 291:1. 1994, 379:7. 1995, 310:175, 181, eff. Nov. 1, 1995.

186–B:4 Aid to the Blind. The department of education shall furnish aid to the blind of the state, as follows:

I. The blind services program, bureau of vocational rehabilitation, shall prepare and maintain a register of the blind in the state, which shall describe their condition, cause of blindness, capacity for education and industrial training, and such other data as deemed appropriate.

II. The blind services program, bureau of vocational rehabilitation, shall provide information and industrial aid for the blind, and for this purpose may furnish materials and tools to any blind person. The bureau may assist blind persons engaged in home industries in marketing their products, in finding employment, and in developing home industries. The bureau may ameliorate the condition of the blind by devising means to facilitate the circulation of books, by promoting visits among the aged or helpless blind in their homes, and by such other methods as are expedient. However, the bureau shall not undertake the permanent support or maintenance of any blind person.

III. The blind services program, bureau of vocational rehabilitation, shall furnish assistance to such blind persons, in such amounts and at such asylums, schools, or other institutions designed for the purpose of industrial aid to the blind as the department of education directs.

IV. The commissioner of education at the commissioner's discretion may contribute to the support of the blind persons from New Hampshire receiving instruction in industrial institutions outside the state.

V. The commissioner of education with approval of the state board may appoint other officials and agents necessary to assist in carrying into effect the provisions of this chapter, subject to rules of the division of personnel.

Source. 1970, 34:1. 1986, 12:4; 41:16. 1994, 379:8, eff. June 9, 1994.

186–B:5 Industrial Workshop and Homework Program.

[Repealed 1986, 41:29, IV, eff. April 3, 1988.]

History

Former RSA 186–B:5, which was derived from 1970, 34:1, related to the establishment and operation of an industrial workshop and homework program.

186–B:6 Aid to the Blind; Transfer of Functions.

[Repealed 1994, 379:24, II, eff. June 9, 1994.]

History

Former RSA 186–B:6, which was derived from 1970, 34:1, related to the transfer of functions and duties of furnishing aid to the blind to the department of education.

186–B:7 Transfer of State Agency for Blind; Position Abolished.

[Repealed 1994, 379:24, II, eff. June 9, 1994.]

History

Former RSA 186–B:7, which was derived from 1970, 34:1, related to the transfer of the position of state agent for the blind to the department of education.

186–B:8 Nesmith Fund.

I. There is hereby appropriated annually the entire income derived from the Nesmith Trust Fund to be expended by the department of education for the aid, support, maintenance and education of the indigent blind of the state of New Hampshire. The governor is authorized to draw his warrants which shall be a charge against the Nesmith Fund.

II. In the event that the annual income derived from said Nesmith Fund shall be less than $4,800, there is hereby appropriated from the general fund of the state a sum equal to the difference between the amount of income from the Nesmith Fund and $4,800 which shall be added to the income and expended by the department of education for the aid, support, maintenance and education of the indigent blind to comply with the terms of the trust under the will of John Nesmith. The governor is authorized to draw his warrant for said sum out of any monies in the treasury not otherwise appropriated.

Source. 1970, 34:1. 1972, 31:2, eff. March 17, 1972.

Vending Facilities Operated by Blind Persons

186–B:9 Purpose. For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under this subdivision shall be authorized to operate vending facilities on state property.

Source. 1975, 260:1, eff. Aug. 5, 1975.

186–B:10 Definitions. In this subdivision:

I. "Blind person" means a person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200 is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select.

II. "Blind services" means the administrative unit for the blind services program within the bureau of vocational rehabilitation, department of education.

III. "State property" means any building or land owned, leased or controlled by the state.

IV. "Vending facility" means a vending machine, cafeteria, snack bar, cart service, shelter, counter or any other facility for the vending of newspapers, periodicals, confections, tobacco products, foods or beverages, or any combination of them, whether dispensed automatically or manually, and which are prepared on or off the property.

V. "Vending machine income" means receipts other than those of a blind licensee from the operation of vending machines on state property, after cost of goods sold, where the machines are operated, serviced or maintained by, or with the approval of the state, or commissions paid other than to a blind licensee by a commercial vending concern which operates, services or maintains vending machines on state property for, or with the approval of the state.

Source. 1975, 260:1. 1981, 403:2. 1986, 41:17. 1994, 379:9, eff. June 9, 1994.

186–B:11 Duties. Blind services shall:

I. Survey the vending facility opportunities on all state property;

II. Establish, whenever feasible, vending facilities on state property to the extent that such facilities do not adversely affect the interests of the state;

III. License blind persons for the operation of vending facilities on state property;

IV. Provide vending facility equipment and an adequate initial stock of suitable articles to licensed blind persons;

V. Provide the necessary training and supervision to licensed blind persons;

VI. [Repealed.]

VII. Conduct mandatory training seminars for operators of its vending facilities, which shall address

topics concerning the management of vending facilities, including, but not limited to, the following:

(a) Customer relations,

(b) Marketing techniques,

(c) Personnel hiring and training,

(d) Inventory control,

(e) New products,

(f) Machine repair and maintenance, and

(g) Accounting.

Source. 1975, 260:1. 1985, 232:3. 1994, 379:24, III, eff. June 9, 1994.

186–B:11–a Rulemaking Authority; Board of Education. The state board of education shall adopt rules, pursuant to RSA 541–A, to carry out the provisions of this chapter.

Source. 1994, 379:10, eff. June 9, 1994.

186–B:12 Licenses. Blind services shall issue a license for the operation of a vending facility only to a blind person who is able, with such disability, to operate a vending facility. In issuing any license, blind services shall give preference to a blind person who is a resident of this state. Each license issued shall be for an indefinite period, but may be terminated by blind services if it is satisfied that the facility is not being operated in accordance with rules adopted by the board of education under RSA 186–B:11–a.

Source. 1975, 260:1. 1990, 140:2, XI. 1994, 379:11, eff. June 9, 1994.

186–B:13 Vending Facilities.

I. No person in control of the maintenance, operation and protection of any state property may offer or grant to any other party a contract or concession to operate a vending facility unless:

(a) He has notified blind services and has attempted to make an agreement with blind services for a licensed blind person to operate a vending facility; and

(b) He has determined in good faith that blind services is not willing to establish a vending facility on such property.

II. [Repealed.]

III. Blind services, with the cooperation of the person in control of the maintenance, operation and protection of any state property, shall select the type of location of the vending facility to be provided and the person to operate such facility.

IV. If blind services determines that a vending facility operated by a full-time licensed blind person is not feasible on any state property, blind services may install vending machines on such property with income accruing pursuant to RSA 186–B:14.

V. The contract for the operation of any vending facility shall specify that it shall be operated at a reasonable cost consistent with a fair return, high quality food and reasonable prices.

VI. This section shall not apply to Franconia Notch state park, Mount Sunapee state park and Mount Washington state park; nor shall it apply to any state property which operates its own vending facility unless the person in control of the maintenance, operation and protection of the property contracts with blind services to operate the vending facility.

Source. 1975, 260:1. 1981, 403:1. 1994, 379:24, IV, eff. June 9, 1994.

186–B:14 Vending Machine Income.

I. If a new vending machine or a replacement for an existing vending machine is installed after August 5, 1975, on any state property, vending machine income shall accrue to the licensed blind person operating a vending facility on the same property, or if none, to blind services. The licensed blind person or blind services shall be responsible for servicing and maintaining the vending machines from which vending machine income is received.

II. Vending machine income which accrues to blind services pursuant to paragraph I may be used to:

(a) Purchase new equipment and replace existing equipment for new and existing vending facilities;

(b) Purchase initial stock and supplies;

(c) Provide training services; and

(d) Establish retirement funds, health insurance contributions, paid sick leave and vacation time for licensed blind persons.

III. If vending machine income which accrues to blind services pursuant to paragraph I is limited, it may be used to earn federal funds on a matching basis.

Source. 1975, 260:1, eff. Aug. 5, 1975.

186–B:15 Appeal. Any person aggrieved by a decision of blind services under this subdivision may apply for rehearing and appeal pursuant to RSA 541.

Source. 1975, 260:1, eff. Aug. 5, 1975.

CHAPTER 186–C

SPECIAL EDUCATION

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

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

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

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

Source. 1981, 352:2. 1990, 140:2, X. 1998, 177:1. 2002, 158:1. 2003, 215:3, eff. Aug. 30, 2003. 2008, 274:31, eff. July 1, 2008; 302:34, eff. Jan. 1, 2009.

186–C:2 Definitions. In this chapter:

I. "Child with a disability" means any person 3 years of age or older but less than 21 years of age who has been identified and evaluated by a school district according to rules adopted by the state board of education and determined to have an intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, acquired brain injury, another health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or a child at least 3 years of age but less than 10 years of age, experiencing developmental delays, who because of such impairment, needs special education or special education and related services. "Child with a disability" shall include a child ages 18 to 21, who was identified as a child with a disability and received services in accordance with an individualized education program but who left school prior to his or her incarceration, or was identified as a child with a disability but did not have an individualized education program in his or her last educational institution.

I–a. "Developmentally delayed child" means a child at least 3 years of age or older, but less than 10 years of age, who, because of impairments in development, needs special education or special education and related services, and may be identified as being developmentally delayed provided that such a child meets the criteria established by the state board of education.

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

II. "Approved program" means a program of special education that has been approved by the state board of education and that is maintained by a school district, regional special education center, private organization, or state facility for the benefit of children with disabilities, and may include home instruction provided by the school district.

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

IV. "Special education" means instruction specifically designed to meet the unique needs of a child with a disability.

V. (a) "Related services" means:

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

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

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

(b) "Related services" shall not include medical services unless such services are necessary for purposes of diagnosis and evaluation.

VI. "Functionally blind" means a pupil who has:

(a) Visual acuity of 20/200 or less in the better eye with the use of the best correction for any refractive error, or a limited field of vision in which the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A medically indicated expectation of visual deterioration.

(c) A functional limitation resulting from a medically diagnosed visual impairment which restricts the child's ability to read and write standard print at levels expected of other children of comparable ability and grade level.

VII. "Parent" means:

(a) A natural or adoptive parent of a child who has legal custody of the child;

(b) A guardian of a child, but not the state when the state has legal guardianship of the child;

(c) A person acting in the place of a custodial parent or guardian of a child, if no other custodial parent or guardian is available, who is designated in writing to make educational decisions on the child's behalf by such parent or guardian;

(d) A surrogate parent who has been appointed in accordance with RSA 186–C:14; or

(e) A foster parent of a child who has been appointed in accordance with RSA 186–C:14–a.

Source. 1981, 352:2. 1990, 140:2, X. 1991, 80:1. 1993, 108:1. 1994, 379:12. 1997, 89:1; 114:1. 1998, 177:2. 1999, 107:1. 2002, 205:1. 2003, 215:1, eff. Aug. 30, 2003. 2008, 52:20, eff. July 11, 2008; 274:29 to 31, 33, eff. July 1, 2008; 302:35 eff. Jan. 1, 2009.

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

Source. 1981, 352:2. 1985, 269:3. 1994, 379:13, eff. June 9, 1994. 2008, 302:3, eff. Jan. 1, 2009.

186–C:3–a Duties.

I. The division shall help school districts meet their responsibilities under this chapter and under

federal law regarding the education of children with disabilities.

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

II. The department of education shall collect, organize, and analyze data and information about programs, conditions, instruction, and trends in special education in the state. In addition, the department shall be responsible for monitoring and maintaining information about national and regional trends, instructions and issues affecting special education in New Hampshire. The department shall make this information available to the districts and use this information to:

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

(b) Identify cost effective and appropriate alternative programs that meet the needs of children with disabilities;

(c) Focus resources on students requiring extensive services;

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

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

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

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

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

(1) Shows the identification of children with disabilities analyzed according to the following criteria: age and grade level, and number and percentage of the total number of children with disabilities in each disability category.

(2) Includes expenditures for special education as reported to the department of education by school districts and state and federal revenues for special education received by school districts.

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

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

(b) These findings shall be reported for the state and for each school district. The commissioner shall make this report available upon request to all legislators, school officials from school districts, school administrative units, cooperative schools, AREA schools, and the general public, and shall make it available in an easily accessible format on the department of education website. In preparing such reports, the department of education shall not disclose personally identifiable information.

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

IV. The department of education shall administer those federal and state funding programs for special education assigned to it by law. The department shall also make recommendations to the state board regarding management systems, standard definitions and procedures in order to provide uniform reporting

of special education services and expenditures by school districts and school administrative units.

V. The department of education shall monitor the operations of local school districts, regional special education centers, chartered public schools, and private organizations or state programs for the benefit of the education of children with disabilities regarding compliance with state and federal laws regarding the education of students with disabilities. The department's monitoring, regulatory oversight, and program approval shall be structured and implemented in a prudent manner and shall not place an excessive administrative burden on local districts. The department and districts shall approach monitoring and regulation in a constructive, cooperative manner, while also ensuring accountability for failing to meet standards and ensuring that the special education needs of children with disabilities are met.

VI. [Repealed.]

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

(b) Each county correctional facility shall designate one person who shall serve as the contact person in all matters related to special education. This person shall:

(1) Provide, on a weekly basis, a list of incarcerated inmates up to the age of 21 who are eligible to receive special education;

(2) Provide the school district with access to the incarcerated inmates with disabilities for the purpose of providing special education to ensure a free and appropriate public education; and

(3) Provide time and space within the correctional facility to allow the school district to provide instruction and any special education and related services pursuant to the person's individualized education program.

(c) County correctional facilities shall be monitored according to the standards set forth in any interagency agreements between the department of education and each county correctional facility.

(d) Granite State high school shall comply with the requirements in RSA 194:60 and shall be monitored in 2010 and subject to onsite monitoring at least annually through 2013.

Source. 1985, 269:3. 1987, 345:7. 1990, 140:2, X, XII. 1994, 379:14, 24, V. 1997, 232:1. 1998, 68:1, eff. July 11, 1998. 2008, 302:36, eff. Jan. 1, 2009. 2010, 184:1, eff. Aug. 20, 2010. 2011, 231:4, eff. June 29, 2011.

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

I. In accordance with the provisions of 20 U.S.C. section 1412(a)(21) and 34 C.F.R. sections 300.167–300.169, there is established an advisory committee on the education of children/students with disabilities to advise the commissioner of education on issues relating to special education, and to promote communication and cooperation among individuals involved with students with disabilities. In addition, the committee shall review the federal financial participation and the level of state funding to determine their impact on the programs and delivery of services to children/students with disabilities.

II. The committee shall be composed of individuals involved in, or concerned with, the education of children with disabilities. A majority of the committee membership shall be composed of individuals with disabilities or parents of children with disabilities. The committee membership shall be as follows:

(a) Individuals with disabilities or parents of children with disabilities, appointed by the governor.

(b) Two members of the house education committee, appointed by the speaker of the house.

(c) Two members of the senate education committee, appointed by the president of the senate.

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

(e) One state education official, appointed by the governor.

(f) One local educational official, who shall be an administrator, appointed by the governor.

(g) Two teachers, one of whom shall be a special education teacher, appointed by the governor.

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

(i) One representative of the Disabilities Rights Center, recommended by the Disabilities Rights Center and appointed by the governor.

(j) One representative of the Parent Information Center, recommended by the Parent Information Center and appointed by the governor.

(k) Two individuals with disabilities who may have received special education services, one of

whom may be a high school student, appointed by the governor.

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

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

(n) One representative of a private school approved for special education, appointed by the governor.

(*o*) One representative of a chartered public school, appointed by the governor.

(p) One individual representing children with disabilities who are home-schooled, appointed by the governor.

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

(r) A state and a local educational official who are responsible for performing activities under subtitle B of title VII of the McKinney–Vento Homeless Assistance Act, 42 U.S.C. section 11431, et seq, appointed by the governor.

(s) A representative from the department of health and human services responsible for foster care, recommended by the commissioner of the department of health and human services and appointed by the governor.

III. (a) Committee members shall be appointed to staggered 2–year terms, and members may succeed themselves.

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

IV. The committee shall:

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

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

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

(d) Assist the state in developing and reporting such information and evaluations as may assist the U.S. Secretary of Education in the performance of responsibilities under 20 U.S.C. section 1418 of the Individuals with Disabilities Education Act.

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

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

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

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

Source. 1994, 114:1. 1995, 310:149. 1998, 201:1. 2001, 286:19. 2006, 191:2, eff. July 29, 2006. 2008, 302:36, eff. Jan. 1, 2009; 354:2, eff. Sept. 5, 2008.

186–C:4 Comprehensive State Special Education Plan.

[Repealed 1994, 379:24, VI, eff. June 9, 1994.]

History

Former RSA 186–C:4, which was derived from 1981, 352:2 1985; 269:4; and 1990, 140:2, X, related to the comprehensive state special education plan.

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

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

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

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

III. Program approval and monitoring shall utilize professionally recognized program evaluation and

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

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

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

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

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

(1) Regular or periodic monitoring.

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

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

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

(f) Program approval and monitoring personnel or teams, which shall be knowledgeable in research-based education, special education practices, professionally recognized program evaluation practices, the Individuals with Disabilities Education Act, and state special education laws and which shall receive appropriate training to participate in the monitoring process. Such personnel or teams for on-site monitoring shall consist of at least one of each of the following: an educator, an educational administrator, and a parent who resides in another school district, who shall receive mileage reimbursement. The department may determine that for certain on-site visits less than a full team is necessary. The department directly or by contract shall develop and train a group of parents on the requisites needed to carry out the monitoring duties. Where volunteers or contracted personnel are used for the non-parent team slots, attempts shall be made to use or balance teams with personnel from non-school district sources such as qualified individuals from higher education. Educators and educational administrators that are used (1) may not review schools in school districts in which they are employed or have been employed in the previous 2 years and (2) may not be from schools which in the current or prior 3 years have been the subject of mandatory technical assistance under subparagraph V(e)(2) or any of the interventions in subparagraphs V(e)(3)–(12). The department shall make available sufficient funds for stipends or similar financial remuneration, in addition to expense reimbursements to ensure that teams have a diversity of perspectives and high quality professional membership. The department of education may contract with an individual or organization which has the requisite expertise and skill to perform the monitoring activities, and who is otherwise independent from school district and non-school district programs in New Hampshire. This subparagraph shall not be construed to preclude individuals who may have performed sporadic or occasional contract or volunteer work for school district or non-school district programs.

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

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

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

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

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

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

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

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

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

(1) The severity and length of noncompliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. The commissioner shall notify the superintendent and local school board, and post findings and corrective actions recommended on the department Internet website. The commissioner shall also notify the advisory committee on the education of children/students with disabilities of the findings, remedies, and sanctions.

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

VIII. The commissioner shall employ or contract with a sufficient number of qualified personnel to carry out the activities enumerated in this section, including but not limited to managing, analyzing, and

verifying data, coordinating and staffing on-site monitoring teams, preparing reports, including findings and corrective actions, and determining, monitoring, or supervising corrective actions and sanctions.

IX. The department, with input from the advisory committee on the education of children/students with disabilities, shall select and contract with an independent, nationally recognized organization in program evaluation and quality assurance to evaluate in 2010, 2015, and decennially thereafter, the effectiveness of the program approval and monitoring system, including whether it is carrying out activities in RSA 186–C:5 in an efficient manner. Such organization shall submit recommendations for any improvements to the commissioner, the state board of education, the governor, and the general court within 90 days of completing the program evaluation. On or before September 1, 2013, the department shall submit a written response to the report submitted by the organization that conducted the 2012 independent evaluation. The written response shall include a detailed plan for how the department will address the areas identified as needing improvement and the recommendations made in the initial evaluation required under this section. The written response shall include specific steps the department plans to take, along with a timeline for each step. The written response shall also provide an explanation for any actions the department will not implement or complete during the plan's timeframe. On or before December 30, 2013 and June 30, 2014, the department shall submit a report of its progress toward completing its plan. The plan and reports shall be submitted to the governor, to the chairpersons of the senate and house committees with jurisdiction over education policy, to the state advisory committee for the education of children with disabilities established in RSA 186–C:3–b, and to the state board of education. For the 2015 evaluation, the department shall invite the same organization that conducted the 2012 evaluation to respond to a request for proposals. The 2015 evaluation shall include feedback on the steps the department has taken in response to the recommendations in the 2012 report. The department shall provide unimpeded access to all documents requested by the organization, except as otherwise required by law.

Source. 1981, 352:2. 1990, 140:2, X. 1998, 270:2, eff. July 1, 1999. 2008, 274:31, eff. July 1, 2008; 302:39, eff. Jan. 1, 2009. 2013, 226:1, eff. Sept. 13, 2013.

186–C:6 Census.

[Repealed 1994, 134:2, eff. July 22, 1994.]

History

Former RSA 186–C:6, which was derived from 1981, 352:2 and 1990, 140:2, X, related to the annual census of emotionally disabled children within the school district.

186–C:7 Individualized Education Programs.

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

II. The parents of a child with a disability have the right to participate in the development of the individualized education program for the child and to appeal decisions of the school district regarding such child's individualized education program as provided in rules adopted in accordance with RSA 541–A by the state board of education.

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

Source. 1981, 352:2. 1985, 269:5. 1987, 345:1, 4. 1990, 140:2, X; 162:4. 1992, 238:2. 1994, 379:20. 1998, 177:6, eff. Aug. 14, 1998. 2008, 274:29–32, eff. July 1, 2008; 302:40, eff. Jan. 1, 2009.

186–C:7–a Interagency Agreement for Special Education.

I. The commissioner of the department of education, the state board of education, and the commissioner of the department of health and human services shall, consistent with applicable state and federal law, enter into an interagency agreement for the purposes of:

(a) Meeting the multi-service agency needs of children with disabilities in an efficient and effective manner and without delays caused by jurisdictional or funding disputes;

(b) Providing for continuity and consistency of services across environments in which children function; and

(c) Ensuring well-planned, smooth, and effective transitions from early intervention to special education and from special education to postsecondary life.

II. This agreement shall address programs and services for children with disabilities, provided, funded, or regulated by the department and local school districts, and the department of health and human services and its local counterparts, the district offices, the area agencies, and the community mental health centers.

III. The agreement shall address the functions set forth in paragraph I including, but not limited to:

(a) Defining the specific populations to be served.

(b) Identifying and describing the services available through each agency.

(c) Describing the specific programmatic and financial responsibilities of each department, and its divisions, bureaus, and local counterparts.

(d) Estimating the costs of, and source of funds for, all services to be provided by each department.

(e) Implementing methods to ensure prompt and timely initiation of services, including criteria for determining agency responsibility for service provision and payment, which shall include:

(1) A provision permitting a parent or agency, believing that it is not responsible for the services at issue, to request the participation of another potentially responsible agency, provided that in the case of an agency request, the parent or child who has reached majority has been advised of his or her appeal rights and the parent or child, as applicable, consents to the participation of the other agency.

(2) The procedure and criteria, when more than one agency is involved, for determining who should provide and pay for the needed services, such criteria to include a requirement that the school district is responsible to provide and pay for all special education, related services, supplemental aids and services, and accommodations for children with disabilities, unless:

(A) Medicaid is responsible or the department of health and human services or another agency is required to pay; or

(B) Another agency agrees to pay voluntarily or pursuant to an agreement; or

(C) The service is primarily non-educational in nature, involving only care or custodial activities and serves no educational purpose, and does not pertain to curriculum or individualized skills or behavior change or development aimed at enabling a child to function in the school, workplace, home, and community, and are neither related services, supplementary aides, and services, or as defined by state or federal law.

(3) A procedure for dispute resolution, including a provision for binding dispute resolution, which may be initiated by any participating agency, parent, guardian, educational surrogate, or child who has reached the age of majority to determine whether or not the child is entitled to the services in dispute, when service entitlement by all agencies is in dispute, and which agency is responsible to pay and provide the service, when agency financial and programmatic responsibility is in dispute.

(4) When there is a dispute as to financial or programmatic responsibility, a provision that the local school district shall provide the service or otherwise ensure that the service is provided, subject to the local school district's right of reimbursement if another agency is found responsible.

(f) Consistent with federal and state privacy laws, provisions for state and local educational and health and human service agencies to share and exchange necessary child and program specific information and data.

IV. [Repealed.]

V. Nothing in this section shall require:

(a) A parent, guardian, or child to pay for services provided by a local school district or other local or state public educational program, if the services are educational in nature or are otherwise required by the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq.

(b) A local school district to provide any educational services beyond those required under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., or this chapter.

(c) The department of health and human services to provide services not otherwise required by other state or federal laws.

Source. 1985, 269:5. 1990, 140:2, X. 1998, 195:1, eff. June 18, 1998. 2008, 274:31, eff. July 1, 2008; 302:41, eff. Jan. 1, 2009. 2012, 264:1, I, eff. Aug. 17, 2012.

186–C:7–b Braille Instruction for Functionally Blind Pupils. In developing the individualized education program for a functionally blind pupil, there shall be:

I. A presumption that proficiency in Braille reading and writing is essential for the pupil's satisfactory educational progress. Every functionally blind pupil shall be entitled to Braille reading and writing instruction unless all members of the pupil's special education team concur that instruction in Braille or the use of Braille is not appropriate for the pupil.

II. Instruction in Braille shall be provided by a teacher certified by the state department of education to teach pupils with visual impairment.

III. An initial learning media assessment by a teacher certified in the education of pupils with visual impairment shall be conducted. This assessment shall be conducted every 3 years and reviewed annually.

Source. 1997, 114:2, eff. July 1, 1997.

186–C:7–c Rate Setting.

I. The division of educational improvement of the department of education shall ensure that each school district develops approved programs for children with disabilities in the school district.

II. The division of educational improvement of the department of education shall set an approved rate for private providers of special education services pursuant to RSA 21–N:5, I(h).

III. Such rates shall be sufficient to reflect costs and expenses of comparable or similar programs in the region or state and sufficient to provide children with disabilities with a free appropriate public education.

IV. No provider shall charge the department of education or any school district in this state an amount in excess of the rate established by the division of educational improvement of the department of education.

Source. 2008, 302:8, eff. Jan. 1, 2009.

186–C:8 Collaborative Programs.

I. School districts or school administrative units, or both, may enter into cooperative agreements in order to provide approved programs for educating children with disabilities. The state board of education, when appropriate because of a low incidence of a disabling condition, high cost of services, or scarcity of trained personnel, shall encourage such cooperative agreements and shall serve as a source of information, advice and guidance to school districts, school administrative units, or both.

II. The state board of education, together with representatives of neighboring states, shall study the feasibility of interstate agreements for the provision of services to children with disabilities.

Source. 1981, 352:2. 1985, 269:6. 1990, 140:2, X, XII, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008; 302:42, eff. Jan. 1, 2009.

186–C:9 Education Required. Each child who is determined by the local school district, or special school district established under RSA 194:60, as having a disability in accordance with RSA 186–C:2 and in need of special education or special education and related services shall be entitled to attend an approved program which can implement the child's individualized education program. Such child shall be entitled to continue in an approved program until such time as the child has acquired a regular high school diploma or has attained the age of 21, whichever occurs first, or until the child's individualized education program team determines that the child no longer requires special education in accordance with the provisions of this chapter.

Source. 1981, 352:2. 1990, 140:2, X. 1998, 270:3, eff. July 1, 1999. 2008, 302:42, eff. Jan. 1, 2009.

186–C:9–a Educationally Related Services.

[Repealed 2008, 302:33, I, eff. Jan. 1, 2009.]

History

Former RSA 186–C:9–a, which was derived from 1985, 313:1 and 1990, 140:2, X, related to educationally related services for educationally disabled children.

186–C:10 Responsibility of School District. A school district shall establish an approved program or programs for children with disabilities, or shall enter into cooperative agreements with other districts to provide approved programs for children with disabilities, or shall pay tuition to such an approved program maintained by another school district or by a private organization.

Source. 1981, 352:2. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008; 302:43, eff. Jan. 1, 2009.

186–C:11 Transportation.

[Repealed 2008, 302:33, II, eff. Jan. 1, 2009.]

History

Former RSA 186–C:11, which was derived from 1981, 352:2; 1990, 140:2, X and 2008, 274:31, related to suitable transportation for children with education plans requiring such transportation.

186–C:12 Federal Assistance. The state board of education is authorized to cooperate with the federal government or any agency of the federal government in the development of any plan for the education of children with disabilities and to receive and expend, in accordance with such plan, all funds made available to the state board of education from the federal government or any of its agencies, from the state, or from other sources. The school districts of the state are authorized to receive, incorporate in their budgets, and expend for the purposes of this chapter such funds as may be made available to them through the state board of education from the federal government or any of its agencies.

Source. 1981, 352:2. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008; 302:44, eff. Jan. 1, 2009.

186–C:13 Liability for Expenses.

I. All expenses incurred by a school district in administering the law in relation to education for

children with disabilities in need of special education and related services shall be paid by the school district where the child resides, except as follows:

(a) When a child with a disability in need of special education and related services is placed in a home for children or health care facility as defined in RSA 193:27, the liability for expenses for such child shall be determined in accordance with RSA 193:29.

(b) When a child with a disability in need of special education and related services is placed in a state facility, the liability for expenses for such child shall be determined in accordance with RSA 186–C:19.

II. For the purposes of meeting the financial obligation for expenses incurred under this chapter, a school district may exceed its annual budget to the extent of additional special education aid which the district has actually received from the state after the annual school district budget was approved.

III. No school district shall be required to pay the expenses of the education program of a child adjudicated under RSA 169–B, 169–C, or 169–D except as provided by RSA 186–C. The sending district shall be notified of a court ordered placement of a child adjudicated under the provisions of RSA 169–B, 169–C, or 169–D, and may submit recommendations to the court concerning the financial impact of the placement on the sending district and the appropriateness of the placement.

IV. When a child is enrolled pursuant to 193:3, IV, the district in which the child resides shall retain the liability for expenses as set forth in this section.

Source. 1981, 352:2; 568:142; 574:6. 1982, 39:1. 1985, 313:2; 368:3. 1990, 140:2, X. 1998, 177:3, eff. Aug. 14, 1998. 2008, 274:30, 31, eff. July 1, 2008; 302:45, eff. Jan. 1, 2009. 2010, 316:3, eff. Sept. 11, 2010.

186–C:14 Surrogate Parents.

I. PURPOSE. The purpose of this section is to protect the educational rights of eligible children with disabilities.

II. DEFINITIONS. The following words as used in this section shall be construed as follows:

(a) "Surrogate parent" shall mean a person appointed to act as a child's advocate in place of the child's biological or adoptive parents or guardian in the educational decision-making process.

(b) "Educational decision-making process" shall include identification, evaluation, and placement as well as the hearing, mediation, and appeal procedures.

(c) [Repealed.]

(d) [Repealed.]

III. DETERMINING NEED.

(a) When a child with a disability, as defined in RSA 186–C:2, needs special education and the parent or guardian of the child is unknown or after reasonable efforts cannot be located, or the child is in the legal custody of the division of children, youth, and families, the commissioner, or designee, may appoint a surrogate parent who shall represent the child in the educational decision-making process, provided that for a child in the legal custody of the division of children, youth, and families, a judge overseeing the child's case pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. section 1415(b)(2)(A)(i), may appoint a surrogate parent.

(b) In the case of a child who is an unaccompanied youth as defined in the McKinney–Vento Homeless Assistance Act, 42 U.S.C. section 11434a(6), the school district shall appoint a surrogate parent pursuant to this section.

IV. APPOINTMENT OF SURROGATE. Appointment of a surrogate parent under this section shall be effective until the child reaches 18 years of age, and may be extended by order of the commissioner until the child graduates from high school or reaches 21 years of age, whichever occurs first. If the surrogate parent resigns, dies or is removed, the commissioner of the department of education or designee, or the court with jurisdiction over the child's case, may appoint a successor surrogate parent in the same manner as provided in paragraph III.

V. RIGHT OF ACCESS. When a surrogate parent is appointed, the surrogate parent shall have the same right of access as the natural parents or guardian to all records concerning the child. These records shall include, but not be limited to, educational, medical, psychological and health and human service records.

VI. LIMITED LIABILITY. No surrogate parent appointed pursuant to the provisions of paragraph III or IV shall be liable to the child entrusted to the surrogate parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such surrogate parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.

VII. RULES. The state board of education shall adopt rules necessary for the administration of the provisions of this section.

Source. 1981, 352:2. 1986, 223:16. 1988, 172:1–3. 1990, 140:2, X. 1996, 195:1. 1998, 177:4. 2002, 158:2, 3. 2004, 99:3, eff. Jan. 1, 2005. 2008, 274:30, 31, eff. July 1, 2008; 302:46, eff. Jan. 1, 2009.

186–C:14–a Foster Parent Representation of Foster Children With Disabilities.

I. A foster parent or parents may be appointed by the commissioner of the department of education that he or she has the knowledge and skills to represent the child adequately in services or designee, or by the director of a child placing agency licensed under RSA 170–E that has placed the child with the foster parent or parents, to make educational decisions on behalf of a foster child for the duration of the foster placement, provided that:

(a) The birth parents' parental rights have been terminated by a court of law or by death; and

(b) Each such foster parent:

(1) Is in an ongoing, long-term parental relationship with the child, as determined by the commissioner of the department of education or the child placing agency;

(2) Is willing to make the educational decisions required of parents under state and federal law;

(3) Has no interest that would conflict with the interests of the child; and

(4) Has demonstrated to the satisfaction of the commissioner of the department of education that he or she has the knowledge and skills to represent the child adequately in educational decision-making.

II. A foster parent appointment pursuant to this section shall supersede the appointment of a surrogate parent under RSA 186–C:14.

III. A foster parent acting as a parent shall have the same right of access as the birth parents or guardians to all records concerning the child. These records shall include, but are not limited to, educational, medical, psychological, and health and human service records.

IV. No foster parent appointed to act in the capacity of a parent under this section shall be liable to the child entrusted to the foster parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such foster parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.

V. The state board of education shall adopt rules, pursuant to RSA 541–A, necessary for the implementation of this section.

Source. 2002, 205:2. 2004, 99:3, eff. Jan. 1, 2005. 2008, 302:14, 15, 16, eff. Jan. 1, 2009.

186–C:15 Length of School Year.

I. The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child's individualized education program team determines that such services are necessary to provide the child with a free appropriate public education.

II. The length of the school year and school day for a preschool child with a disability shall be determined by the child's individualized education program team and shall not be governed by the school district's school calendar. A free appropriate public education shall be provided to a preschool child with a disability as of the child's third birthday and when the child's individualized education program team determines that services are necessary to provide a free appropriate public education to the child.

Source. 1981, 352:2. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:30, eff. July 1, 2008; 302:47, eff. Jan. 1, 2009.

186–C:16 Rulemaking. The state board of education shall adopt rules, pursuant to RSA 541–A, and consistent with the provision of a free appropriate public education, relative to:

I. Developing individualized education programs;

II. Approving and monitoring special education programs;

III. Reporting the number of children with disabilities in a school district;

IV. Requesting administrative due process hearings and appealing a final administrative decision;

V. Determining eligibility for participation in approved programs;

VI. Appointing surrogate parents;

VII. Determining the length of the school year for children with disabilities; and

VIII. Other matters related to complying with provisions of this chapter.

Source. 1981, 352:2. 1990, 140:2, X. 1992, 114:1, eff. June 30, 1992. 2008, 274:31, eff. July 1, 2008; 302:48, eff. Jan. 1, 2009.

186–C:16–a Special Education Hearing Officers. Hearing officers appointed by the department of education to hear special education impartial due process appeals shall have the authority to compel the attendance of witnesses in accordance with RSA 516:1 including issuing subpoenas for parents who are

representing themselves. Any costs incurred in issuing a subpoena shall be the responsibility of the party requesting the subpoena, unless otherwise determined by the hearing officer. The state board of education may adopt rules pursuant to RSA 541–A to implement the provisions of this section, including guidelines to be used for consideration by the hearing officers in determining the responsibility of costs of the subpoena. Nothing in this section shall prohibit any justice from issuing a subpoena for such hearing in accordance with RSA 516:3.

Source. 1991, 325:1, eff. Jan. 1, 1992.

186–C:16–b Due Process Hearing; Appeal.

I. Any action against a local school district seeking to enforce special education rights under state or federal law shall be commenced by requesting an administrative due process hearing from the department of education within 2 years of the date on which the alleged violation was or reasonably should have been discovered.

II. Notwithstanding the provisions of paragraph I, any action against a local school district to recover the costs of a unilateral special education placement shall be commenced by requesting an administrative due process hearing from the department of education within 90 days of the unilateral placement.

III. Where the parent, legal guardian or surrogate parent has not been given proper written notice of special education rights pursuant to 20 U.S.C. section 1415(d), including notice of the time limitations established in this section, such limitations shall run from the time notice of those rights is properly given. The department of education shall make available a model notice of rights which school districts may use as one means of complying with this paragraph.

IV. An appeal from a final administrative decision in a special education due process hearing to a court of competent jurisdiction pursuant to 20 U.S.C. section 1415(i)(2)(A) shall be commenced within 120 days from receipt of the final decision. All such decisions shall be sent certified mail, return receipt requested.

V. An action pursuant to 20 U.S.C. section 1415(i)(3) seeking reimbursement for attorney's fees or seeking reimbursement for expert witness fees shall be commenced within 120 days from receipt of the final decision in accordance with RSA 186–C:16–b, IV. All such decisions shall be sent certified mail, return receipt requested.

(a) The court may award reimbursement to a parent of a child with a disability for expert witness fees incurred as part of a due process complaint at which the parent was the prevailing party and when the court determines that a school has not acted in good faith in developing or implementing a child's individualized education program, including appropriate placement.

(b) The court may deny or reduce reimbursement of expert witness fees if the hearing officer determines:

(1) The expert witness was not a necessary component to the parent's complaint.

(2) The expert witness fee exceeds an amount that is reasonable, given the type and location of the service provided and the skill, reputation, and experience of the expert witness.

(3) The parent, or the parent's attorney, did not provide notice to the school district of their intent to have the expert witness participate in the due process hearing.

VI. Where a unilateral placement has been made, without the school district of residence being offered a reasonable opportunity to evaluate the child and to develop an individualized education program, reimbursement may not be sought for any costs incurred until the school district is given an opportunity to evaluate the child and develop an individualized education program.

Source. 1992, 114:2, eff. June 30, 1992. 2008, 274:32, eff. July 1, 2008; 302:19, eff. Jan. 1, 2009.

186–C:16–c Rules Exceeding State or Federal Minimum Requirements.

I. Whenever the state board of education proposes to adopt or amend any special education rule which exceeds the minimum requirements of state or federal law, the state board shall, in addition to the provisions of RSA 541–A, issue a report of all such proposed rules which meets the following requirements:

(a) For each rule or proposed rule contained in the report, the state board shall include the rule number, the nature of the rule, any state minimum requirement exceeded, any federal minimum requirement exceeded, and the reasons for exceeding those minimum requirements.

(b) The report shall be issued to the chairpersons of the house and senate education committees.

(c) A copy of the report shall be distributed to the superintendent of each school district in the state.

II. By December 1 of each year, the commissioner of the department of education shall issue a report

of all special education rules, proposed or adopted, which exceed the minimum requirements of state or federal law. This report shall meet the requirements of paragraph I.

Source. 2012, 210:1, eff. June 13, 2012.

186–C:17 Limitation of Provisions. Nothing in this chapter shall be construed as authorizing any public official, agent, or representative, in carrying out any of the provisions of this chapter to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child except pursuant to a proper court order.

Source. 1981, 352:2, eff. July 1, 1981.

186–C:18 State Aid.

I. [Repealed.]

II. [Repealed.]

III. (a) The state board of education through the commissioner, department of education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for whose costs they are responsible, for whom the costs of special education in the fiscal year exceed 3 ½ times the estimated state average expenditure per pupil for the school year preceding the year of distribution. If in any year, the amount appropriated for distribution as special education aid in accordance with this section is insufficient therefor, the appropriation shall be prorated proportionally based on entitlement among the districts entitled to a grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed for court-ordered placements under RSA 186–C:19–b. The state may designate up to $250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the state board of education, may qualify for emergency assistance for special education costs. Upon application to the commissioner of education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain children with disabilities, it shall not receive special education aid for those same children with disabilities. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be used to assist school districts in meeting special education cost increases in their special education programs as provided by this paragraph.

(b) The school district shall be liable for 3–½ times the estimated state average expenditure per pupil for the school year preceding the year of distribution, plus 20 percent of the additional cost, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

(c) The department of education shall be liable for 80 percent of the cost above the 3–½ times the estimated state average expenditure per pupil for the school year preceding the year of distribution, up to 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. The department of education shall be liable for all costs in excess of 10 times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

IV. The state shall appropriate an amount for each fiscal year to assist special education programs that are statewide in their scope, and that meet the standards for such programs established by the state board of education. Funds under this paragraph shall be administered and distributed by the state board of education through the commissioner.

V. The state board of education shall adopt rules pursuant to RSA 541–A relative to:

(a) Prescribing the forms to be used to apply for any benefit covered by any other subparagraph of this paragraph;

(b) Administering and distributing aid;

(c) [Repealed.]

(d) School districts applying for special education aid under paragraph III;

(e) School districts identifying special education costs under paragraph III;

(f) Establishing standards for statewide special education programs under paragraph IV.

VI. The state board of education shall distribute through the commissioner:

(a) Special education aid payments under paragraph III on or before January 1, provided that school districts shall annually submit their special education costs for the immediately preceding school year to the state board of education by July 31. The state board of education shall then verify the cost and distribute the appropriate amounts for the previous year on or before January 1 of each year.

(b) Aid to statewide special education programs under paragraph IV.

VII. In Cheshire county, upon request of such a school district and upon approval by the county convention, the county may raise and appropriate funds to pay a portion of such costs for special education under this section.

VIII. A school district shall raise, appropriate and expend funds, reflecting the total cost in meeting special education student costs as provided under this section, including the school district and department of education liability. A school district may issue reimbursement anticipation notes as provided for in RSA 198:20–d to be redeemed upon receipt of reimbursement from the state. The department of education shall be liable for the cost of the school districts borrowing of any funds for special education student costs over 3-½ times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

IX. When a student for whom a district receives state aid for special education under this section transfers to another school district during the school year, both the district liability and the reimbursement under this section shall be prorated among such districts. This proration shall be based upon the number of school days that the student was a resident of each district.

X. Unexpected special education costs incurred by a school district which are eligible for reimbursement from the state pursuant to RSA 186–C:18, III and which could not be identified prior to the adoption of the local district budget shall be exempt from the provisions of RSA 32:8, RSA 32:9 and RSA 32:10.

XI. (a) The state board of education, through the commissioner of the department of education, shall distribute to school districts the lesser of 3.5 percent or $1,000,000 in special education aid funds appropriated in the fiscal year, to establish or support school district-based programs for children with disabilities who have been in out-of-district programs in the previous school year. Funds shall be distributed to school districts as reimbursement for the establishment or support of such programs and shall be applied to the greater of the following:

(1) Supplemental costs incurred by the school district for educating the child within a local school district program; or

(2) The amount the school district received to educate the child in an out-of-district program, with the school district receiving in year one, 70 percent of the special education aid the school district received from the previous school year, which would constitute the base year; in year 2, 50 percent of the special education aid the school district received during the base year, and in year 3, 30 percent of the special education aid the school district received during the base year.

(b) The state board of education shall adopt rules, pursuant to RSA 541–A, establishing procedures pursuant to this paragraph for reimbursement to school districts.

Source. 1981, 352:2. 1982, 39:11. 42:63. 1985, 244:6–8, 15, X; 320:1. 1987, 294:5, 6. 1988, 222:1. 1989, 357:1, 2. 1990, 140:2, X. 1992, 238:1, 3. 1996, 195:2. 1998, 243:1. 1999, 341:1, 2. 2001, 56:1. 2003, 215:2, eff. Aug. 30, 2003. 2008, 274:31, eff. July 1, 2008; 302:21, eff. Jan. 1, 2009. 2011, 224:227, eff. July 1, 2011. 2017, 156:96–100, eff. July 1, 2017.

186–C:19 Children With Disabilities in Certain State Facilities.

I. For a child with a disability in a state facility, the school district responsible for selecting and funding the child's special education or special education and related services shall be as follows:

(a) If such child is in the legal custody of the parent, the school district in which the child's parent resides shall be the liable school district.

(b) If such child is not in the legal custody of the parent, or if the parent resides outside the state, the school district in which the child most recently resided other than in a state facility, home for children or health care facility as defined in RSA 193:27 shall be the liable school district.

(c) For the purposes of this section a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or any other state, shall determine legal custody under this section.

II. For a child with a disability in a state facility, the responsible school district shall be liable for all expenses incurred in administering the law in relation to children with disabilities.

III. Nothing in paragraphs I or II of this section shall diminish the responsibility of the financially liable school district as defined in paragraphs I and II to develop and implement an individualized education program or to fulfill its obligations under other sections of this chapter for a child with a disability in a state facility, regardless of whether such child was initially placed by a school district, the parent or some other agent.

IV. "State facility" as used in this section means any state operated facility for children and youth with disabilities.

Source. 1982, 39:2. 1985, 195:7; 241:3; 355:1, 2. 1988, 107:5. 1990, 140:2, X, eff. June 18, 1990. 2008, 274:30 to 33, eff. July 1, 2008; 302:49, eff. Jan. 1, 2009.

186–C:19–a Children with Disabilities at the Youth Development Center, County Correctional Facilities and the Youth Services Center.

I. For a child with a disability at the youth development center or county correctional facilities, or who is placed at the youth services center maintained by the department of health and human services while awaiting disposition of the court following arraignment pursuant to RSA 169–B:13, the school district responsible for the development of an individualized education program and the child's special education expenses shall be as follows:

(a) If such child is in the legal custody of the parent, the school district in which the child's parent resides shall be responsible.

(b) If such child is not in the legal custody of the parent or if the parent resides outside the state, the school district in which the child most recently resided other than in a state institution, home for children or health care facility as defined in RSA 193:27 shall be responsible.

(c) For the purposes of this section a parent shall not have legal custody if legal custody has been awarded to some other person or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this section.

II. The school district liability for educational expenses for a child with a disability in the youth development center or county correctional facilities, or who is placed in the youth services center while awaiting disposition of the court following arraignment pursuant to RSA 169–B:13, shall not exceed the state average elementary cost per pupil, as determined by the state board of education for the preceding school year.

Source. 1983, 458:10. 1985, 241:4. 1987, 402:24. 1990, 3:57, 58; 140:2, X. 1994, 212:2. 1995, 181:9. 1997, 337:1. 1998, 270:4. 2001, 286:19, eff. Sept. 14, 2001. 2008, 274:30–32, eff. July 1, 2008.

186–C:19–b Liability for Children With Disabilities in Certain Court Ordered Placements.

I. (a) As used in this section "children in placement for which the department of health and human services has financial responsibility" means all children receiving special education or special education and related services whose placements were made pursuant to RSA 169–B, 169–C, or 169–D, except children at the youth development center and children placed at the youth services center maintained by the department of health and human services while awaiting disposition of the court following arraignment pursuant to RSA 169–B:13.

(b) In the case of an out-of-district placement, the appropriate court shall notify the department of education on the date that the court order is signed, stating the initial length of time for which such placement is made. This subparagraph shall apply to the original order and all subsequent modifications of that order.

II. The school district liability for expenses for special education or for special education and related services for a child with a disability in placement for which the department of health and human services has financial responsibility shall be limited to 3 times the estimated state average expenditure per pupil, for the school year preceding the year of distribution. The liability of a school district under this section shall be prorated if the placement is for less than a full school year and the district shall be liable for only the prorated amount. This section shall not limit a school district's financial liability for children who receive special education or special education and related services in a public school or program identified in RSA 186–C:10.

(a) Any costs of special education or special education and related services in excess of 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution shall be the liability of the department of education. Costs for which the department of education is liable under this section shall be paid to education service providers by the department of education. The department of education shall develop a mechanism for allocating the funds appropriated for the purposes of this section.

(b) The department of health and human services shall be liable for all court-ordered costs pursuant to RSA 169–B:40, 169–C:27, and 169–D:29 other than for special education or special education and related services.

(c) The department of education shall distribute special education payments under subparagraph II(a) within 60 days of receipt of invoice from the school district. School districts shall submit education service providers costs to the department within 30 days of receipt of such costs. The department shall then verify the cost and distribute

the appropriate amounts to the education service provider.

III. The department of education shall by rules adopted under RSA 541–A establish the rates charged by education service providers to the department of education or to school districts for children with disabilities in placement for which the department of health and human services has financial responsibility.

IV. The department of education is authorized to receive and take appropriate action on complaints regarding the failure to provide necessary special education or special education and related services to children with disabilities in placement for which the department of health and human services has financial responsibility.

V. All appropriations made for the purposes of funding court-ordered placements shall be nonlapsing.

Source. 1986, 223:15. 1987, 402:25. 1990, 3:59; 140:2, X; 162:2. 1991, 324:4. 1992, 238:5. 1994, 212:2. 1995, 181:10; 308:20; 310:181. 2001, 286:19. 2005, 10:1, eff. July 2, 2005. 2008, 274:30, 31, 33, eff. July 1, 2008.

186–C:20 Special Education Program of the Youth Services Center. Notwithstanding the provisions of any other law to the contrary, the expenses for a child with a disability receiving services at the special education program at the youth services center maintained by the department of health and human services shall be the responsibility of the liable school district so assigning the child. Such a school district shall pay the rate established for the special education program of the center.

Source. 1982, 39:2. 1985, 195:8. 1990, 3:60; 140:2, X. 1994, 212:2. 1995, 181:11. 2001, 286:19, eff. Sept. 14, 2001. 2008, 274:30, eff. July 1, 2008; 302:50, eff. Jan. 1, 2009. 2017, 195:2, eff. Sept. 3, 2017.

186–C:21 Executive Planning Commission on Special Education.

[Repealed 2011, 231:2(5), eff. Dec. 31, 2011.]

History

Former RSA 186–C:21, which was derived from 1985, 317:2; 1990, 140:2, X; 1994, 379:20; 1995, 310:181; 2007, 328:2; 2008, 274:31; and 2009, 202:14, related to the executive planning commission on special education.

186–C:22 Development of In-state Services for Severely Emotionally Disturbed Children.

[Repealed 2007, 328:3, eff. July 1, 2007.]

History

Former RSA 186–C:22, which was derived from 1985, 317:2; 1990, 140:2, X; 1992, 198:1; 1994, 379:20; and 1995, 310:150, 181, related to development of in-state services for severely emotionally disturbed children.

Alternative Dispute Resolution

186–C:23 Alternative Dispute Resolution.

I. In order to encourage informal resolution of differences of opinion regarding the provision of special education, the following methods of alternative dispute resolution shall be available to parents and school districts:

(a) Neutral conference.

(b) Mediation.

(c) [Repealed.]

II. To assist parents and schools, this subdivision requires the local education agency to notify the department of education in writing that an individualized education program, educational placement, identification, or evaluation of a child has been rejected by the parent, and establishes a 30-day period for discussion beginning on the date such notice is received by the department of education. Immediately following notification, the department shall communicate to the parent a description of the alternative dispute resolution process. While the use of these informal resolution procedures is strongly encouraged, it is not mandatory for either party. If this option is chosen by both parties, the department shall, during the 30-day period, schedule and conduct an alternative dispute resolution conference. The conference shall not be used to delay a due process hearing; however, both parties may agree to postpone the hearing pending a resolution.

III. Alternative dispute resolution proceedings shall be confidential and shall not impair the right of the participants to demand a due process hearing. Information, evidence, or the admission of any party shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there was an alternative dispute resolution proceeding or any other matter concerning the conduct of such proceedings. The authority of the department of education in alternative dispute resolution proceedings initiated under this section shall be limited to the provisions of paragraphs I and II.

IV. There shall be no record made of any alternative dispute resolution proceedings.

V. Evidence that would otherwise be admissible in a due process hearing or in a subsequent court hearing shall not be rendered inadmissible as a result

of its use in an alternative dispute resolution proceeding.

Source. 1990, 162:1. 1994, 223:2. 2005, 10:2, eff. July 2, 2005. 2008, 302:20, eff. Jan. 1, 2009. 2015, 24:1, eff. July 4, 2015.

186–C:23–a Local School District Alternative Dispute Resolution Programs.

I. Each school district in New Hampshire is encouraged to develop options for alternative dispute resolutions which can be utilized at the local district level. A plan outlining these methods may be submitted to the department of education for review. The department shall provide technical assistance at the request of the school districts in developing and implementing these alternative dispute resolution options.

II. Local school districts and parents are encouraged to submit to the department of education information relating to methods of alternative dispute resolution which have proven to be effective. Pursuant to RSA 21–N:6, VII, the department shall develop a system whereby such information can be collected, compiled, and disseminated to local school districts.

Source. 1994, 223:3, eff. May 27, 1994.

186–C:23–b Neutral Conference.

I. Neutral conference shall consist of an informal, abbreviated presentation of case facts and issues by the parties to a neutral who is responsible for reviewing the strengths and weaknesses of the case and issuing a recommendation. If the neutral conference is selected, the department of education shall provide the parties with resumes of 5 neutrals. The parties shall agree to the selection of one neutral to preside at the conference. Following such selection, the department shall schedule the neutral conference and shall provide the parties with the neutral's name and address, the time, date, and place of the neutral conference, and the date by which the parties shall furnish the neutral with required information and documentation.

II. (a) Not less than 5 days prior to the neutral conference, the parties shall submit to the neutral and exchange a summary of the significant aspects of their case. The parties shall attach to the summary copies of all documents on which they rely. Such summaries shall be not more than 4 pages.

(b) Parties shall not communicate with the neutral concerning their case.

(c) At the neutral conference, the parties shall be present and shall have authority to authorize settlement.

(d) If the neutral deems it necessary, such neutral may request additional written information prior to the conference from either party. At the neutral conference, the neutral may address questions to the parties and shall allow each party no more than 30 minutes to complement their written summaries with a brief oral statement. The conference shall be limited to not more than 2 hours.

(e)(1) At the conclusion of the oral statements, the neutral shall issue an oral opinion to the parties. The opinion shall contain a suggested settlement or disposition and the reasons therefor.

(2) If the neutral conference results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party.

(3) If the neutral conference does not result in agreement, the neutral shall document only the date and the participants at the meeting. No other record of the neutral conference shall be made. The neutral shall not be called as a witness at any additional proceedings in the specific case in which such neutral participated.

(4) The neutral shall advise the department of education that the neutral conference has taken place.

III. (a)(1) The neutral who presides at a conference shall have experience with children with disabilities and shall have knowledge of special education law, rules, and regulations.

(2) The neutral shall not have personal knowledge of the student or involvement with the school district.

(3) [Repealed.]

(b) Upon receipt of notice of appointment in a case, the neutral shall disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or to prevent the process from proceeding as scheduled. If the neutral withdraws, has a conflict of interest, or is otherwise unavailable, another shall be appointed by the commissioner of education.

(c) The participants and counsel shall recognize that the neutrals shall not be acting as legal advisors or legal representatives.

IV. The department of education shall evaluate the effectiveness of the alternative dispute resolution procedures annually and shall report its findings to the State Advisory Council required by the Individuals with Disabilities Education Act.

Source. 1994, 223:3. 1997, 89:2, eff. Aug. 2, 1997. 2008, 302:27, eff. Jan. 1, 2009.

186–C:24 Mediation; Procedure.

I. When disputes arise under this chapter, mediation shall be available through the office of the commissioner, department of education. Mediation shall be provided in accordance with the following:

(a) Attempts to resolve conflicts between the parent or parents and a school district are encouraged.

(b) Either party may be accompanied and advised at mediation by individuals with special knowledge or training with respect to the needs of children with disabilities. At least 5 days prior to the mediation conference, the mediator shall contact the parties to determine whether either party will be accompanied by an individual with special knowledge or training and shall notify the other party if such an individual will be in attendance.

II. Mediation shall be provided as follows:

(a) A request for mediation shall be made in writing by either party to the commissioner of education. The mediation request shall specify the issue or issues in dispute and the relief sought;

(b) A mediation conference shall be conducted within 30 calendar days after receipt of a written request at which time:

(1) Issues shall be determined;

(2) Options explored; and

(3) Mediation attempts made within New Hampshire law.

(c) The role of the mediator shall be:

(1) To facilitate communication.

(2) To define the issues and explore alternatives.

(3) To remain neutral.

(d) The mediation conference shall be:

(1) Informal; and

(2) Held at a time and place reasonably convenient and mutually agreeable to the parties in the dispute.

(e) If the mediation results in agreement, the conclusions shall be incorporated into a written binding agreement signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made. The mediator shall not be called as a witness in any additional proceedings in the specific case that the mediator mediates.

(f) The mediator may terminate the mediation after at least one meeting if in the mediator's judgment the parties are not making progress toward resolving the issue or issues in dispute.

(g) Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree to the change.

III. The commissioner shall:

(a) Appoint impartial mediators.

(b) Assure that mediators receive appropriate training.

(c) Assign mediators on a regional basis.

Source. 1990, 162:1. 1996, 195:3, eff. Aug. 2, 1996. 2008, 302:28, eff. Jan. 1, 2009.

Medicaid to Schools Program

186–C:25 Medicaid to Schools Program Established.

I. There is established within the department of health and human services a Medicaid reimbursement program to be known as the "Medicaid to schools" program providing medical assistance for covered services furnished to children with disabilities. The purpose of the program is to seek Medicaid reimbursement for services provided by local school districts and school administrative units to children with disabilities which are reimbursable under federal law but which were previously fully funded by such districts or administrative units. The program shall be voluntary and is designed to assist children with disabilities by maintaining them in their own homes and communities. This subdivision is intended to provide Medicaid funding for services which, in the absence of such funding, nevertheless qualify as special education or related services under this chapter. It is not the intention of this subdivision to increase school district responsibility or liability beyond what is required by other sections of this chapter.

II. Eligible services may be provided to children with disabilities and may include, but shall not be limited to, the following:

(a) Screening, evaluation, and diagnostic services.

(b) Speech pathology and audiology.

(c) Occupational and physical therapy.

(d) Any other service which qualifies as a special education or related service under RSA 186–C or federal law and which also qualifies for reimbursement under Medicaid as a covered service.

III. Services provided under this subdivision shall:

(a) Offer the least restrictive setting for children receiving the services.

(b) Be provided to children in conformity with any medical criteria necessary for Medicaid reimbursement.

(c) Be in addition to any special education program as defined in the New Hampshire Rules for the Education of Children with Disabilities.

(d) Be provided only after obtaining informed parental consent.

IV. The commissioner of the department of health and human services, after consultation with the commissioner of the department of education, shall adopt rules, pursuant to RSA 541–A, relative to:

(a) State plans and reimbursement procedures necessary for local school districts or school administrative units to receive appropriate Medicaid reimbursement for eligible services under paragraph II of this section that are provided or paid for by school districts or school administrative units. Such rules shall recognize the financial obligation of the department of health and human services, and that any disputes between the department of health and human services and a school district or school administrative unit regarding whether such reimbursement is required shall be resolved pursuant to RSA 186–C:7–a.

(b) Monitoring mechanisms to ensure that services provided under this subdivision meet the requirements of paragraph III of this section. Monitoring responsibilities shall be consistent with the jurisdiction of the different departments.

(c) A financial mechanism by which the federal mandatory matching requirement is met through collection, or other means, of 50 percent of the cost of allowable services from local school districts and/or school administrative units.

V. The commissioner of the department of health and human services, after consultation with the commissioner of the department of education, shall adopt rules, pursuant to RSA 541–A, relative to further defining services eligible for medicaid reimbursement under this subdivision.

VI. New Hampshire local school districts or school administrative units shall be the enrolled Medicaid providers for the purpose of administration and billing.

VII. Beginning on September 1, 2018, the commissioner of the department of health and human services shall submit an annual report to the senate president, the speaker of the house of representatives, and the chairpersons of the house and senate finance committees regarding the total cost of the Medicaid to schools program and the number of students who received services through the program during the prior school year.

Source. 1990, 272:1. 1995, 310:151, eff. Nov. 1, 1995. 2008, 302:26, eff. Jan. 1, 2009. 2017, 187:2, eff. Aug. 28, 2017.

186–C:26 Eligible Services.

[Repealed 2008, 302:33, III, eff. Jan. 1, 2009.]

History

Former RSA 186–C:26, which was derived from 1990, 272:1, related to eligible services for children requiring special educationally-related services.

186–C:27 Rulemaking.

[Repealed 2008, 302:33, IV, eff. Jan. 1, 2009.]

History

Former RSA 186–C:27, which was derived from 1990, 272:1; 1994, 212:2 and 1995, 310:152, 182, related to rulemaking regarding reimbursement to local school districts for eligible services provided by the schools.

186–C:28 Enrolled Providers; Administration and Billing.

[Repealed 2008, 302:33, V, eff. Jan. 1, 2009.]

History

Former 186–C:28, which was derived from 1990, 272:1, related to enrolled medicaid providers for the purpose of administration and billing.

Medicaid-Funded Services

186–C:29 Medicaid-Funded Services.

I. Medicaid-funded services that are provided as part of a child's individualized education program (IEP) shall be provided for the sole purpose of enabling the child to benefit from special education or to receive a free and appropriate public education. If a child receives Medicaid-funded services as part of the child's special education program and also receives the same or similar medical services outside of his or her special education program, the services that are provided outside of the child's special education program shall not be considered to be duplicative provided such services are medically necessary and not inconsistent with federal Medicaid law. Medicaid-funded services that are provided as part of a child's individualized education program shall not be considered to be duplicative services if the child receives the same or similar medical services outside of his or her special education program, provided both services are medically necessary and not inconsistent with federal Medicaid law.

II. Services are considered to be Medicaid-funded if they are funded in full or in part by Medicaid.

III. Medicaid providers, managed care providers, or private providers receiving full or partial payment

through Medicaid shall not require a parent to provide a copy of a child's individualized education program as a prerequisite to determining if a child is eligible for Medicaid-funded services that are not being provided as part of a child's individualized education program.

IV. Upon request from the state Medicaid agency or its agent, the local education agency shall provide a list of related services specified in the child's IEP that are eligible for Medicaid reimbursement.

Source. 2014, 211:1, eff. Sept. 9, 2014.

Commission to Study Issues Relating to Students Receiving Special Education Services While Attending a Chartered Public School

186–C:30 Commission Established.

[Repealed 2015, 120:2, eff. Nov. 1, 2016.]

History

Former RSA 186–C:30, which was derived from 2015, 120:1, related to a commission which studied issues regarding students receiving special education services while attending chartered public schools.

CHAPTER 187

THE STATE COLLEGE AND UNIVERSITY

[Repealed 1981, 331:2, eff. Aug. 16, 1981.]

History

Former RSA 187:1, which was derived from 1866, 4216:1; GS 11:1; GL 11:1; PS 11:1; PL 180:1; and RL 222:1, related to the New Hampshire college of agriculture and the mechanic arts. See now RSA 187–A:2.

Former RSA 187:2, which was derived from 1866, 4216:1; GS 11:1; GL 11:1; PS 11:2; PL 180:2; and RL 222:2, related to the leading object of the college of agriculture and the mechanic arts. See now RSA 187–A:5, I.

Former RSA 187:3, which was derived from 1923, 106:1; PL 180:3; RL 222:3; RSA 187:3; and 1963, 303:2, related to the university of New Hampshire. See now RSA 187–A:3.

Former RSA 187:4, which was derived from 1923, 106:4; PL 180:4; RL 222:4; RSA 187:4; 1961, 46:1; 1969, 380:1; and 1975, 189:1, related to the departments of the university. See now RSA 187–A:4.

Former RSA 187:4–a, which was derived from 1963, 303:1 and 1977, 567:1, related to the designation of Keene state college, Plymouth state college and Merrimack valley college. See now RSA 187–A:11.

Former RSA 187:4–b, which was derived from 1963, 303:1 and 1971, 103:1, related to the purposes and procedures of the state colleges. See now RSA 187–A:11, III.

Former RSA 187:4–c, which was derived from 1977, 567:2, related to the purposes of Merrimack valley college.

Former RSA 187:5, which was derived from 1866, 4216:2; GS 11:2; GL 11:2, 3; 1887, 43:1; PS 11:3, 4; 1891, 52:5; 1911, 54:1; 1913, 214:1; PL 180:5; 1927, 71:1; 1929, 70:1; RL 222:5; RSA 187:5; 1963, 303:3; 1965, 107:1; 1971, 161:1; 1974, 28:4, 5; 1977, 50:1, 567:3; and 1979, 124:1-3, related to the board of trustees. See now RSA 187–A:13.

Former RSA 187:5–a, which was derived from 1971, 161:2; 1974, 28:6; and 1977, 567:4, related to the chairman, meetings, quorum and compensation of the board of trustees. See now RSA 187–A:15.

Former RSA 187:6, which was derived from 1923, 106:2, PL 180:6; and RL 222:6, was previously repealed by 1963, 303:4, and related to persons constituting the board of trustees.

Former RSA 187:7, which was derived from 1923, 106:3; PL 180:7; and RL 222:7, related to the duties of the trustees generally and the application of gifts and bequests made to the college or the state. See now 187–A:16, VII, XIV and RSA 187–A:21.

Former RSA 187:8, which was derived from 1923, 106:5; PL 180:9; 1927, 105:1; RL 222:8; RSA 187:8; 1963, 303:6; 1974, 28:3, 38:26; and 1977, 567:5 to 7, related to the powers of the trustees. See now RSA 187–A:16.

Former RSA 187:8–a, which was derived from 1961, 23:1 and 1977, 121:1, related to the acquisition of fire and other casualty insurance. See now 187–A:16, XXI.

Former RSA 187:8–b, which was derived from 1977, 600:105, related to the state manual of procedure relative to state-owned motor vehicles. See now RSA 187–A:23.

Former RSA 187:9, which was derived from 1955, 44:1, related to the authority of the trustees to enter into contracts and agreements with other institutions for education of students in fields not provided for in state college or university. See now RSA 187–A:16, XII.

Former RSA 187:10, which was derived from 1950, 7:6; 1953, 226:10; RSA 187:10; and 1963, 303:5, was previously repealed by 1974, 38:28, and related to dormitory rentals. See now RSA 187–A:16, XXII.

Former RSA 187:10–a, which was derived from 1974, 38:27, related to special funds for self-amortizing projects. See now RSA 187–A:18.

Former RSA 187:11, which was derived from 1866, 4216:5; GS 11:4; GL 11:4; PS 11:15; PL 180:9; and RL 222:9, related to the compensation of the trustees. See now RSA 187–A:15, V.

Former RSA 187:12, which was derived from 1866, 4216:3; GS 11:3; GL 11:3; PS 11:6; PL 180:10; RL 222:10; and 1951, 122:1, related to the secretary and treasurer of the board of trustees. See now RSA 187–A:15, II.

Former RSA 187:13, which was derived from 1866, 4216:3, 6; GS 11:3, 6; PS 11:7; PL 180:11; and RL 22:11, related to the appointment of a faculty of instruction. See now RSA 187–A:16, VI.

Former RSA 187:14, which was derived from 1866, 4216:3, 6; GS 11:3, 6; GL 11:3, 6; PS 11:7; PL 180:12; and RL 222:12, related to free tuition for indigent students. See now RSA 187–A:19.

Former RSA 187:14–a, which was derived from 1972, 54:1 and 1977, 567:8, related to the waiver of tuition for children of certain members of the armed forces. See now RSA 187–A:20.

Former RSA 187:15, which was derived from 1866, 4216:5; GS 11:5; GL 11:5; PS 11:9; 1895, 32:1; PL 180:13; RL 222:13; RSA 187:15; and 1973, 140:21, related to trustees' filing of an annual report with the governor and council. See now RSA 187–A:22.

Former RSA 187:16, which was derived from 1866, 4216:7; GL 11:10; 1883, 83:1, 2; PS 11:10; PL 180:14; and RL 222:14, related to a fund derived from the sale of a scrip of land of the United States. See now RSA 187–A:5, IV.

Former RSA 187:17, which was derived from 1872, 45:1; GL 11:11; PS 11:11; PL 180:15; RL 222:15; RSA 187:17; and 1963, 177:1, related to the investment of funds of the institution by the finance committee. See now RSA 187–A:17.

Former RSA 187:18, which was derived from 1951, 175:1, par. 15–a, related to the John G. Winant Memorial Foundation. See now RSA 187–A:24.

Former RSA 187:19, which was derived from 1951, 175:1, par. 15–b, related to the trustees of the university of New Hampshire as trustees of the John G. Winant Memorial Foundation. See now RSA 187–A:24.

Former RSA 187:20, which was derived from 1951, 175:1, par. 15–c, related to the powers of the trustees of the John G. Winant Memorial Foundation. See now RSA 187–A:24.

Former RSA 187:21, which was derived from 1891, 2:1; PL 180:16; and RL 222:16, related to acceptance of grants of money authorized by act of congress, approved August 30, 1890. See now RSA 187–A:5, II.

Former RSA 187:22, which was derived from 1891, 2:2; PL 180:17; and RL 222:17, related to the treasurer of the New Hampshire college of agriculture and mechanic arts as custodian of grants received by act of congress, approved Aug. 30, 1890. See now RSA 187–A:5, II.

Former RSA 187:23, which was derived from 1947, 219:1; 1951, 241:1; RSA 187:23; 1957, 312:1; 1965, 357:1; 1967, 363:1; 1973, 233:1; and 1979, 79:1, related to county extension work. See now RSA 187–A:6.

Former RSA 187:24, which was derived from 1925, 111:1, 2; PL 180:18; RL 222:18; 1947, 37:1; and 1951, 228:1, related to the university of New Hampshire fund based on taxable property in the state. See now RSA 187–A:7.

Former RSA 187:25, which was derived from 1925, 111:3; PL 180:19; 1931, 5:2; and RL 222:19, related to the uses of the fund provided for in RSA 187–A:7, II.

Former RSA 187:26, which was derived from 1925, 111:4; PL 180:20; and RL 222:20, related to the payment of the state fund provided for in RSA 187:24. See now RSA 187–A:8.

Former RSA 187:27, which was derived from 1925, 111:5; PL 180:21; and RL 222:21, related to borrowing on the credit of the university. See now RSA 187–A:16, XVII.

Former RSA 187:28, which was derived from 1925, 111:6; PL 180:22; and RL 222:22, related to income received from sources other than the state fund. See now RSA 187–A:16, XIV.

Former RSA 187:29, which was derived from 1925, 111:7; PL 180:23; RL 222:23; 1949, 224:1; RSA 187:29; 1967, 44:1; and 1973, 387:1, related to non-resident students generally. See now RSA 187–A:10.

Former RSA 187:30, which was derived from 1949, 224:2, related to the limitation on out-of-state enrollment. See now RSA 187–A:10.

Former RSA 187:30–a, which was derived from 1973, 387:2, related to reciprocal exchange of students with other states and foreign countries. See now RSA 187–A:16, XX.

Former RSA 187:31, which was derived from 1949, 224:2; 1953, 43:1; RSA 187:31; and 1969, 160:1, related to limitations on out-of-state students in certain divisions of the university. See now RSA 187–A:10.

Former RSA 187:32, which was derived from 1895, 107:1; PL 180:24, related to a 2 years' course in practical and theoretical agriculture. See now RSA 187–A:9.

Former RSA 187:33, which was derived from 1895, 197:1; PL 180:25; RL 222:25; RSA 187:33; and 1969, 160:2, related to diplomas awarded for 2-year programs. See now RSA 187–A:9.

Former RSA 187:34, which was derived from 1895, 107:3; PL 180:26, and RL 222:26, was previously repealed by 1969, 160:3, and related to the amount of practical instruction contained in the 2-year programs.

Former RSA 187:35, which was derived from 1895, 107:2; PL 180:27; and RL 222:27, was previously repealed by 1969, 160:4, and related to the establishment of a department of horticulture

Former RSA 187:36, which was derived from 1891, 52:1; PS 11:13; PL 180:33; and RL 222:30, related to construction of chapter as it concerns the removal of the New Hampshire college of agriculture and the mechanic arts from Hanover. See now RSA 187:A:5, V.

Former RSA 187:37, which was derived from 1897, 75:1; PL 180:34; and RL 222:31, related to tax exemption of state college and university property. See now RSA 187–A:25.

Former RSA 187:38, which was derived from 1973, 289:1, related to the state university system study committee. See now RSA 187–A:28–a.

Former RSA 187:39, which was derived from 1973, 289:1, related to the duties of the state university system study committee. See now RSA 187–A:28–a.

Former RSA 187:40, which was derived from 1973, 289:1, related to the state university system study committee's report to the legislature and other government officials. See now RSA 187–A:28–a.

Former RSA 187:41, which was derived from 1973, 289:1, related to acceptance of aid and grants from any source for the purposes of the university system study committee. See now RSA 187–A:28–a.

CHAPTER 187–A

STATE COLLEGE AND UNIVERSITY SYSTEM

University System

187–A:1 The University System of New Hampshire. The university system of New Hampshire is established and made a body politic and corporate, the main purpose of which shall be to provide a well coordinated system of public higher education offering liberal undergraduate education encompassing the major branches of learning, emphasizing our cultural heritage, and cultivating the skills of reasoning and communication. The university system shall provide for professional and technical 2-year, 4-year and graduate programs which serve the needs of the state and the nation; for research which contributes to the welfare of mankind, to the development of the faculty, and to the educational experience of students; and for its faculty and staff to bring educational resources and professional experience to the benefit of the state and its people. The university system of New Hampshire is authorized to grant and confer in the name of the university system of New Hampshire all such degrees, literary titles, honors and distinctions as other universities may of right do.

Source. 1981, 331:1. 1983, 420:3, eff. June 24, 1983.

187–A:2 Components of the University System. The university system of New Hampshire shall consist of the university of New Hampshire (including the New Hampshire college of agriculture and the mechanic arts and its other colleges, schools and divisions), the Plymouth state university, the Keene state college, and the Granite state college.

Source. 1981, 331:1. 1985, 140:1. 1993, 109:1. 2003, 159:1. 2005, 13:1, eff. May 9, 2005.

187–A:2–a Governance. The university system shall be governed by a single board of trustees who shall be responsible for ensuring that its components, each having a unique character and educational mission, operate as a well coordinated system of public higher education.

Source. 1983, 420:4, eff. June 24, 1983.

187–A:2–b Legislative Oversight.

I. The general court finds that because of the importance of public higher education, elected officials should be aware of the activities and needs of the university system, exercising their responsibility for legislative oversight through (1) the consideration by the appropriate legislative committees of proposed legislation pertaining to the university system; and (2) the consideration of reports filed by the university system pursuant to RSA 187–A:16 and 187–A:22.

II. The general court also recognizes the need to protect the institutions of the university system from inappropriate external influence which might threaten the academic freedom of faculty members or otherwise inhibit the pursuit of academic excellence. To this end, the general court has delegated broad authority to the board of trustees who shall be responsible for managing the university system in a manner which promotes academic excellence and serves the educational needs of the people of New Hampshire.

Source. 1983, 420:4. 1995, 10:5, eff. April 12, 1995.

187–A:2–c Identification Cards. If a college or university of the university system issues identification cards to students, all cards issued after January 1, 2014 shall bear a date of issuance.

Source. 2013, 278:2, eff. July 24, 2013.

University of New Hampshire

187–A:3 University of New Hampshire. A university is established and made a body politic and corporate, by the name of the "University of New Hampshire", the object of which shall be to teach such branches of learning and to prosecute such researches as may be necessary and desirable in the education of youth and advancement and development of the arts, the sciences and the industries, including the education and training of teachers for the public school systems of the cities and towns of

the state, and of such nature, scope and standard as usually prevail in the tax supported universities of the several states. Such university is authorized to grant and confer in the name of the university of New Hampshire all such degrees, literary titles, honors and distinctions as other universities may of right do including associate, baccalaureate, master's and doctor's degrees. The trustees of said university are further authorized to define and prescribe the standard, scope and nature of the instruction and attainments necessary in order to qualify for such degrees, titles, honors and distinctions and to issue such bulletins, announcements and reports as may be found necessary or desirable in publishing and defining the standard, scope, quality and nature of the educational work of the corporation.

Source. 1981, 331:1. 1983, 239:11, eff. June 18, 1983.

187–A:4 Colleges and Schools. The university shall include a college of engineering and physical sciences, a college of liberal arts, a college of life sciences and agriculture, a school of business and economics, a school of health studies, a college at Manchester, a graduate school, and may include a school of social work and such other colleges, schools, departments and divisions as are consistent with such organization.

Source. 1981, 331:1. 1985, 140:2, eff. July 1, 1985.

187–A:5 College of Agriculture and Mechanic Arts. The New Hampshire college of agriculture and the mechanic arts shall be a division of the university of New Hampshire, established pursuant to the provisions of RSA 187–A:3.

I. The leading object of the college shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in conformity to an act of congress entitled "An act donating land to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts", approved July 2, 1862.

II. The state gives its assent to the purpose of and accepts for the benefit of the New Hampshire college of agriculture and the mechanic arts the grants of money authorized by act of congress, approved August 30, 1890, for the further endowment and support of the colleges for the benefit of agriculture and the mechanic arts and "to be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural and economic science, with special reference to their application in the industries of life and the facilities for such instruction," as provided in said act of congress. The treasurer of the university of New Hampshire shall receive all grants of money made to this state under the provisions of said act of congress.

III. The work of the college shall be carried on in connection with, and as a part of the work of, the university, in such manner as to be consistent with the provisions of the aforesaid act of congress and the supplements to and amendments of said act, and with the terms of the bequest made to the state by Benjamin Thompson of Durham, and of other gifts made to the college or to the state for the benefit of the college, and with the continuance of the corporate existence of the college as a division of the university of New Hampshire.

IV. The funds derived from the sale of land scrip of the United States, and now in the possession of the state, shall be held by it as a trust fund for the benefit of the college of agriculture and the mechanic arts until otherwise ordered by the legislature; and the state shall pay to the treasurer of the university of New Hampshire, semi-annually, interest on the fund at the rate of 6 percent per annum.

V. Nothing in this chapter shall repeal any of the provisions of the laws of 1891, 361, entitled "An act providing for the removal of the New Hampshire college of agriculture and the mechanic arts from Hanover to Durham, and for other purposes".

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:6 County Programs; University of New Hampshire Cooperative Extension Outreach Programs.

I. The purpose and intent of university of New Hampshire cooperative extension programs shall be as provided in RSA 24:10.

II. The university of New Hampshire cooperative extension shall, through its county outreach centers, take full advantage of communication technologies and distance-learning capabilities to bring university-based research and knowledge to the citizens of New Hampshire.

III. The memorandum of understanding between the division of forests and lands (DRED) and the university of New Hampshire cooperative extension, which provides cooperative extension with funds for forest education purposes, shall continue.

IV. The state recognizes and applauds the relationships between cooperative extension and other state agencies and encourages the development and

continuance of the memorandum of understanding between the appropriate parties.

V. There shall be appropriated annually by the state a sum of money consistent with the purpose of conducting cooperative extension outreach programs in the various counties of the state in cooperation with the appropriate federal agencies and the counties and in furtherance of the so-called Smith-Lever Act as accepted by the state under the provisions of the laws of 1915, 194 and 195. The sums appropriated shall be expended through the university of New Hampshire cooperative extension to support outreach programs in the counties.

Source. 1981, 331:1. 1985, 49:3. 1995, 134:13, eff. May 24, 1995.

187–A:7 The State Fund.

I. For the purpose of providing a fund to be known as the university system of New Hampshire fund, the state treasurer shall credit to such fund the appropriation made to the university system for each fiscal year.

II. All sums so credited are appropriated to said university system for the support and maintenance thereof, including payments of salaries and wages to employees, and current expenses; the construction of additional buildings; the taking of land by eminent domain; the purchase of land, library books, and periodicals; the making of necessary repairs and replacements; the building of roads and walks; the improvement of the grounds; the construction, extension and maintenance of water, sewer and heating systems; and in general for the payment of all such expenses incident to the management of the university system as the trustees thereof may from time to time determine.

III. This fund shall constitute a continuing appropriation for the benefit of the university system. Any amount remaining to the credit of the university system at the close of any fiscal year shall be carried over and credited to its account for the succeeding year. No part of the fund shall be used for the payment of salaries or expenses of extension service agents resident in the counties of the state.

Source. 1981, 331:1. 1986, 27:1, eff. June 30, 1986.

187–A:8 Payment of State Fund. Money in the state fund shall be paid to the treasurer of the university system on manifests approved by the governor and council in the same manner as other state claims are paid; provided, that there shall be advanced to the treasurer such money as may be requested by the treasurer of the university system and approved by the governor and council; and provided, further, that manifests covering the money so advanced shall be submitted according to regular procedure at the earliest practicable time.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:9 Two-Year Course. A 2-year course in practical and theoretical agriculture is established in the Thompson school of applied science of the university of New Hampshire, to which students shall be admitted who can pass such fair and reasonable examination in reading, spelling, writing, arithmetic, English grammar, and the geography and history of the United States as may be approved by the trustees. In this course students are not required to take higher mathematics or any foreign language. In addition, they may take any other exercises or studies for which they are qualified and which are provided by the Thompson school of applied sciences or the university of New Hampshire in other courses. Those who successfully complete said 2-year program of instruction in the Thompson school of applied science shall receive an appropriate associate degree as authorized by the trustees.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:10 Out-of-State Students. The number of undergraduate students enrolled in the university of New Hampshire from domiciles outside the state in any year shall not exceed 25 percent of the maximum capacity for regular undergraduate students at the university as determined by the board of trustees. The limitation on out-of-state enrollment at the university may be suspended by vote of the board of trustees whenever the trustees find that such suspension benefits the state and the university without impairing the opportunity for qualified students of the state of New Hampshire to attend the university. However, any such suspension shall be made for not more than one year at a time but may be continued from year to year upon vote of said trustees. The limitation on out-of-state enrollment at the university of New Hampshire shall not apply to the following divisions of the university: Thompson school of applied science, summer school and graduate school. Nor shall the limitation apply to students attending the university under reciprocal agreements and contracts with other educational institutions.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:10–a Consulting Center. The university of New Hampshire consulting center shall be an administrative unit of the university of New Hampshire research office. The consulting center shall report to the director of the research office and, through the director, to the vice president for aca-

demic affairs. The purpose of the consulting center shall be:

I. To promote interaction between the faculty and students of the university of New Hampshire and members of the private sector, nonprofit organizations, and state and local governmental units.

II. To aid New Hampshire businesses, nonprofit organizations, and state and local governmental units by providing access to the facilities and expertise offered by the university of New Hampshire.

III. To address the needs of clients, who may be either public or private organizations, by forming project teams composed of faculty and students of the university of New Hampshire. The purpose of the project teams shall be to find solutions to client problems.

IV. To promote the transfer of technology from the university to New Hampshire businesses and industries.

Source. 1983, 56:4, eff. May 3, 1983.

Other Colleges Within System

187–A:11 Keene State College, Plymouth State University, and Granite State College.

I. Keene state college is established and made a body corporate and politic and a division of the university system of New Hampshire.

II. Plymouth state university is established and made a body corporate and politic and a division of the university system of New Hampshire.

II–a. Granite state college is established and made a body corporate and politic and a division of the university system of New Hampshire and is authorized to award associate, baccalaureate, and masters degrees.

III. Keene state college and Plymouth state university shall be multipurpose institutions of higher education providing instruction in the liberal arts and sciences and in selected applied fields to better serve the needs of its respective area. Each institution shall continue to provide special instruction in teacher training. Procedures for integrating the various functions of these colleges shall be developed by the board of trustees as the need for integration and coordination arises.

IV. Keene state college and Plymouth state university are hereby authorized to offer 2–year programs and to award the degree of associate in arts or associate in science to those who successfully complete such programs. Keene state college and Plymouth state university are also authorized to award a baccalaureate degree or a master's degree. Plymouth state university is authorized to award a doctoral degree.

Source. 1981, 331:1. 1983, 239:9. 2003, 159:1, Aug. 1, 2003. 2008, 215:1, eff. June 16, 2008. 2011, 76:1, eff. July 1, 2011.

187–A:12 Merrimack Valley College.

[Repealed 1985, 140:9, eff. July 1, 1985.]

History

Former RSA 187–A:12, which was derived from 1981, 331:1 and 1983, 239:12, related to the purpose and programs of Merrimack valley college.

Administration

187–A:13 Trustees of University System. The general government of the university system and its constituent divisions and institutions shall be vested in a single board of trustees composed as follows and in accordance with the following conditions:

I. Eight ex-officio members: the governor of the state, the chancellor of the university system, the commissioner of agriculture, markets, and food, the commissioner of education, the president of the university of New Hampshire, the president of Plymouth state university, the president of Keene state college, the president of the Granite state college.

II. Ten members appointed by the governor with the advice and consent of the council.

III. (a) Two members shall be students enrolled at Keene state college, Plymouth state university, Granite state college, or the university of New Hampshire who shall serve as student trustees, for the term indicated in this paragraph, on a rotating basis in the order listed below:

(1) One student each from the university of New Hampshire and Plymouth state university.

(2) One student each from Plymouth state university and Granite state college.

(3) One student each from Granite state college and Keene state college.

(4) One student each from Keene state college and the university of New Hampshire.

(b) The student trustees shall be elected by the student body at the school responsible for providing the student trustees. The term of the student trustees shall be for one year commencing July 1 of the year for which the student was elected and ending June 30 of the next year. Student trustees shall be expected to serve the full duration of their elected term. In the event that a student trustee ceases for any reason to attend the school from which the student was elected, the chancellor of the

university system shall declare a vacancy in that student trustee position, and the school causing the vacancy shall elect a replacement student trustee who shall serve for the remainder of the predecessor's term. Graduation of a student trustee shall not constitute a vacancy under this paragraph.

IV. Four members elected by the alumni of the university of New Hampshire.

V. One member elected by the alumni of Keene state college.

VI. One member elected by the alumni of Plymouth state university.

VII. One member elected by the alumni of Granite state college.

[Paragraph VIII repealed by 2015, 276:250 effective December 1, 2018.]

VIII. The senate president or designee from the senate leadership, who shall be a nonvoting member.

[Paragraph IX repealed by 2015, 276:250 effective December 1, 2018.]

IX. The speaker of the house of representatives or designee from the house leadership, who shall be a nonvoting member.

At all times, 2 members of the board shall be farmers and both major political parties shall be represented on the board.

Source. 1981, 331:1. 1983, 420:5. 1995, 130:5; 134:14. 1998, 334:1. 1999, 281:1, 2. 2000, 23:1, 2. 2003, 159:1. 2005, 13:2, eff. May 9, 2005. 2011, 76:2, eff. July 1, 2011. 2015, 276:248, 249, eff. Sept. 16, 2015.

187–A:14 Terms of Trustees.

I. The terms of office of the appointed and elected members, except the student member, shall be 4 years. The terms of the elected members and student member, shall end on June 30.

II. Each member, except the student member, shall hold office until a successor is appointed and qualified. The appointment of successors for the filling of vacancies for unexpired terms shall be by appointment or election in the same manner as the original appointment, except that a vacancy in an alumni trustee position shall be filled in accordance with the bylaws of the alumni association at the institution with which the position is associated.

Source. 1981, 331:1. 1995, 134:15. 1998, 334:2. 2002, 3:1, eff. April 8, 2002.

187–A:15 Operation of Board of Trustees.

I. The board shall elect its own chairperson annually.

II. The board shall choose a secretary, who shall keep a record of proceedings, and a treasurer, who shall give a bond satisfactory to the trustees for the faithful discharge of duties as treasurer. The trustees may, in their discretion, require a bond for any other persons employed by or administering the affairs of the institutions of the university system. Said trustees shall determine the amount and sufficiency of the surety of said treasurer's bond or any other bonds required under this section.

III. The board shall meet at such times and places as it may determine but shall hold at least one meeting each year at Keene state college and one at Plymouth state university. The chairperson shall call special meetings upon the written request of any 5 members or on the chairperson's own motion.

IV. Fourteen members shall constitute a quorum for the transaction of business, but not less than 14 affirmative votes shall be required to elect the chancellor of the university system or a college or university president;

V. Members shall receive no compensation for their services but shall be reimbursed for expenses reasonably incurred by them in the performance of their duties.

Source. 1981, 331:1. 1985, 140:3. 1994, 158:12. 1995, 134:16. 2000, 23:3. 2003, 159:1, eff. Aug. 16, 2003.

187–A:16 Authority of the Trustees. The trustees shall have the management and control of all the property and affairs of the university system of New Hampshire, the university of New Hampshire (including the New Hampshire college of agriculture and the mechanic arts), and all its divisions and departments, the Keene state college, the Plymouth state university, and the Granite state college. They shall not change the name of the Plymouth state university, the Keene state college, or the Granite state college nor shall they cease operating these colleges without legislative authority. It is the intent of the general court that the trustees, when exercising their responsibilities under this chapter, recognize and foster the unique character and educational mission of each institution of the system. To this end, the institutions are to be permitted to operate with the highest measure of autonomy and self-governance, subject to the supervision of the board of trustees. In addition to this general authority, the trustees are authorized to:

I. Appoint and fix the compensation of a president of the university of New Hampshire, a president of Keene state college, a president of Plymouth state university, and a president of the Granite state col-

lege, who shall be the chief academic and administrative officers of their respective institutions. The chief executive officer of each institution shall have the authority for and be responsible for the general administration and supervision of all aspects of the institutional, research and service programs of that institution.

II. Appoint and fix the compensation and duties of the administrative officers of each component institution of the university system.

III. Appoint and fix the compensation of a chancellor of the university system who shall serve as the chief executive officer of the university system, as the university system's primary liaison with the general court and other elements of state government, and as chief spokesman for the university system. The chancellor shall serve as chairperson of the administrative board of the university system, leading and coordinating the efforts of the chief officers of the component institutions of the university system, and shall have such other duties as the board of trustees may determine.

IV. Establish an administrative board, comprised of the chief executive officers of each component institution together with the chancellor of the university system, which shall be the coordinating body for the university system. The board is responsible for recommending and implementing policies and procedures which assist the campus presidents in discharging their responsibilities in such a manner as to provide for maximum institutional initiative and responsibility within a unified university organization.

V. Appoint and fix the compensation and duties of such other university system administrators as are needed to provide a well coordinated system of public higher education. These system administrators shall provide assistance needed by the component institutions in order to fulfill their individual educational missions and shall provide services which facilitate coordination in order to serve the educational needs of the people of New Hampshire.

VI. Appoint a faculty of instruction, prescribe their duties, and invest them with such powers for the immediate government and management of each institution as the trustees may deem conducive to the best interests of each institution and the university system.

VII. Accept legacies and other gifts to or for the benefit of the university or any of its divisions or departments.

VIII. Accept all moneys accruing to the institutions of the university system, all moneys appropriated by or received from the government of the United States or the state of New Hampshire, all dividends and interest accruing to these institutions, all gifts of securities and property, real and otherwise, all grants and matching funds from any source, and all monies from sales, tuition fees, admissions and guarantees and from bills receivable.

IX. Acquire water by purchase, development or otherwise and to construct reservoirs or water towers, erect pumping machinery, lay water mains and pipes, install gates, valves and hydrants.

X. Furnish and sell water in the town of Durham to manufacturers, private corporations and individuals for fire protection, manufacturing and domestic use, and collect payment or rentals for the same.

XI. Construct and maintain sewers, culverts, conduits and pipes, with all necessary inlets and appliances for surface, under surface and sewage drainage for the health, comfort and convenience of the inhabitants and the sanitary improvement of the town of Durham, and fix and regulate the price of connection therewith to corporations, firms and individuals.

XII. Enter into agreements and contract with other colleges and universities for the purpose of further education of any qualified New Hampshire student in fields of study not provided for in the curricula of the university system or any of its divisions or component institutions.

XIII. Contract with any city or town in this state for the maintenance of practice schools therein in connection with its teacher-trainees and to provide for the payment of such portion of the compensation of the supervising teachers employed in said practice schools as it may deem just and equitable.

XIV. Authorize the retention by Keene state college or Plymouth state university of the income received and due from all sources, including bequests, trusts, student fees and tuition charges, rents, sales and any other income from whatever source derived, and to authorize the use thereof in such manner as the trustees may determine or as may be provided by law or by the conditions incident to the trusts, gifts and bequests involved.

XV. Transfer funds among the institutions of the university system, and their divisions and departments, when such action shall appear necessary and in the best interests of the state and the institutions of the university system.

XVI. Employ such other persons as may be necessary to carry out the purposes for which the university system and any of its divisions or component institutions have been created and to prescribe their duties.

XVII. By and with the consent of the governor and council, borrow on the credit of the university system in anticipation of income, for the purpose of forwarding its building program, not exceeding $500,000 in any one fiscal year. All amounts so obtained in any fiscal year shall be repaid from the income of the next succeeding fiscal year.

XVIII. Establish a differential in the rate of tuition to be charged all in-state and out-of-state students based on the dual legislative policy of:

(a) Limiting the number of out-of-state students who may attend the university system; and

(b) Giving due weight to the fact that the support of the university system is substantially dependent upon legislative appropriations derived from revenue contributed by persons domiciled within the state of New Hampshire.

XIX. Adopt rules pursuant to RSA 541–A establishing criteria for determining whether students shall be classified as in-state students or out-of-state students for tuition purposes, and to delegate the administration of such rules to a subcommittee or agent. Any student in the university system who is aggrieved by a final determination of the board of trustees or of any subcommittee or agent of the board denying in-state status for tuition purposes may appeal to the superior court in the county in which the particular division of the university involved is located. Such appeal shall be filed within 30 days after the final determination by the board of trustees. In the superior court, the burden of proof shall be on the appellant to show that the determination of the board of trustees is unreasonable or unlawful and all findings by the board or its properly designated subcommittee or agent shall be deemed to be prima facie lawful and reasonable. The determination of the board of trustees shall be set aside only if, on all the evidence, the court is satisfied that it is unlawful or unreasonable according to the policy as set forth in this section, and additional criteria as may be established and published, to the student bodies of the institutions constituting the university system by the board of trustees.

XX. Enter into agreements with appropriate agencies and institutions of higher education in other states and foreign countries providing for the reciprocal exchange of students. Such agreement may include provisions for waiver or reduction of out-of-state tuition rates for designated categories of students and may include contractual payments to such out-of-state institutions within the availability of appropriations. The board shall have the power to make such agreements on a continuing basis with mutual credits and offsets which need not be balanced in any given year. One purpose to be accomplished thereby shall be to make available to in-state students of the university system educational facilities not available within the state of New Hampshire in exchange for acceptance by the university system of out-of-state students from jurisdictions where such facilities are made available for New Hampshire students.

XXI. Acquire all risk insurance to cover donated property, real and personal, and to cover the equipment of New Hampshire public television as may be essential to remain eligible for federal funding of public television, notwithstanding the provisions of RSA 9:27 to the contrary; provided, however, that the costs of such insurance shall be borne by New Hampshire public television from private moneys and that no state funds shall be used for this purpose.

XXII. Maintain and operate all housing facilities, dining halls or other food service facilities, student unions, and bookstores for students and faculty on all campuses of the university system, and to collect rents from such facilities.

XXIII. Require every student admitted after December 31, 2012 and receiving the in-state rate of tuition to execute an affidavit attesting he or she is a legal resident of the United States.

Source. 1981, 331:1. 1983, 145:1; 420:6. 1985, 140:4-6; 250:3. 1993, 109:2. 1995, 134:17, 18. 2000, 23:4. 2003, 159:1. 2005, 13:3, eff. May 9, 2005. 2012, 247:4, 23, eff. Aug. 17, 2012; 260:1, eff. Jan. 1, 2013.

187–A:16–a Prohibition on Preferential Treatment and Discrimination.

I. Within the state college and university system, there shall be no preferential treatment or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

Source. 2011, 227:2, eff. Jan. 1, 2012.

187–A:16–b Freedom of Association. No institution within the university system of New Hampshire which accepts state funds shall prohibit, as a condition of admission or continued enrollment, any student from becoming a member of any group or organization, nor shall an institution take disciplinary action against a student based solely on the student's membership in a group or organization.

Source. 2012, 69:1, eff. July 14, 2012.

Finances

187–A:17 Investments. The governor, the treasurer of the university system, and 3 members of the board of trustees, to be selected by the board of trustees, shall constitute a finance committee who may, except as provided in RSA 187–A:8, make such changes from time to time in the investment of the funds of the institutions of the university system as their interests, in the committee's judgment, may require.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:18 Special Funds for Self-amortizing Projects. The trustees of the university system shall keep the income from each of the following specified facilities in a separate fund for each division or campus of the university system: housing facilities, dining halls and other food service facilities, student unions, and bookstores. From each such fund shall be paid the proportionate part of the annual interest on the state borrowing for the purpose of constructing any of the 4 specified facilities at the particular division or campus, and a like proportionate payment of installments of principal as the same become due until such time as all obligations incurred by the state for any of said 4 facilities at any division or campus have been met. All operating and maintenance expenses of the 4 specified facilities shall be paid from the applicable separate fund.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:19 Free Tuition. The trustees of the university system shall furnish free tuition to indigent students, so far as practicable.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:20 Tuition Waived. If a person is domiciled in this state while serving in or with the armed forces of the United States and is, after February 28, 1961, reported or listed as missing, or missing in action, or interned in a neutral country, or beleaguered, beseiged or captured by the enemy during the South East Asian conflict, any child of such person, enrolled after August 16, 1981, in the university of New Hampshire, Plymouth state university, or Keene state college shall, so long as said person is so reported, listed, interned, beleaguered, beseiged or captured, not be required to pay tuition for attendance at such institutions. Any person entitled to free tuition under this section shall apply to the board of trustees of the university system, and said board may require such proof as they may deem necessary in order for a person to qualify for free tuition under this section.

Source. 1981, 331:1. 1985, 140:7. 2003, 159:1, eff. Aug. 16, 2003.

187–A:20–a Tuition Waived for Children of Certain Firefighters and Police Officers; Room and Board Scholarships.

I. A person who is a New Hampshire resident, who is under 25 years of age, and who enrolls in a program leading to a certificate, associate, or bachelor degree at any public postsecondary institution within the state shall not be required to pay tuition for attendance at such institution if he or she is the child of a firefighter or police officer who died while in performance of his or her duties, and whose death was found to be compensable pursuant to RSA 281–A.

II. (a) Any person entitled to a waiver of tuition under this section may apply for a room and board scholarship while attending the institution, to the extent of available funds. The board of trustees of the university system of New Hampshire and the board of trustees of the community college system of New Hampshire shall have the authority to develop policies for their respective institutions relative to the development of criteria for awarding scholarships, development of scholarship application forms, application deadlines, scholarship amounts, provisions for continuing eligibility, and other procedures necessary to administer the room and board scholarships.

(b) There is hereby established in the office of the state treasurer a nonlapsing fund to be known as the room and board scholarship fund. The state treasurer shall invest the fund pursuant to RSA 6:8 and earnings shall be added to the fund. The fund shall be continually appropriated to the university system of New Hampshire for the purpose of providing room and board scholarships as provided in this section, and shall not be diverted or used for any other purpose. The board of trustees of the university system of New Hampshire and the

board of trustees of the community college system of New Hampshire may apply for and accept gifts, grants, and donations from any source to be used for the purpose of providing room and board scholarships as provided in this section.

Source. 2004, 249:4, eff. July 1, 2004. 2009, 76:1, eff. Aug. 8, 2009. 2011, 224:130, eff. July 1, 2011. 2013, 164:4, eff. June 28, 2013.

187–A:20–b Tuition Waiver for Children in State Foster Care or Guardianship.

I. An eligible individual who enrolls full-time in a program leading to a certificate, associate, or bachelor degree at any public postsecondary institution within the state shall not be required to pay tuition or fees for attendance at such institution.

II. In this section, an eligible individual is a person who is less than 23 years of age and who is or was:

(a) In state foster care for the immediate 6-month period prior to his or her 18th birthday;

(b) In state guardianship or custody at the time of his or her 18th birthday;

(c) Adopted while in state guardianship or adopted from the care, custody, and control of the department following a surrender of parental rights; or

(d) In an out-of-home placement under the supervision of the division for juvenile justice services at the time of his or her 17th birthday.

III. (a) Eligible individuals interested in a tuition waiver shall annually apply on forms provided and within the deadlines established by the university system of New Hampshire and the community college system of New Hampshire for their respective institutions. No more than 10 tuition waivers per year shall be granted by the university system of New Hampshire and no more than 10 tuition waivers per year shall be granted by the community college system of New Hampshire. The university system of New Hampshire and the community college system of New Hampshire shall have the authority to develop eligibility criteria for their respective institutions designed to give the children with the greatest financial need first priority in the tuition waiver program. Such eligibility criteria shall also include provisions for continuing eligibility based on continued full-time enrollment and satisfactory academic progress as defined by the institution.

(b) Beginning November 1, 2008, and no later than November 1 each year thereafter, the division of children, youth, and families shall submit a report to the health and human services oversight committee, established in RSA 126–A:13, and the house children and family law committee, or their successor committees, detailing the status of the tuition waiver program.

IV. An eligible individual may also apply for a room and board scholarship under the provisions of RSA 187–A:20–a, II without having to comply with the provisions of RSA 187–A:20–a, I.

Source. 2011, 224:131, eff. July 1, 2011. 2013, 164:4, eff. June 28, 2013.

187–A:20–c Waiver of Residency Requirement for In-State Tuition For Veterans. A veteran of the armed forces who establishes a residence in New Hampshire shall immediately after establishing such residence be eligible for in-state tuition rates when attending any institution in the university system of New Hampshire.

Source. 2014, 121:1, eff. June 16, 2014.

187–A:21 Other Income. The income received and due to the institutions of the university system from all other sources, including bequests, trusts, income from bequests and trusts, student fees and tuition charges, rents, sales, and any other income, from whatever source derived for the institutions of the university system, shall be retained by the treasurer of the university system and be used in such manner as the trustees may determine or as is provided by law or by the conditions incident to trusts, gifts, or bequests.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:22 Reports.

I. The trustees shall file with the governor and council, by November 1 of each year, a report of the operations, progress and financial condition of the university system and its constituent institutions. They shall include in the report an account of improvements made. One copy thereof shall be transmitted to each college endowed under the act of Congress cited in RSA 187–A:5, I; one copy to the Secretary of the Interior; one copy to the legislative fiscal committee; one copy to the house education committee and one copy to the senate education committee.

II. [Repealed.]

Source. 1981, 331:1. 1983, 420:7, eff. June 24, 1983. 2012, 247:40, IV, eff. Aug. 17, 2012.

187–A:23 Motor Vehicle Regulations. Other provisions of law notwithstanding, the university system of New Hampshire is hereby directed to adopt the provisions of the state manual of procedure relative to stateowned motor vehicles as promulgated by

governor and council as may be amended. The annual report of motor vehicle operations shall also be filed in the same manner and in the same detail as that prescribed for all other state agencies. The university shall purchase compact cars consistent with the policy established for all state agencies.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:24 John G. Winant Memorial Foundation. There is hereby established a charitable and educational foundation to be known as the John G. Winant memorial foundation. The purpose of said foundation shall be to administer a fund in memory of the late John G. Winant for aid to needy students at the university of New Hampshire, with special emphasis upon assistance to students majoring in economics and social welfare.

I. The trustees of the university system of New Hampshire and their successors are hereby constituted the trustees of the foundation. The trustees shall receive no compensation for their services to the foundation, except expenses reasonably incurred by them shall be paid from its funds.

II. The trustees may receive by gift, grant, devise or otherwise and may hold, possess and enjoy for the purposes of the foundation real and personal estate and shall likewise have the power to invest and reinvest its holdings of real or personal property according to the best judgment of the board of trustees. The income from any property real or personal held by said trustees under the provisions of this section shall be expended for charitable and educational purposes as set forth in this section.

Source. 1981, 331:1, eff. Aug. 16, 1981.

187–A:25 Tax Exemption. The property of the university system of New Hampshire and each of its constituent institutions and divisions is exempt from taxation, as provided in RSA 72:23.

Source. 1981, 331:1. 2006, 205:3, eff. May 31, 2006.

187–A:25–a Audit. The governor shall be a member ex officio of each audit committee appointed by the board of trustees. The governor may designate another member of the board of trustees to serve in the governor's place as a member of the audit committee. The board of trustees shall submit to the governor, for concurrence, the board's recommendation with respect to the selection of external auditors. The external auditors selected by the board of trustees shall render their report and findings to the board of trustees, to the governor, and to the legislative fiscal committee. Such auditors shall provide to the governor and to the legislative fiscal committee any information normally provided to the audit committee and shall respond to any request from the governor or from the legislative fiscal committee relative to the financial conditions, operations, and systems of the university that the board reviewed during its audit.

Source. 1983, 420:12. 1995, 134:19, eff. May 24, 1995.

Public Higher Education Study Committee

187–A:26 to 187–A:28 Repealed.

[Repealed 1995, 10:16, V, eff. April 12, 1995.]

History

Former RSA 187–A:26, which was derived from 1981, 331:1; 1983, 420:8; 1985, 140:8; and 1993, 109:3, related to the establishment of a university system study committee. See now RSA 187–A:28–a.

Former RSA 187–A:26–a, which was derived from 1983, 420:9, related to membership of the committee. See now RSA 187–A:28–b.

Former RSA 187–A:27, which was derived from 1981, 331:1 and 1983, 420:10, related to duties of the committee. See now RSA 187–A:28–c.

Former RSA 187–A:28, which was derived from 1981, 331:1 and 1983, 420:11, related to reports and recommendations of the committee. See now RSA 187–A:28–d.

187–A:28–a Public Higher Education Study Committee. Educational opportunity in New Hampshire must involve all the components of education. The general court acknowledges that education does not start or end at any particular point. There is hereby established a permanent public higher education study committee for the state of New Hampshire. The study committee shall be composed of 8 members and shall examine the goals, purposes, organization, and financing of public higher education in New Hampshire, and shall evaluate and make recommendations on the university of New Hampshire, Plymouth state university, Keene state college, the Granite state college, and the community college system of New Hampshire.

Source. 1995, 292:2. 1998, 260:2. 2003, 159:1. 2005, 13:4. 2007, 361:11, eff. July 17, 2007.

187–A:28–b Membership. The committee shall be appointed as follows: 3 senators, including the chairperson of the senate education committee and a member of the senate finance committee, by the president of the senate; 5 representatives, including the chairperson and at least 2 other members of the house education committee and a member of the house finance committee, by the speaker of the house of representatives. The chair of the study committee shall rotate biennially between the chairperson of the house education committee and the chairperson of the senate education committee. A member shall only serve while a member of the general court. The members shall not be entitled to any salary but are entitled to reimbursement for mileage and other expenses incurred in carrying out their duties. The

committee may hire necessary consultants and professional or clerical personnel.

Source. 1995, 292:2, eff. June 21, 1995.

187–A:28–c Duties.

I. The committee shall study, among other things, the following:

(a) The operation of public higher education.

(b) The goals and purposes of public higher education.

(c) The organization of public higher education.

(d) The size of public higher education.

(e) The financing of public higher education.

(f) Any other areas which will act as a guide to the legislature and trustees in formulating policies for the future.

(g) The economic effects of student activities on higher education campuses as reported in studies by the university system of New Hampshire and municipalities. The committee shall study possible solutions and recommend legislation. Possible solutions for the committee to study include payments to the municipalities by institutions of higher education in lieu of taxes; additional fees or assessments; and any other remedy suggested by the municipalities affected by higher education campuses.

I–a. In addition to the duties set forth in paragraph I, the committee shall study the feasibility of granting state franchise rights to the providers of online education courses which may include but is not limited to, the institutions of the university system of New Hampshire and the regional community-technical college system. The committee may consult with any individual or organization with information or expertise relevant to this aspect of the committee's duties.

I–b. In addition to the duties set forth in paragraph I, the committee shall monitor the transition of the regional community-technical college system to a self-governing community college system.

II. The committee shall act as liaison between the university system, the community college system of New Hampshire, the general court, and the public to promote better understanding and communications between public higher education, the general court, and the public.

III. The committee shall hold at least 4 meetings per year to be called by the chairperson.

Source. 1995, 292:2. 1998, 260:3. 2001, 221:1. 2003, 49:1. 2007, 361:12, 13, eff. July 17, 2007.

187–A:28–d Report and Recommendations. The committee shall submit a report to the general court by January 15 of each year. Copies of the report shall be submitted to the governor and council, the senate finance and education committees, the house of representatives finance and education committees, the board of trustees of the university system, the chancellor of the community college system of New Hampshire, and to any other individual or organization as the committee deems advisable.

Source. 1995, 292:2. 1999, 99:1. 2007, 361:14, eff. July 17, 2007.

187–A:29 Aid and Grants.

[Repealed 1995, 10:16, V, eff. April 12, 1995.]

History

Former RSA 187–A:29, which was derived from 1983, 420:9, related to aid and grants.

Innovation Research Center

187–A:30 Purpose. To promote the economic well-being of its citizens, the general court finds it desirable to establish an innovation research center at the University of New Hampshire for the purpose of providing a mechanism to promote applied and basic scientific, engineering, and associated marketing research and technological transfer to support the New Hampshire industrial and business community. This center shall foster cooperative industry and university research partnerships to increase the pace of innovation technology developments that expand the New Hampshire economy, increase the number and quality of jobs in New Hampshire, and cause New Hampshire to be more competitive in the world economy. The center shall become the foremost advocate in the state for applied science and technology, bridging the gap between industry and academia by the judicious application of "innovation investment" competitive contract awards and other developmental support to the New Hampshire business community. The center shall seek to expand the available "innovation investment" funds by leveraging center talent and the available grant money provided by the legislature to pursue and capture federal and other appropriate funds to increase the pace of innovation and job creation in New Hampshire.

Source. 1991, 211:1. 1994, 293:3. 2007, 251:2, eff. Aug. 27, 2007.

187–A:31 Grant Program. To carry out the purposes of this subdivision the department of business and economic affairs shall enter into a grant program with the university of New Hampshire to establish a center for innovation research at the Durham campus. Through the grant program, the center shall provide applied and basic scientific, engineering, and associated marketing research capability and technol-

ogy transfer in support of New Hampshire's industrial and business community. The center may pool its funds with those of other entities, either public or private, for the purpose of delivering services to New Hampshire businesses and industries. To be eligible to receive grant-funded services, businesses and industries must have an ongoing business within the state or an announced intention to locate a business in the state. The center may provide services other than grants including but not limited to: training regarding the capture and protection of intellectual property, strategic thinking and strategy development, and writing proposals. Assistance may be provided by the NHIRC director, by small subsidies to assist in the identification and funding of consultants to help the company, or by other creative means approved by the NHIRC oversight committee.

Source. 1991, 211:1. 1994, 293:4. 2007, 251:3, eff. Aug. 27, 2007. 2017, 156:14, II, eff. July 1, 2017.

187–A:32 Oversight Committee; Membership; Duties.

I. An oversight committee is hereby established to oversee the operations of the center. The committee shall consist of the following members:

(a) The commissioner of the department of business and economic affairs or designee.

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

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

(d) The dean of the college of engineering and physical sciences.

(e) The university's vice-president for research.

(f) Five members representing business and industry, 3 of whom shall represent small and medium sized businesses, appointed by the governor.

(g) The director of the technology transfer office of Dartmouth College.

(h) One faculty member from Franklin Pierce Law Center's intellectual property, science and technology program, appointed by the law center.

II. The members of the committee appointed by the governor shall serve 3-year staggered terms. The terms of office for other members of the committee shall be co-terminous with the term of office in the position that qualifies that member to be a member of the committee.

III. The committee, in consultation with the board of trustees, shall establish criteria and procedures relative to the general operation of the center. Such criteria shall include, but not be limited to, the following:

(a) Administrative leadership for the center.

(b) Submission, acceptance and awarding of proposals for funding.

(c) Cooperative agreements with neighboring states.

IV. The officers of the committee shall be selected by the committee from its membership.

V. The committee shall coordinate and cooperate with the appropriate state agencies.

Source. 1991, 211:1. 1992, 242:6. 1993, 327:4. 1995, 134:20. 2007, 251:4, eff. Aug. 27, 2007. 2017, 156:14, II, eff. July 1, 2017.

187–A:33 Funding. Any center project utilizing state appropriations except for certain short-term, fee-based activities authorized by the oversight committee, shall match state funds at least dollar for dollar with funds generated by the center from the net income of any of the following operations of the center: the center's research clients, profit and nonprofit organizations, the federal government, or local political subdivisions. In kind and equipment contributions may be accepted as matching funds under criteria established by the committee.

Source. 1991, 211:1. 1994, 293:5, eff. July 1, 1994.

187–A:33–a Company Default on Matching Funds. In the event that a company defaults on all or a portion of its matching obligations, the state's obligated pro rata portion of the project costs incurred will still be paid to the university to minimize its losses for the work that has already been completed. The university shall notify the state within 45 days of the time a company's matching portion payment has not been received when due.

Source. 1996, 183:1, eff. June 3, 1996.

187–A:33–b Fees. The innovation research center may assess fees on the business or industry involved with a project of up to 5 percent of the total cost of the project under RSA 187–A:31. The center shall reimburse the university of New Hampshire or Dartmouth College for its administrative expenses incurred out of these fees.

Source. 1996, 183:1. 2007, 251:5, eff. Aug. 27, 2007.

187–A:33–c Equipment Purchases. Any center project which includes the purchase of equipment shall contain a provision that allows either the company, the university of New Hampshire, or Dartmouth College to retain possession of such equipment when the project is completed and the company has paid its matching share in full. Final disposition of equipment shall be agreed to by the company and the

center and approved by the oversight committee in advance of a project starting date. A company which purchases equipment deemed necessary to the conduct of the project may count the purchase price as part of its matching fund requirement.

Source. 1996, 183:1, eff. June 3, 1996.

Inventors Assistance Act

187–A:34 Statement of Purpose. The general court recognizes the numerous benefits to the state's economic base from the establishment of businesses by inventors and the numerous benefits provided by inventors which include industrial diversification, broadening of the economic base, a great proliferation of jobs, providing financial benefits to our citizens through a greatly expanded tax base, and new products and processes for the nation's consumers. A great number of inventions are never authoritatively considered primarily because inventors are unfamiliar with the business environment or financial structure necessary for implementing their proposals. The general court, therefore, recognizes a need to encourage and assist inventors and, at the same time, to position this state as a leader in advanced and high technology and to foster a climate for those leaders of this state, the nation and the world.

Source. 1993, 327:2, eff. July 1, 1993.

187–A:35 Program Established.

I. A program to provide assistance to inventors shall be established at the innovation research center at the University of New Hampshire at Durham. The center shall develop, implement, publicize, and operate the program within the limits of available resources and in a manner which will give greatest effect to the purposes of the program. In so doing the center may charge a reasonable fee for proposals submitted. The administrative head of the program shall be the executive director of the innovation research center. The administrative head shall be responsible to the oversight committee established in RSA 187–A:32.

II. With the prior approval of the committee, which approval shall include the affirmative votes of both senate and house representatives on that committee, the administrative head may elect to provide services to specific inventors or persons with intellectual property for the purposes of assisting such inventors or persons in the development of the invention or intellectual property. The assistance may include limited patent searches, patent applications, copyright registration, market analysis, product or process research and development, assistance in obtaining financing, including financing from private sources, and business counseling. The administrative head shall establish guidelines relative to the provision of services and governing the choice of services offered to individual persons, which guidelines will be approved by the committee.

III. No offer of assistance made by the center under this section to any person shall be taken to create a contractual obligation, either express or implied, on the part of the center to do any act or thing on behalf of the person.

Source. 1993, 327:2. 2003, 174:5. 2007, 251:7, eff. Aug. 27, 2007.

187–A:36 Annual Report. The center shall submit an annual report on or before December 31 of each year to the governor, the governor's executive council, and the oversight committee established in RSA 187–A:32. The report shall include statistics for the following:

I. Proposals submitted for review and evaluation.

II. Proposals accepted for development and the number rejected.

III. Products receiving patents.

IV. Products developed to the commercial stage.

V. Jobs created and preserved as a result of the manufacturing, marketing, packaging, warehousing, and distribution of products.

Source. 1993, 327:2, eff. July 1, 1993.

187–A:37 Inventors Assistance Program Fund.

[Repealed 2002, 254:5, VI, eff. July 1, 2002.]

History

Former RSA 187–A:37, which was derived from 1993, 327:2, related to the inventors assistance program fund.

Selective Service Registration Awareness and Compliance Act

187–A:38 Title. This subdivision shall be known as the Selective Service Registration Awareness and Compliance Act.

Source. 1998, 273:1, eff. Aug. 25, 1998.

187–A:39 Application.

I. No person who is not in compliance with the Military Selective Service Act as provided in 50 U.S.C. app. section 451 et seq. shall:

(a) Be permitted to enroll in a state-supported institution of postsecondary or higher education.

(b) Be eligible to receive a loan, grant, scholarship, or other financial assistance for postsecondary higher education supported by state revenue, including federal funds, gifts, or grants accepted by

the state, or to receive a student loan guaranteed by the state.

(c) Having attained the age of 18 years, be eligible for employment by or service to the state or any political subdivision of the state, including all state boards, commissions, departments, agencies, and institutions.

II. A person who has authorized the department of safety to submit information to the Selective Service System pursuant to RSA 263:5–c shall be considered to be in compliance with the Selective Service Act for purposes of this section.

Source. 1998, 273:1. 2002, 129:1, eff. July 7, 2002.

187–A:40 Responsibility for Compliance. It shall be the duty of any official having charge of or authority over the hiring of employees by the state or its political subdivisions, and over state supported institutions of postsecondary higher education, and over decisions relating to the granting of state-supported financial assistance for postsecondary higher education as described in this subdivision, to assure themselves that applicants are in compliance with the provisions of RSA 187–A:39.

Source. 1998, 273:1, eff. Aug. 25, 1998.

187–A:41 Exceptions. The provisions of this subdivision shall not apply if:

I. The requirement for the person to register under the Military Selective Service Act has terminated, or otherwise become inapplicable to such person; or

II. The person is serving or already has served in the military, or has a condition that would, under military rules and regulations, preclude military service.

Source. 1998, 273:1, eff. Aug. 25, 1998.

New Hampshire Estuaries Project

187–A:42 New Hampshire Estuaries Project. The university of New Hampshire shall administer the New Hampshire estuaries project.

Source. 2005, 20:2, eff. May 10, 2005.

CHAPTER 187–B

ENVIRONMENTAL RESEARCH ADVISORY COMMITTEE

[Repealed by 2010, 368:1(18), eff. Dec. 31, 2010.]

History

Former RSA 187–B:1, which was derived from 1995, 123:1, related to the establishment of the environmental research advisory committee.

Former RSA 187–B:2, which was derived from 1995, 123:1, 3, related to the membership and organization of the environmental research advisory committee.

Former RSA 187–B:3, which was derived from 1995, 123:1, related to the duties of the environmental research advisory committee.

Former RSA 187–B:4, which was derived from 1995, 123:1, related to the meetings and compensation of the environmental research advisory committee.

Former RSA 187–B:5, which was derived from 2002, 251:3, related to the annual report of the environmental research advisory committee.

CHAPTER 188

TECHNICAL INSTITUTES AND AREA VOCATIONAL SCHOOLS

[Repealed 1961, 267:2, eff. July 1, 1961.]

History

Former RSA ch. 188, comprising RSA 188:1 to 188:11, was derived from 1945, 204:1 to 6, 8, 9, 11; 1950, 9:2; 1953, 210:1; 1959, 215:1; and 1967, 320:6, related to technical institutes and vocational schools. See now RSA 188–F.

CHAPTER 188–A

TECHNICAL INSTITUTES AND VOCATIONAL-TECHNICAL COLLEGES

[Repealed 1983, 379:1, eff. July 1, 1983.]

History

Former RSA 188–A;1, which was derived from 1945, 204:1; RSA 188:1; 1961, 267:1, related to the policies of the state to finance facilities under this chapter.

Former RSA 188–A:2, which was derived from 1945, 204:4; RSA 188:4; 1961, 267:1; and 1967, 13:1, related to the establishment of technical institutes. See now RSA 188–F:1.

Former RSA 188–A:2–a, which was derived from 1967, 379:17 and 1977, 600:66, related to the appointment of the director of each technical institute.

Former RSA 188–A:3, which was derived from 1961, 267:1 and 1969, 196:1, related to the name and programs of the technical institutes.

Former RSA 188–A:3–a, which was derived from 1979, 474:1, related to the establishment of the department of emergency health care.

Former RSA 188–A:4, which was derived from 1961, 267:1, related to the transfer of technical training from 2 centers to a new location.

Former RSA 188–A:5, which was derived from 1945, 204:8; RSA 188:8; 1961, 267:1; 1967, 13:2; and 1977, 290:2, related to the establishment of vocational-technical institutes throughout the state.

Former RSA 188–A:6, which was derived from 1961, 267:1; 1969, 196:2; and 1977, 290:3, related to the names and programs of the vocational-technical institutes.

Former RSA 188–A:6–a, which was derived from 1972, 60:80 and 61:1, related to the accreditation of the technical institutes and vocational colleges. See now RSA 188–F:14.

Former RSA 188–A:6–b, which was derived from 1983, 86:1, related to degree granting authority of the postsecondary education commission.

Former RSA 188–A:7, which was derived from 1961, 267:1; 1967, 13:3; 1977, 290:4; and 1981, 47:2, related to the appointment of an advisory committee.

Former RSA 188–A:8, which was derived from 1945, 204:6; RSA 188:6; 1961, 267:1; 1967, 13:4; and 1977, 290:5, related to tuition rates.

Former RSA 188–A:8–a, which was derived from 1972, 54:2 and 1977, 290:6, related to tuition waiver for children of certain members of the armed forces. See now RSA 188–F:15.

Former RSA 188–A:9, which was derived from 1945, 204:11; RSA 188:10; 1961, 267:1; 1967, 13:5; and 1972, 12:1, related to the application for, and use of, federal funds. See now RSA 188–F:17.

Former RSA 188–A:10, which was derived from 1957, 320:6; RSA 188:11; 1961, 267:1; 1967, 13:6; and 1977, 107:1, related to the establishment and administration of a revolving fund to be known as Loan Fund for the Technical Institutes and Vocational-Technical Institutes.

Former RSA 188–A:10–a, which was derived from 1977, 600:32, and previously repealed by 1979, 343:3 related to the establishment of the scholarship administration fund.

Former RSA 188–A:11, which was derived from 1953, 210:1; RSA 188:7; 1959, 251:1; 1961, 267:1; 1967, 13:7; 1977, 290:7; and 1981, 362:1, related to the Building Projects Revolving Fund.

Former RSA 188–A:11–a, which was derived from 1971, 436:1, related to the operation of bookstores.

Former RSA 188–A:12, which was derived from 1945, 204:9; RSA 188:9; 1961, 267:1; 1967, 13:8; and 1969, 196:3; and previously repealed by 1977, 70:1, related to state aid for area vocational students.

Former RSA 188–A:13, which was derived from 1965, 186:1, related to the Vocational Education Act of 1963. See now RSA 188–F:17.

Former RSA 188–A:13–a, which was derived from 1969, 165:1, related to adult education and work related course programs.

Former RSA 188–A:14, which was derived from 1965, 186:2, related to the vocational educational act fund.

Former RSA 188–A:15, which was derived from 1967, 381:1, related to the designation of the office of the governor as the sole state agency to receive federal funds concerning the State Technical Services Act of 1965.

Former RSA 188–A:16, which was derived from 1967, 381:1, related to the establishment of a special fund to be known as the state technical services act fund.

CHAPTER 188–B

ALLIED HEALTH PROFESSIONS

188–B:1 Declaration of Purpose. The purpose of this chapter is to provide facilities and curriculum for special training of technicians in the fields of allied health professions and occupations. The special training for said fields shall be such as to meet accreditation requirements from said professions or occupations and also to meet requirements for federal aid.

Source. 1967, 410:1, eff. July 1, 1967.

188–B:2 Administration. The chancellor of the community college system of New Hampshire is charged with the administration of this chapter and is authorized, within the funds appropriated therefor, to employ teachers, administrative staff and such other employees as may be necessary to carry out the provisions hereof. The chancellor is authorized and directed to locate the facilities for any training program hereunder at the community college system of New Hampshire, and to establish and implement curricula for as many of said professions as soon as possible, and to make application for and receive any and all federal grants or assistance available. The chancellor shall study the feasibility for the expansion and greater implementation of the general purposes of this chapter including the establishment of new facilities for the purposes hereunder and shall make recommendations to the next session of the legislature relative to the matter.

Source. 1967, 410:1. 1981, 318:4. 1986, 41:25. 1989, 303:1. 1995, 182:22, 29. 2007, 361:15, eff. July 17, 2007.

188–B:3 Acceptance of Federal Funds, Gifts, and Grants. The governor and council, upon recommendation of the state board of education is authorized to apply for financial or any other aid which the United States has authorized or may authorize to be given to the several states for training for health services, including but not limited to the Allied Health Professions Personnel Training Act of 1966 and the Nurse Training Act of 1964. Federal funds made available to the state for purposes hereof shall be expended by the state department of education in accordance with the terms of the federal grant.

Source. 1967, 410:1, eff. July 1, 1967.

188–B:4 to 188–B:7 Repealed.

[Repealed 1981, 47:1, eff. March 30, 1981.]

History

Former RSA 188–B:4 to 188–B:7, which were derived from 1967, 410:1, related to establishment, terms, duties and compensation of an advisory board on technical services.

188–B:8 Specialized Advisory Boards. The state board of education may appoint special advisory boards relative to any of the allied health professions to assist and advise it in all matters pertaining thereto.

Source. 1967, 410:1, eff. July 1, 1967.

CHAPTER 188–C

REGULATION OF PRIVATE TRADE, COMMERCIAL CORRESPONDENCE, AND OTHER SCHOOLS AND CORRESPONDENCE SCHOOL REPRESENTATIVES

[Repealed 1983, 239:6, eff. June 18, 1983.]

History

Former RSA 188–C:1, which was derived from 1969, 447:1, related to definitions. See now RSA 188–D:19.

Former RSA 188–C:2, which was derived from 1969, 477:1; 1971, 423:1; and 1977, 563:41, related to a license to conduct business. See now RSA 188–D:20.

Former RSA 188–C:3, which was derived from 1969, 477:1, related to inspections. See now RSA 188–D:21.

Former RSA 188–C:4, which was derived from 1969, 477:1, related to revocation of license to conduct business. See now RSA 188–D:22.

Former RSA 188–C:5, which was derived from 1969, 477:1 and 1971, 423:2, related to contracts deemed to be home solicitation sales contracts. See now RSA 188–D:23.

Former RSA 188–C:6, which was derived from 1969, 477:1, related to the use of license fees collected. See now RSA 188–D:25.

Former RSA 188–C:7, which was derived from 1969, 477:1, related to rulemaking authority. See now RSA 188–D:26.

Former RSA 188–C:8, which was derived from 1969, 477:1, and previously repealed by 1981, 43:3, related to appointment of an advisory committee.

Former RSA 188–C:9, which was derived from 1969, 477:1 and 1973, 529:36, related to penalties. See now RSA 188–D:28.

CHAPTER 188–D

POSTSECONDARY EDUCATION COMMISSION

[Repealed 2011, 224:125, IX, eff. July 1, 2011.]

History

Former RSA 188–D:1, which was derived from 1973, 533:1, related to a declaration of purpose.

Former RSA 188–D:2, which was derived from 1973, 533:1; 1983, 75:1, 2, 239:7; 1985, 233:1–3; 1989, 303:1; 1995, 182:22, 29; 1996, 110:1; 1998, 272:33, 34; 2003, 159:1; 2007, 361:16, 17; and 2008, 338:1, related to the postsecondary education commission.

Former RSA 188–D:3, which was derived from 1973, 533:1, related to the establishment of guidelines.

Former RSA 188–D:3–a, which was derived from 1979, 388:2 and 1996, 110:2, related to the executive director.

Former RSA 188–D:4, which was derived from 1973, 533:1, related to the commission's staff.

Former RSA 188–D:5, which was derived from 1973, 533:1, related to the commission members' compensation.

Former RSA 188–D:6, which was derived from 1973, 533:1 and previously repealed by 1983, 75:4, related to the implementation of the postsecondary education commission.

Former RSA 188–D:7, which was derived from 1973, 533:1, related to the commission's organization.

Former RSA 188–D:8, which was derived from 1973, 533:1; 1981, 574:3; 2003, 159:3; 2005, 60:1, 242:2; and 2006, 28:2, related to the responsibilities of the commission.

Former RSA 188–D:8–a, which was derived from 1981, 574:3; 2000, 70:1; 2004, 190:3; and 2005, 242:4, related to the executive director's rulemaking authority.

Former RSA 188–D:8–b, which was derived from 1996, 110:3 and previously repealed by 2006, 28:10, I, related to reimbursement of state by state institutions of higher education for default cost fees charged by federal education agency.

Former RSA 188–D:9, which was derived from 1973, 533:1, related to preparation of postsecondary education plans and to the powers of the commission.

Former RSA 188–D:9–a, which was derived from 1977, 395:1 and 1998, 148:1, related to duties regarding postgraduate educational opportunities.

Former RSA 188–D:9–b, which was derived from 1981, 574:2 and 1996, 110:4, related to evaluation committees.

Former RSA 188–D:10, which was derived from 1976, 27:2 and 2006, 28:1, related to the establishment of the New Hampshire incentive program.

Former RSA 188–D:11, which was derived from 1976, 27:2, related to the administration of the New Hampshire incentive program.

Former RSA 188–D:12, which was derived from 1976, 27:2, related to loan incentives for eligible lenders.

Former RSA 188–D:13, which was derived from 1976, 27:2; 1981, 273:1, 2; 1983, 240:3; 1990, 26:1; 1996, 110:5; and 2009, 280:2, related to grants.

Former RSA 188–D:14, which was derived from 1981, 436:3; 1989, 310:1; and 1998, 148:3, and was previously repealed by 2003, 235:5, I, related to administration of a career incentive scholarship program.

Former RSA 188–D:15, which was derived from 1981, 436:3; 1989, 310:2; and 1998, 148:3, and was previously repealed by 2003, 235:5, I, related to rulemaking for the career incentive scholarship program.

Former RSA 188–D:16, which was derived from 1981, 436:3; 1987, 170:3; 1989, 310:3; and 1998, 148:3, and was previously repealed by 2003, 235:5, I, related to terms and requirements for choosing recipients of career incentive scholarships.

Former RSA 188–D:17, which was derived from 1981, 436:3; 1987, 249:1; 1989, 310:4; and 1998, 148:3, and was previously repealed by 2003, 235:5, I, related to disbursement of the loans.

Former RSA 188–D:18, which was derived from 1981, 436:3; 1987, 249:2; 1996, 110:6; and 1998, 148:3, and was previously repealed by 2003, 235:5, I, related to repayment of the loans.

Former RSA 188–D:18–a, which was derived from 1989, 310:5 and 2003, 319:3, and was previously repealed by 2003, 235:5, II, related to establishment of a nursing leveraged scholarship program.

Former RSA 188–D:18–b, which was derived from 1989, 310:5, and previously repealed by 2003, 235:5, II, related to rulemaking in regard to the nursing leveraged scholarship program.

Former RSA 188–D:18–c, which was derived from 1989, 310:5 and 2003, 319:4, and was previously repealed by 2003, 235:5, II, related to terms, requirements, and source of funds for recipients of scholarship.

Former RSA 188–D:18–d, which was derived from 1989, 310:5, and previously repealed by 2003, 235:5, II, related to disbursement of the loans.

Former RSA 188–D:18–e, which was derived from 1989, 310:5; 1996, 110:7; 1998, 148:4, 5; and 2003, 319:5, 6, and was previously repealed by 2003, 235:5, II, related to repayment of the loans.

Former RSA 188–D:18–f, which was derived from 2003, 235:1 and 2006, 28:3, related to the workforce incentive program.

Former RSA 188–D:18–g, which was derived from 2003, 235:1, related to forgivable loans.

Former RSA 188–D:18–h, which was derived from 2003, 235:1, related to repayment of forgivable loans.

Former RSA 188–D:18–i, which was derived from 2003, 235:1, related to the loan repayment component.

Former RSA 188–D:19, which was derived from 2004, 190:2; 2008, 338:2; 2009, 32:2; and 2010, 35:1, related to definitions and exclusions.

Former RSA 188–D:20, which was derived from 1983, 239:4; 1987, 249:4; 1996, 110:9; 2004, 190:2; and 2008, 338:3, related to licenses and fees.

Former RSA 188–D:20–a, which was derived from 2004, 190:2; 2005, 242:3; and 2008, 338:4, related to surety indemnification.

Former RSA 188–D:20–b, which was derived from 2004, 190:2 and 2008, 338:5, related to a student tuition guaranty fund.

Former RSA 188–D:21, which was derived from 1983, 239:4; 2004, 190:2; and 2008, 338:6, related to inspections of licensed schools.

Former RSA 188–D:22, which was derived from 2004, 190:2 and 2008, 338:6, related to revocation of school licenses after a hearing.

Former RSA 188–D:23, which was derived from 2004, 190:2, related to a waiting period for certain contracts involving training.

Former RSA 188–D:24, which was derived from 1983, 239:4 and 1987, 249:5, related to veterans services approval.

Former RSA 188–D:25, which was derived from 1983, 239:4, related to the use of license fees.

Former RSA 188–D:26, which was derived from 1983, 239:4 and 2008, 338:7, related to rulemaking authority.

Former RSA 188–D:27, which was derived from 1983, 239:4 and previously repealed by 1987, 97:3, related to appointment, composition and duties of an advisory committee.

Former RSA 188–D:28, which was derived from 1983, 239:4; 2004, 190:4; and 2008, 338:8, related to penalties.

Former RSA 188–D:29, which was derived from 1985, 244:1 and previously repealed by 1998, 148:6, related to the purpose of the out-of-state students incentive program.

Former RSA 188–D:30, which was derived from 1985, 244:1; 1986, 116:3; and 1996, 110:10, and was previously repealed by 1998, 148:6, related to the appointment of the "out-of-state students incentive committee".

Former RSA 188–D:31, which was derived from 1985, 244:1 and previously repealed by 1998, 148:6, related to the application to the committee for funds.

Former RSA 188–D:32, which was derived from 1985, 244:1 and previously repealed by 1998, 148:6, related to the qualifications for grants.

Former RSA 188–D:33, which was derived from 1987, 170:4 and 2006, 28:4, related to the establishment of the leveraged incentive grants program.

Former RSA 188–D:34, which was derived from 1987, 170:4, related to the administration of the program.

Former RSA 188–D:35, which was derived from 1987, 170:4, related to grants and the prohibition of discrimination.

Former RSA 188–D:36, which was derived from 2000, 70:2 and 2006, 28:5, related to the establishment and intent of the granite state scholars program.

Former RSA 188–D:37, which was derived from 2000, 70:2, related to definitions under the granite state scholars program subdivision.

Former RSA 188–D:38, which was derived from 2000, 70:2, related to the granite state scholars program administration.

Former RSA 188–D:39, which was derived from 2000, 70:2, related to granite state scholar designation and special recognition.

Former RSA 188–D:40, which was derived from 2000, 70:2, related to the establishment of the granite state scholars financial aid endowment fund.

Former RSA 188–D:41, which was derived from 2000, 70:2, related to grants.

Former RSA 188–D:42, which was derived from 2000, 70:2 and 2008, 75:2, related to investment of state matching funds.

Former RSA 188–D:43, which was derived from 2007, 366:1, related to tuition waivers for foster children.

CHAPTER 188–E

REGIONAL CAREER AND TECHNICAL EDUCATION (CTE)

188–E:1 Designation of Regional Centers and Programs. The commissioner, department of education, is hereby authorized and directed to designate high schools, and public academies as defined in RSA 194:23, II, offering career and technical education programs as career and technical education centers. In instances where it is educationally and economically feasible to do so, the commissioner may designate individual career and technical education programs in other than the career and technical education centers as regional programs. An out-of-state school or program may be designated, when it is in the best interest of the state, as a part of the New Hampshire regional career and technical education plan.

Source. 1973, 567:1. 1990, 28:4, eff. May 14, 1990. 2008, 328:1, eff. Sept. 1, 2008. 2015, 252:3, eff. July 1, 2015.

188–E:2 Definitions. In this chapter:

I. "Alternative education program" means a program providing at-risk students with a variety of options with a goal of graduation or completion by focusing on the student's individual social needs and the academic requirements for a high school diploma, including:

(a) A program offered at a regional career technical education center or other comprehensive high school.

(b) An adult high school diploma program administered pursuant to rules of the department.

(c) An adult basic education program administered pursuant to rules of the department.

II. "At-risk student" means a high school student who has been evaluated by the local school district staff and deemed to be an individual in jeopardy of dropping out of school prior to graduation.

III. "Career and technical education" or "CTE" means organized educational activities that:

(a) Offer a sequence of courses that:

(1) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(2) Provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(3) Might include prerequisite courses, other than a remedial course; and

(b) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

IV. "Construction" means the actual construction of facilities and provision of initial equipment.

V. "Receiving district" means a school district operating a comprehensive high school or public academy pursuant to RSA 194:23 which is designated as a regional center or offers a designated regional program.

VI. "Regional career and technical education student" means a student attending a regional center or a regional program, for career and technical education purposes, which is in a high school other than one the student would normally attend for his or her regular education program.

VII. "Renovation" means an upgrade and/or addition of career and technical education space, facility, and/or equipment at designated regional career and technical education centers.

VIII. "Sending district" means:

(a) A school district where students reside who attend a regional center, regional program, or alternative education program other than within the district itself; or

(b) If a student attends a chartered public school, the sending district shall be the school district in which the student resides.

Source. 1973, 567:1. 2007, 232:1, 2, eff. Aug. 24, 2007. 2012, 199:1, eff. Aug. 12, 2012. 2015, 252:4, eff. July 1, 2015.

188–E:3 Construction or Renovation of Regional Career and Technical Education Centers.

I. The commissioner, department of education, shall make grants available to designated regional centers for construction of career and technical education facilities or renovation of existing regional career and technical education centers. The state board shall adopt rules, pursuant to RSA 541–A and RSA 21–N:9, II, which the commissioner shall carry out, relative to requirements for approval of regional career and technical education centers to receive funds for construction or renovation of such facilities. The rules shall include criteria which guarantee potential sending districts an opportunity to enroll students in the regional career and technical education program, and basic criteria for planning such facilities through cooperative development of plans by the career and technical education staff of the state department of education and the local school district's staff. When such plans appear to be both educationally and financially acceptable, the department's career and technical education staff shall recommend to the commissioner that they be approved for funding.

II. Upon completion, the constructed or renovated facility shall become the property of the school district or public academy, for use by the career and technical education center exclusively. Provision of the site, parking, and other related areas shall be the responsibility of the local community. Site work, including but not limited to cut and fill work, compaction, demolition, relocation of utilities, relocation of roadways and sidewalks, and similar work within an area extending to one foot beyond the outside edge of the exterior walls of the building, shall be eligible for grants under paragraph I. Nothing shall prohibit

the inclusion of the site and related facilities which are not funded as part of construction cost by the state under this chapter from being included in a regular building aid grant application of the district as provided in RSA 198:15–b. However, no school district which receives any funding under this chapter shall be eligible to receive school building aid grants under RSA 198:15–b for the same project. Maintenance, repair, and upkeep of the constructed or renovated facility, including all classroom and laboratory spaces, shall be the responsibility of the school district or public academy, as the case may be.

Source. 1973, 567:1. 1986, 41:18. 1990, 28:5. 1997, 265:1, eff. Aug. 18, 1997. 2008, 296:1, eff. June 27, 2008; 296:33, eff. Sept. 1, 2008. 2012, 275:8, eff. Aug. 18, 2012. 2015, 252:5, eff. July 1, 2015.

188–E:4 Advisory Committees.

[Repealed 2010, 368:1(45), eff. Dec. 31, 2010.]

History

Former RSA 188–E:4, which was derived from 1973, 567:1 and 1981, 94:1, related to regional vocational education advisory committees.

188–E:4–a Advisory Committees.

I. Each designated region shall have a regional advisory committee consisting of representatives from each sending district and the receiving district. Appointees from each district shall represent a reasonable balance of the career cluster areas in the region's approved career and technical education programs. Each regional advisory committee shall have at least 7 members representative of the districts and career and technical education areas and at least one member shall be a certified high school counselor.

II. The regional advisory committee shall advise the receiving district school board on matters related to career and technical education but shall have no legal authority with respect to such board's responsibility.

III. Each regional career and technical education center shall have active program advisory committees representing each approved career and technical education program established at the center. Said program advisory committees shall advise the regional advisory committee on matters relating to their particular approved career and technical education program but shall have no legal authority with respect to the regional advisory committee's responsibility.

Source. 2012, 223:4, eff. Aug. 13, 2012. 2017, 110:1, eff. Aug. 7, 2017.

188–E:5 Program.

I. The program in the regional career and technical education centers shall be broad enough to serve the reasonable business and industry needs of the area, and provide for a substantial career and technical offering in the region.

II. Career and technical education of consistent quality shall be equally available to students and across the state. Each career and technical education program pathway shall include embedded rigorous academic skills and technical core competencies aligned with national business and industry standards delivered through a relevant sequence of courses.

III. Each center shall make maximum utilization of cooperative arrangements with special education and vocational rehabilitation in providing career and technical education for disadvantaged and disabled persons. Opportunities for out-of-school youths, including "drop outs" and others, and adult education will be provided whenever possible.

IV. The regional career and technical education centers, as an integral part of each career and technical offering, may provide opportunities in leadership development through participation by students in appropriate corresponding and nationally recognized career and technical student organizations.

V. Regional career and technical education centers shall, on a space available basis, enroll any student requesting enrollment who has attended one year of high school regardless of the number of academic credits earned, except that the Manchester school district shall, on a space available basis, enroll and bear the associated costs for any Manchester school district student in grades 9–12 who resides in the city of Manchester and who requests enrollment in a regional career and technical education center within the district, provided that in either case:

(a) The student has successfully completed any courses required as a prerequisite for the career and technical education program selected; or

(b) The prerequisites have been waived by the regional career and technical education center director. Such a waiver shall not be unreasonably withheld.

VI. The receiving district shall be responsible for determining the student's qualifications for admission and space availability.

VII. (a) All career and technical education students shall be given access to career and technical education programs for the entire instructional time required for those programs.

(b) Upon a joint application by a student's career and technical education center and his or her sending district, the commissioner may grant a

waiver from the requirement of subparagraph (a) on a case-by-case basis.

VIII. Programs shall demonstrate alignment of curriculum to national technical core competencies to assess and demonstrate achievement through evidence documented by course and learning experiences using multiple measures, such as, but not limited to, examinations, quizzes, portfolios, performances, exhibitions, industry certifications, projects, and community service.

IX. An approved career and technical education program shall be designed to enable a student to meet industry standards applicable to the respective career field.

X. To the greatest extent possible, a career and technical education program offered at a center or region shall provide students the opportunity to take advantage of any applicable career pathways, including career pathways set forth in an articulation agreement with a postsecondary institution or in a collaborative agreement with publicly supported secondary and postsecondary educational institutions that form a dual enrollment career and technical education program.

Source. 1973, 567:1. 1990, 140:2, X. 1998, 333:1. 2007, 333:4, eff. Sept. 14, 2007. 2012, 221:3, eff. June 13, 2012. 2015, 252:6, eff. July 1, 2015. 2017, 156:107, eff. July 1, 2017; 210:1, eff. Sept. 8, 2017.

188–E:6 Costs for Students Attending Career and Technical Education Programs.

I. The state shall pay a portion of the cost of tuition and reimburse transportation costs, as provided in this section, for a sending district student attending an approved career and technical education (CTE) program.

II. A student's sending district shall be financially responsible for 25 percent of the career and technical education portion of the receiving district's cost per pupil for the prior school year, as calculated by the department of education.

III. Any sending district student who attends an approved CTE program that provides instruction in subject areas approved by the state board of education shall be eligible for payment of tuition and reimbursement of transportation costs. Students enrolled in introductory CTE courses, pre-CTE courses, or other CTE programs offering instruction in subject areas not approved by the state board of education shall not be eligible for payment of tuition and transportation reimbursement.

IV. In consultation with the house and senate committees responsible for education policy and financial matters, the state board of education shall, in rules adopted pursuant to RSA 541–A, develop a formula for determining the tuition and transportation costs for approved career technical education programs and procedures for disbursement of funds.

Source. 1973, 567:1. 2004, 151:1. 2007, 232:3, eff. Aug. 24, 2007; 333:2, eff. Sept. 14, 2007. 2012, 199:2, eff. Aug. 12, 2012. 2015, 252:7, eff. July 1, 2015.

188–E:7 Tuition.

I. The department of education is authorized to pay from its regular budget tuition for full or part-time sending district students, attending programs at designated career and technical education centers or designated career and technical education programs at other comprehensive high schools, whose residence is in a district where the high school of normal attendance does not offer a similar career and technical education program.

II. The department of education shall pay only those districts designated as regional career and technical education centers for sending district tuition at a per student rate calculated by dividing the total number of students into the balance of appropriation available.

III. The department is authorized to pay from its budget for at-risk students who reside in a school district in which the high school does not offer an alternative education program, to attend an alternative education program at a comprehensive high school within New Hampshire.

IV. The liability of the state and local school districts for tuition shall be determined by the state board under rules adopted pursuant to RSA 541–A, provided that a receiving district may charge a student from a sending district a differential fee for career and technical education not to exceed 3 percent of the receiving district's cost per pupil for the prior school year, as calculated by the department of education, and provided that the receiving district shall deposit the differential fee into its capital reserve account to be used for career and technical education program development, improvement, and equipment.

V. The state's tuition liability for a student enrolled in an alternative education program shall not exceed the per student cost of a student enrolled in a career and technical education program, as calculated by the department of education.

Source. 1973, 567:1. 1990, 28:6. 2000, 282:3. 2007, 232:4, eff. Aug. 24, 2007. 2012, 199:3, eff. Aug. 12, 2012. 2015, 252:8, eff. July 1, 2015.

188–E:8 Transportation. The department of education is authorized to reimburse from its regular budget the cost of transportation for (a) regional career and technical education students who attend regional career and technical education centers and for (b) at-risk students who attend alternative education programs located at a regional career and technical education center or other comprehensive high school. Transportation costs shall not exceed the rate adopted pursuant to RSA 541–A by the state board. The sending district shall be responsible for paying the transportation costs and shall be reimbursed from state funds.

Source. 1973, 567:1. 1981, 94:2. 1990, 28:7. 2007, 232:5, eff. Aug. 24, 2007. 2015, 252:9, eff. July 1, 2015.

188–E:9 Payment of Tuition and Transportation Funds.

I. The state shall pay the receiving district for its portion of the tuition charge upon receipt by the department of education of forms showing the charges as requested by them. Payment of transportation shall be made to the sending district by the department of education upon certification of payment or liability of payment of transportation charges on forms prescribed by the department. School districts shall report actual tuition and transportation costs for reimbursement by the state to the department by September 30 of each year. Failure to file such information on the forms required under this paragraph shall result in withholding of funds.

II. Reimbursement of tuition and transportation costs under this section shall be made annually and shall be calculated based upon the previous year's actual tuition and transportation costs for each school district. Funds shall be distributed to school districts on or before December 1.

III. Funds appropriated to pay the costs of tuition and transportation shall be distributed in accordance with rules adopted pursuant to RSA 541–A.

IV. All appropriations made for the purposes of tuition and transportation shall be nonlapsing.

Source. 1973, 567:1. 1990, 28:8, 9. 1993, 218:1, eff. July 1, 1993. 2012, 199:4, eff. Aug. 12, 2012.

188–E:10 Funding for Renovation and Expansion.

I. The department of education is responsible for maintaining a statewide system of regional vocational education centers to provide and allow for a variety of career and technical education programs funded within state budget appropriations. The treasurer of the state of New Hampshire is hereby authorized to make funds available to the department of education for the renovation and expansion of qualified regional career and technical education centers or regional career and technical education programs authorized in the capital budget, provided that:

(a) The commissioner of the department of education shall ensure that all requests submitted are both educationally and financially appropriate within the state capital project authorization process;

(b) The commissioner of the department of education submits on a biennial basis in a capital budget request a priority list of facilities and programs eligible for renovation and expansion, provided that priority shall be given to programs that have been certified by an approved standard or that need additional funds to become certified by an approved standard;

(c) Each request for funding follows the capital budget procedure pursuant to RSA 9:3–a, provided that no qualified project funded in a state capital budget as required in this section shall have additional funds for the same project included in a subsequent proposal for capital appropriation under RSA 9:3–a unless directed by the priority list of the department of education;

(d) Each school district requesting funds from the department of education establishes and funds a renovation and expansion reserve fund, which shall be used by the school district to pay renovation and expansion costs not funded by the state, and which may include funding for the replacement of equipment; and

(e) The state shall fund not less than 50 percent nor more than 75 percent of the cost of a qualified project approved pursuant to this section.

(f) In this section, "qualified" means the project:

(1) Demonstrates need connected to the labor market.

(2) Accepts students from sending schools.

(3) Demonstrates adequate numbers of students through enrollment figures based on 3-year averages.

(4) Demonstrates alignment with program competencies and academic competencies required by the department of education.

(5) Allows for matriculation into a postsecondary venue.

(6) Meets all industry and building standards.

(7) Meets the procedural requirements for requests under this section and any other requirements in rules of the department of education.

(8) Is a regional career and technical education center within a public school, or a public academy as defined in RSA 194:23, II, in the state of New Hampshire.

(9) Has the capacity to provide academic courses for students from the sending districts who are approved for full-time attendance at the center.

II. The renovation and expansion reserve funding required by subparagraph I(d) may be funded through local community funds, career and technical education tuition payments, gifts, contributions, and bequests of unrestricted funds from individuals, foundations, corporations, organizations, or institutions. School districts shall consider priority funding for programs certified or needing additional funds to become certified as set forth in subparagraph I(b).

III. Public academies receiving funds through the capital budget process shall comply with all contracts or agreements required by department of education rules adopted pursuant to RSA 541–A.

Source. 1973, 567:1. 1975, 345:1. 1977, 513:1. 1979, 271:1. 1982, 38:1. 1983, 11:1. 1986, 186:2. 1988, 182:2. 1989, 322:2. 1990, 28:10; 158:2. 1992, 47:1. 1993, 265:1. 1997, 265:2. 2000, 282:2. 2003, 214:1, 2. 2005, 99:1. 2007, 333:3, eff. Sept. 14, 2007. 2008, 328:3, 4, eff. Sept. 1, 2008. 2017, 110:2–4, eff. Aug. 7, 2017.

188–E:10–a Study Commission on Career and Technical Education.

[Repealed 2014, 140:2, eff. Jan. 15, 2015.]

History

Former RSA 188–E:10–a, which was derived from 2014, 140:1, related to the study commission on career and technical education.

188–E:10–b Advisory Council on Career and Technical Education.

I. There is established an advisory council on career and technical education (CTE). The members of the council shall be as follows:

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

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

(c) The state director of career and technical education.

(d) The commissioner of the department of business and economic affairs, or designee.

(e) The chancellor of the community college system, or designee.

(f) Three CTE directors, one member of a school board, and one SAU administrator, appointed by the commissioner of education.

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

(h) Three representatives of skilled trades or businesses related to CTE programs, appointed by the commissioner of education.

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

III. Members of the advisory council appointed under subparagraphs I(f)–(h) shall serve for terms of 3 years and may be reappointed, except that terms of initial appointments by the commissioner under subparagraphs (f) and (h) shall be staggered.

IV. The council shall study career and technical education, and make recommendations concerning:

(a) The delivery system of career and technical education in New Hampshire;

(b) Increasing access to career and technical education programs;

(c) Increasing partnerships between businesses, skilled trades, advanced manufacturing, and CTE programs;

(d) The establishment and implementation of individual learning plans beginning in grade 6; and

(e) Other barriers as may be identified that restrict the delivery of career and technical education to all interested students.

V. The members of the advisory council shall elect a chairperson from among the members. Meetings of the advisory council shall be called by the chairperson as necessary. Seven members of the council shall constitute a quorum.

VI. The advisory council shall file an annual report of 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.

Source. 2015, 252:10, eff. July 1, 2015. 2017, 156:14, II, eff. July 1, 2017.

188–E:11 Equipment and Instruction Program; Revolving Fund.

I. There is established an equipment and instruction program in which any regional career and technical education center may establish a revolving fund to be used for capital improvement costs for the replace-

ment or upgrading of equipment, or for aiding instruction in the various career and technical education programs offered by the center. The fund shall be used to pay necessary costs of equipment and related instructional materials which are required to provide up-to-date adult, business and industry training, re-training or customized programs.

II. If a revolving fund is established, the revenues from non-school district sources generated by career and technical educational programs in excess of legitimate and customary school district expenses shall be placed in the fund. Such revenues shall include, but are not limited to, profits from program operations consisting of capitalization costs calculated as part of rental services, cash gifts to career and technical education programs, and moneys from the sale of donated equipment. The revolving fund shall be established as a separate school district account and shall be used only for the purposes specified in paragraph I.

Source. 1991, 187:1, eff. July 26, 1991. 2017, 110:5, eff. Aug. 7, 2017.

Secondary Career and Technical Education Programs

188–E:12 Secondary Career and Technical Education Programs; Federal Authorization. In accordance with 20 U.S.C. sec. 9271, the state shall include in its unified plan, all secondary career and technical education programs authorized under 20 U.S.C. 2301 et seq., known as the Carl D. Perkins Career and Technical Education Act of 2006.

Source. 2000, 317:1, eff. June 21, 2000. 2017, 110:7, eff. Aug. 7, 2017.

188–E:13 Legislative Membership on Youth Council. The following legislative members shall be appointed to the youth council which has been established as a subgroup within the workforce opportunity council formed by the governor pursuant to the Workforce Investment Act of 1998:

I. Two members of the house of representatives, one of whom shall serve as an alternate, appointed by the governor.

II. Two members of the senate, one of whom shall serve as an alternate, appointed by the governor.

Source. 2000, 317:1, eff. June 21, 2000.

Pre-Engineering and Technology Curriculum and Pre-Engineering and Technology Advisory Council

188–E:14 Pre-Engineering and Technology Curriculum

I. The department of education shall facilitate the development and implementation of a pre-engineering and technology curriculum in the public schools for students in kindergarten through grade 12 who are interested in careers in engineering or allied engineering fields, and shall encourage school districts to implement age-appropriate instruction and projects involving science, technology, engineering, and mathematics.

II. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to course content, curricular requirements, and general procedures for implementing the pre-engineering and technology curriculum. At a minimum, the curriculum shall include the following concepts:

(a) Introduction to engineering design.

(b) Principles of engineering.

(c) Engineering design and development.

III. In developing and implementing a pre-engineering and technology curriculum, the efforts of the department of education shall complement existing public and private actions, and shall include the pursuit of innovative public-private partnerships with businesses, nongovernmental organizations, academic institutions, and other appropriate groups. Such partnerships shall at a minimum consist of a 50/50 match of public and private funds. Teachers teaching in the pre-engineering and technology curriculum, shall be certified to teach the course work as required in this curriculum.

IV. The department of education, in coordination with the regional career and technical education centers, shall include in its biennial capital budget request, funding for the planning, construction, and renovation of equipment necessary for the operation of pre-engineering and technology curriculum in the public schools for students in kindergarten through grade 12.

V. Public schools which implement the pre-engineering and technology curriculum shall be responsible for maintaining the program with funding requests made through the budgetary cycle.

VI. The department of education shall develop a procedure for evaluating existing pre-engineering programs funded under this section and shall submit a report on the status of such programs to the speaker of the house of representatives and the president of the senate annually on December 1.

Source. 2002, 271:1, eff. July 1, 2002. 2008, 244:1–3, eff. Aug. 23, 2008. 2012, 223:2, eff. Aug. 13, 2012. 2017, 46:2, eff. July 11, 2017; 110:10, eff. Aug. 7, 2017.

188–E:15 Pre-Engineering and Technology Advisory Council. There is established a pre-engineering and technology advisory council to advise the

department of education in the implementation, evaluation, and expansion of the pre-engineering and technology curriculum, to assist the department of education in pursuing public and private funds in order to ensure statewide access to pre-engineering and technology curriculum coursework for public school students in kindergarten through grade 12.

Source. 2002, 271:1, eff. July 1, 2002. 2008, 244:4, eff. Aug. 23, 2008. 2012, 223:3, eff. Aug. 13, 2012. 2017, 46:2, eff. July 11, 2017.

188–E:16 Membership and Terms.

I. The members of the advisory council shall be as follows:

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

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

(c) The commissioner of the department of education, or designee.

(d) The president of the New Hampshire technical institute, or designee.

(e) The dean of the university of New Hampshire college of engineering and physical sciences, or designee.

(f) Three superintendents from school administrative units in which at least one school offers a pre-engineering and technology curriculum to its students, appointed by the governor and council.

(g) Six members of the public representing businesses or other organizations, firms, or institutions which hire engineers or engineering technologists, appointed by the governor and council.

II. (a) The term of office for each member appointed under subparagraphs I(f) and I(g) shall be 3 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

(b) The advisory council shall meet at least quarterly, and may meet more often at the call of the chair, or at the request of a majority of the members directed to the chair. The council may, by majority vote of the voting members, adopt additional bylaws as deemed necessary by the council.

(c) The council shall, at its annual meeting, elect one voting member to serve as chair for a one-year term, or until a successor is elected and qualified.

(d) No member shall receive any compensation for serving on the council, provided that the legislative members shall receive legislative mileage when in performance of their duties and the public members may receive compensation dependent upon the availability of funds, other than from the general fund.

Source. 2002, 271:1, eff. July 1, 2002. 2017, 46:3, eff. July 11, 2017.

188–E:17 Duties. The advisory council shall advise the department of education in the following areas relative to the implementation of the pre-engineering and technology curriculum:

I. Curriculum expansion and revision.

II. Curriculum eligibility requirements.

III. Curriculum quality.

IV. Fund raising from private and other sources.

V. Allocation of funds necessary for the curriculum.

VI. Evaluation of performance of pre-engineering and technology program sites.

Source. 2002, 271:1, eff. July 1, 2002. 2008, 244:5, eff. Aug. 23, 2008. 2017, 46:4, eff. July 11, 2017.

Automotive Technology Curriculum and Advisory Council

188–E:18 Automotive Technology Curriculum; Funding.

I. The department of education shall develop and implement an automotive technology curriculum in the regional career and technology education centers to provide statewide opportunities for high school students interested in careers in the automotive industry to enroll in a high quality automotive technology curriculum.

II. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to course content, curricular requirements, and general procedures for implementing the automotive technology curriculum. At a minimum, the curriculum shall include standards established by the National Automotive Technicians Education Foundation (NATEF).

III. In developing and implementing an automotive technology curriculum, the efforts of the department of education shall complement existing public and private actions, and shall include the pursuit of innovative public-private partnerships with businesses, nongovernmental organizations, the community college system of New Hampshire, and other appropriate groups. Such partnerships shall at a minimum consist of a 50/50 match of public and private funds, or like kind compensation.

(a) Funding shall not exceed $5,000 per automotive technology program or $90,000 in total nonlapsing appropriations in a fiscal year. Such funding shall be used exclusively to assist an automotive technology program in obtaining or maintaining NATEF certification and may include instructor professional development, including ASE certification, automotive laboratory equipment, hand tools, maintenance of equipment or tools, learning resources, multimedia periodicals, and any other items deemed necessary to assist an automotive technology program in obtaining or maintaining NATEF certification.

(b) Automotive technology programs that will meet certification requirements within 2 years shall be given priority for funding. All other programs not eligible to be certified within the first 2 years shall be eligible for any remaining funding.

IV. When appropriate, the department of education shall include in its biennial capital budget request funding for the planning, construction, and renovation of equipment necessary for the operation of automotive technology curriculum in the regional career and technical education centers.

V. Regional career and technology education centers which implement the automotive technology curriculum shall be responsible for maintaining the program with funding requests made through the budgetary cycle.

VI. Existing or new technical education centers that provide automotive technology education shall obtain program certification pursuant to paragraph II of this section prior to becoming eligible to receive state renovation and construction funds.

Source. 2003, 214:3. 2007, 361:18, eff. July 17, 2007. 2010, 368:23, eff. Dec. 31, 2010. 2017, 110:9, eff. Aug. 7, 2017.

188–E:19 Automotive Technology Advisory Council.

[Repealed 2010, 368:1(46), eff. Dec. 31, 2010.]

History

Former RSA 188–E:19, which was derived from 2003, 214:3, related to the automotive technology advisory council.

188–E:20 Membership and Terms.

I. The members of the advisory council shall be as follows:

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

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

(c) The commissioner of the department of education, or designee.

(d) The chancellor of the community college system of New Hampshire, or designee.

(e) One automotive instructor teaching in the community college system of New Hampshire, appointed by the governor and council.

(f) One secondary education career technical education administrator, appointed by the governor and council.

(g) Four members of the New Hampshire Automobile Dealers Association, appointed by the governor and council.

II. (a) The term of office for each member appointed under subparagraphs I(e), I(f), and I(g) shall be 3 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

(b) The advisory council shall meet at least quarterly, and may meet more often at the call of the chair, or at the request of a majority of the members directed to the chair. The council may, by majority vote of the voting members, adopt additional bylaws as deemed necessary by the council.

(c) The council shall, at its annual meeting, elect one voting member to serve as chair for a one-year term, or until a successor is elected and qualified.

(d) No member shall receive any compensation for serving on the council, provided that the legislative members shall receive legislative mileage when in performance of their duties and the public members may receive compensation dependent upon the availability of funds, other than from the general fund.

Source. 2003, 214:3. 2007, 361:19, eff. July 17, 2007.

Advanced Manufacturing Education Advisory Council

188–E:21 Advanced Manufacturing Education Advisory Council Established.

There is established an advanced manufacturing education advisory council to advise the department of education in the implementation, evaluation, and expansion of the advanced manufacturing curriculum, to assist the department of education in pursuing public and private funds in order to ensure statewide access for all public high school students to advanced manufacturing curriculum coursework.

Source. 2008, 199:1, eff. June 11, 2008.

188–E:22 Membership and Terms.

I. The members of the advisory council shall be as follows:

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

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

(c) The commissioner of the department of education, or designee.

(d) The commissioner of the department of business and economic affairs, or designee.

(e) The president of the New Hampshire technical institute, or designee.

(f) The dean of the university of New Hampshire college of engineering and physical sciences, or designee.

(g) Three superintendents from school administrative units in which at least one school offers an advanced manufacturing curriculum to its students, appointed by the governor and council.

(h) Two directors of a regional career and technical center, appointed by the governor and council.

(i) Six members of the public representing businesses or other organizations, firms, or institutions representing advanced manufacturing industries in New Hampshire, appointed by the governor and council.

(j) One member who is employed as a secondary school counselor or a state guidance director, appointed by the governor.

(k) One member representing the interests of an advanced manufacturer with 20 or fewer employees, appointed by the governor and council.

II. (a) The term of office for each member appointed under subparagraphs I(g), I(h), I(i), I(j), and I(k) shall be 3 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

(b) The advisory council shall meet at least quarterly, and may meet more often at the call of the chair, or at the request of a majority of the members directed to the chair. The council may, by majority vote of the voting members, adopt additional bylaws as deemed necessary by the council.

(c) The council shall, at its annual meeting, elect one voting member to serve as chair for a one-year term, or until a successor is elected and qualified.

(d) No member shall receive any compensation for serving on the council, provided that the legislative members shall receive legislative mileage when in performance of their duties and the public members may receive compensation dependent upon the availability of funds, other than from the general fund.

Source. 2008, 199:1, eff. June 11, 2008. 2011, 20:1–3, eff. April 25, 2011. 2014, 85:1, 2, eff. Aug. 10, 2014. 2017, 10:1, 2, eff. June 16, 2017; 156:14, II, eff. July 1, 2017.

188–E:23 Duties. The advisory council shall advise the department of education in the following areas relative to the implementation of advanced manufacturing curriculum:

I. Curriculum expansion and revision.

II. Curriculum eligibility requirements.

III. Curriculum quality.

IV. Fund raising from private and other sources.

V. Allocation of funds necessary for the curriculum.

Source. 2008, 199:1, eff. June 11, 2008.

Robotics Education Development Program and Robotics Education Fund

188–E:24 Robotics Education Fund Established. There is established in the office of the state treasurer a nonlapsing fund to be known as the robotics education fund which shall be kept distinct and separate from all other funds. The fund shall be administered by the commissioner of the department of education. The commissioner may accept and expend funds from any public or private source, including private gifts, grants, and donations.

Source. 2014, 306:1, eff. Sept. 30, 2014. 2017, 156:155, eff. July 1, 2017.

188–E:24–a Robotics Education Development Program.

I. There is established a robotics education development program in the department of education. The purpose of the program is to motivate public school students to pursue education and career opportunities in science, technology, engineering, and mathematics, while building critical life and work-related skills. Grants from the robotics education fund established in RSA 188–E:24 shall be available to any eligible public school or chartered public school for the purpose of financing the establishment of a robotics team and its participation in competitive

events. Grant funds shall be limited to the purchase of robotics kits, stipends for coaches, and the payment of associated costs from participation in competitions.

II. The commissioner shall establish eligibility criteria for grants to public schools and chartered public schools which require that the applying school demonstrates:

(a) That it has established a partnership with at least one sponsor, business entity, institution of higher education, or technical school for the purpose of participation in a robotics program; and

(b) That it has developed a budget.

III. A school shall submit a grant application to the department of education, division of career technology and adult learning, bureau of career development, between September 1 and September 30 of each year. Grants shall be awarded no later than October 31 of each year.

IV. The amount of the grant shall be sufficient to cover the costs of establishing and supporting a team for 2 years and shall be disbursed by the commissioner as a single payment.

V. No school shall receive more than one grant every 2 years, however, a school district may receive multiple grant awards.

VI. If the amount of grant funds requested exceeds the balance in the robotics education fund available in any year, the commissioner shall not prorate the grant awards, but shall assign preference to those schools with a higher percentage of students in the school's average daily membership in attendance who are eligible for a free or reduced-price meal as defined in RSA 198:38. Secondary preference shall be given to schools which did not receive a grant in the previous year due to lack of funds.

VII. The commissioner shall adopt rules pursuant to RSA 541–A, relative to developing grant application forms and procedures, and establishing criteria for awarding and disbursing grants.

VIII. No later than July 15, 2018, and annually thereafter, the department shall issue a report to the governor, senate president, speaker of the house of representatives, and the state library, detailing the number of grants awarded, the schools receiving grants and the grant amount, the schools that applied for grants but did not receive a grant due to insufficient funds, and the unencumbered balance of the robotics education fund.

Source. 2017, 156:156, eff. July 1, 2017.

Dual and Concurrent Enrollment Program

188–E:25 Definitions. In this subdivision:

I. "Concurrent enrollment" means courses taught at the high school by high school teachers approved by the community college system of New Hampshire (CCSNH) in which high school students earn both high school and college or university credit while students are still attending high school or a career technical education center.

II. "Dual enrollment" means college courses taught by instructors from the community college system of New Hampshire (CCSNH) in which high school students earn college credit while students are still enrolled in high school or a career technical education center.

Source. 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017.

188–E:26 Program Established. There is established a dual and concurrent enrollment program in the department of education. Participation in the program shall be offered to high school and career technical education center students in grades 11 and 12. The program shall provide opportunities for qualified New Hampshire high school students to gain access and support for dual and concurrent enrollment in STEM (science, technology, engineering, and mathematics) and STEM-related courses that are fundamental for success in postsecondary education and to meet New Hampshire's emerging workforce needs.

Source. 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017.

188–E:27 Enrollment Requirements.

I. An interested high school student in grade 11 or 12 may enroll in a course that is designated by the CCSNH as part of the dual and concurrent enrollment program.

II. A student in the program shall be provided funding for enrollment in no more than 2 dual or concurrent enrollment courses taken in grade 11 and no more than 2 dual or concurrent enrollment courses taken in grade 12. A student may take more than 2 dual or concurrent enrollment courses per year at his or her own expense.

III. The state shall pay up to $250 to the CCSNH institution where a high school or career and technical education student successfully completes an approved course and the CCSNH shall accept such amount as full payment for course tuition.

IV. Each high school should provide a designated individual to serve as the point of contact on matters related to the program, including but not limited to,

student counseling, support services, course scheduling, managing course forms and student registration, program evaluation, course transferability, and assisting with online courses. Each high school shall annually notify all high school students and their parents of dual and concurrent enrollment opportunities.

Source. 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017.

188–E:28 School Board Policy.

I. No later than July 1, 2018, the school board of each school district shall develop and adopt a policy permitting students residing in the district who are in grade 11 or 12 to participate in the dual and concurrent enrollment program. The policy shall, at a minimum, include compliance with measurable educational standards and criteria approved by the CCSNH and that meet the same standard of quality and rigor as courses offered on campus by the CCSNH. The policy shall also comply with the standards for accreditation and program development established by the National Alliance for Concurrent Enrollment Partnerships. The policy shall include, but not be limited to, student eligibility criteria, standards for course content, standards for faculty approval, program coordination and communication requirements, tuition and fees, textbooks and materials, course grading policy, data collection, maintenance, and security, revenue and expenditure reporting, and process for renewal of the agreement.

II. The department of education and the CCSNH shall develop and approve a model dual and concurrent enrollment agreement that shall be used by the CCSNH and the school board of a school district participating in the dual and concurrent enrollment agreement program. The model agreement shall include standards established by the CCSNH, shall include elements, standards, and criteria that have been approved by the department of education and CCSNH, and shall serve as the framework for the development, implementation, and administration of the dual and concurrent enrollment program in each school district by clearly defining the procedures related to concurrent and dual enrollment of high school students in college classes. The department shall further develop guidelines for the program relating to reporting, accountability, and payment of available funds to the CCSNH.

Source. 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017.

188–E:29 Budget Requests. The commissioner of the department of education shall submit expenditure requests in accordance with RSA 9:4 to fund the dual and concurrent enrollment program established in this subdivision.

Source. 2017, 156:110, eff. July 1, 2017; 210:2, eff. July 1, 2017.

CHAPTER 188–F

COMMUNITY COLLEGE SYSTEM OF NEW HAMPSHIRE

188–F:1 Community College System of New Hampshire Established. The community college system of New Hampshire is hereby established and made a body politic and corporate, the main purpose of which shall be to provide a well-coordinated system of public community college education offering, as a primary mission, technical programs to prepare students for technical careers as well as general, professional, and transfer programs, and certificate and short term training programs which serve the needs of the state and the nation. The colleges of the community college system of New Hampshire are authorized to grant and confer in the name of the colleges all such degrees, literary titles, honors, and distinctions as other community colleges may of right do. The community college system of New Hampshire shall include, but is not limited to, colleges in Berlin, Claremont, Concord, Laconia, Manchester, Nashua, and Portsmouth. The community college system may also include regional academic centers that make quality educational opportunities accessible to New Hampshire residents.

Source. 2007, 361:2, eff. July 17, 2007. 2010, 199:1, eff. Aug. 20, 2010. 2011, 35:1, eff. July 8, 2011.

188–F:1–a Transfer Authorized. All functions, powers, duties, books, papers, records, and property of every kind, tangible and intangible, real and personal, possessed, controlled, or used by the former department of regional community-technical colleges as of the effective date of this section are hereby transferred to and vested in the board of trustees of the community college system of New Hampshire established in RSA 188–F:4. Nothing in this section shall transfer real property commonly associated with the McAuliffe-Shepard discovery center or the police standards and training council.

Source. 2011, 199:1, eff. Aug. 19, 2011; 224:362, eff. July 1, 2011.

188–F:2 Governance. The community college system of New Hampshire shall be governed by a single board of trustees which shall be its policy-making and operational authority. The board of trustees shall be responsible for ensuring that the colleges operate as a well coordinated system of public community college education.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:3 Legislative Oversight.

I. The general court finds that because of the importance of public community college education, elected officials should be aware of the activities and needs of the community college system, exercising their responsibility for legislative oversight through (1) the consideration by the appropriate legislative committees of proposed legislation pertaining to the community college system; and (2) the consideration of reports filed by the community college system of New Hampshire pursuant to this chapter.

II. The general court also recognizes the need to protect the institutions of the community college system of New Hampshire from inappropriate external influence which might threaten the academic freedom of faculty members or otherwise inhibit the pursuit of academic excellence. To this end, the general court has delegated broad authority to the board of trustees who shall be responsible for managing the community college system of New Hampshire in a manner which promotes academic excellence and serves the educational needs of the people of New Hampshire.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:3–a Prohibition on Preferential Treatment and Discrimination.

I. Within the state's community college system, there shall be no preferential treatment or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin, religion, or sexual orientation.

II. Notwithstanding paragraph I:

(a) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(b) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

Source. 2011, 227:3, eff. Jan. 1, 2012.

188–F:3–b Identification Cards. If a college of the community college system issues identification cards to students, all cards issued after January 1, 2014 shall bear a date of issuance.

Source. 2013, 278:3, eff. July 24, 2013.

188–F:4 Board of Trustees; Community College System of New Hampshire. The governance of the community college system of New Hampshire shall be vested in a single board of trustees composed as follows:

I. The governor, the chancellor and the vice-chancellor of the community college system, the president of each college within the community college system, and the commissioners of the departments of busi-

ness and economic affairs, employment security, and education, all of whom shall be nonvoting members.

II. The following voting members who shall be appointed by the governor with the advice and consent of the council:

(a) Four members from the fields of business and industry.

(b) One member who shall be a high school vocational/technical education director.

(c) One member who shall be an alumnus of one of the colleges within the community college system.

(d) One member from the field of education.

(e) One member from the health care profession.

(f) Two members from the building or mechanical trades who represent labor.

(g) One member from the community service sector.

(h) One member from the law enforcement community.

(i) Eight members from the general public.

(j) Two members who shall be New Hampshire residents and who are full-time students enrolled in one of the colleges within the community college system. The student trustees shall be voted from the colleges within the community college system of New Hampshire locations proceeding in alphabetical order and shall be elected by the student body of the campus responsible for providing the student trustee. The student trustees shall serve a one-year term commencing June 1 of the year for which the student was elected and ending May 31 of the next year. In the event that a student trustee ceases for any reason to attend the school from which the student was elected, the chancellor of the community college system of New Hampshire shall declare a vacancy in that student trustee position, and the next school in order shall elect the student trustee who shall serve for the remainder of the predecessor's term and an additional one-year term immediately thereafter.

(k) One member from the technology sector.

(*l*)(1) One member who shall be an employee of the community college system of New Hampshire. Such trustee position shall rotate among the institutions within the community college system of New Hampshire, proceeding in alphabetical order beginning with the college that is first alphabetically. The institutions within the community college system of New Hampshire, through an election at an all-college/institutional forum, shall nominate a slate of 3 employees, that shall not include members of the community college system leadership team (SLT), whose names shall be forwarded to the governor who shall choose one for the nomination. The employee-trustee shall serve a 2-year term. In the event the employee-trustee is unable for any reason to serve the entire term, the chairman of the board of trustees shall declare a vacancy in that employee-trustee position. Upon expiration or vacancy of such term, the next institution in order shall nominate a slate of 3 employees, not to include a member of the SLT, whose names shall be forwarded to the governor for consideration.

(2) For purposes of this paragraph, "community college system leadership team (SLT)" means and is comprised of the chancellor, vice chancellor, president of each community college, and the chancellor's senior staff associated with statewide policy and operational coordination as identified in the handbook for administrative, managerial, professional and operating support staff exempt from the collective bargaining process, as approved by the community college system of New Hampshire board of trustees.

III. (a) The terms of office for appointed and elected members, except for the student and employee members, shall be 4 years unless otherwise specified in this section, and shall end on June 30, except for the student and employee members.

(b) In cases where the terms of office of the members of the board of trustees do not expire in successive years, the governor, with the advice and consent of the council may, in making any appointment or filling any vacancy to such office, appoint any person for a period less than the full term or up to one year greater than the full term in order to adjust the terms of each member so that terms of office of no more than 5 members per year will expire.

IV. At least one voting member shall be from each executive council district.

V. Each member, except the student member, shall hold office until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term only, except as provided in RSA 188–F:4, II(j) and subparagraph III(b). The appointment of successors for the filling of vacancies for unexpired terms shall be by appointment or election in the same manner as the original appointment.

VI. All board members shall be New Hampshire residents.

VII. Except for the governor and locally elected municipal officials, no person who holds elected public office shall serve on the board.

VIII. Board members shall not be eligible to participate in a vote when the board member has recused himself or herself from participation because he or she has a pecuniary or personal interest or other conflict of interest.

Source. 2007, 361:2, eff. July 17, 2007. 2008, 133:1, 3, eff. June 3, 2008. 2016, 299:1–3, eff. Aug. 20, 2016. 2017, 156:14, II, eff. July 1, 2017.

188–F:5 Operation of Board of Trustees.

I. The board shall elect its own chairperson and vice-chairperson annually.

II. The board shall choose a secretary, who shall keep a record of proceedings, and a treasurer, who shall give a bond satisfactory to the trustees for the faithful discharge of duties as treasurer. The trustees may, in their discretion, require a bond for any other persons employed by or administering the affairs of the community college system. Said trustees shall determine the amount and sufficiency of the surety of said treasurer's bond or any other bonds required under this section.

III. Twelve voting members shall constitute a quorum for the transaction of business, but not less than 12 affirmative votes shall be required to elect the chancellor of the community college system.

IV. The board shall meet at such times and places as it may determine, but shall hold regular meetings no less than once every 3 months. The chairperson shall call special meetings upon the written request of any 5 board members or upon the chairperson's own motion.

V. Members shall receive no compensation for their services but shall be reimbursed for expenses reasonably incurred by them in the performance of their duties.

Source. 2007, 361:2, eff. July 17, 2007. 2008, 133:2, eff. June 3, 2008.

188–F:6 Authority of the Board of Trustees. The trustees shall have the management and control of all the property and affairs of the community college system, all of its colleges, divisions, and departments. In addition to this authority, the trustees are authorized to:

I. Develop and adopt bylaws for the regulation of its affairs and the conduct of business and to adopt an official seal and alter it as necessary or convenient.

II. Oversee the administration of the community college system of New Hampshire and its colleges, divisions, departments, and regional academic centers, to determine the organizational structure and operational policies and procedures for the community college system, and to render the final decision on the closure of any college or regional academic center.

III. (a) Appoint and fix the compensation of a chancellor of the community college system of New Hampshire who shall serve as the chief executive officer of the community college system, as the community college system's primary liaison with the general court and other elements of state government, and as chief spokesperson for the community college system. The chancellor shall be qualified by education and experience and shall serve at the pleasure of the board.

(b) Approve the nomination by the chancellor, and fix the compensation of a vice-chancellor who shall be qualified by education and experience and who shall serve at the pleasure of the chancellor.

(c) Approve the nomination by the chancellor, and fix the compensation of a president of each community college system of New Hampshire college, who shall be the chief academic and administrative officer of his or her institution. The president, who shall report to the chancellor, shall be the chief executive officer of his or her college, and shall have the authority for and be responsible for the general administration and supervision of all operations of that college, and shall have such other duties as the board of trustees may determine. The president shall be qualified by education and experience and shall serve at the pleasure of the board.

(d) Appoint and fix the compensation and duties of such other community college system of New Hampshire administrators as are needed to provide a well-coordinated system of public higher education.

(e) Employ and prescribe the duties of personnel as may be necessary to carry out the purposes for which the community college system of New Hampshire has been created.

IV. Accept legacies and other gifts to or for the benefit of the community college system.

V. Accept any moneys accruing to the community college system and its colleges, or moneys appropriated by or received from the United States government or the state of New Hampshire, including federal financial aid, and any grant moneys from state or

federal governmental agencies, public or private corporations, foundations or organizations for the benefit and support of the community college system.

VI. Prepare and adopt a biennial operating budget for presentation to the governor and the general court. Each college within the community college system of New Hampshire and the chancellor's office shall be considered a separate division and budgetary unit. The community college system of New Hampshire shall submit its budget in accordance with RSA 9:4–e and at the same time as state agencies. All claims to be presented for the issuance of warrants submitted by the colleges and the system office of the community college system of New Hampshire shall be pre-audited by the community college system of New Hampshire, and such certification shall be sufficient evidence for the director of the division of accounting services to fulfill such responsibilities relative to the debt incurred by the community college system of New Hampshire.

VII. Prepare and adopt a biennial capital improvements budget for presentation to the governor and the general court.

VIII. Receive, expend, allocate, and transfer funds within the community college system of New Hampshire as necessary to fulfill the purposes of the community college system. The trustees shall have no authority over any funds appropriated to the police standards and training council or to the McAuliffe-Shepard discovery center, which shall not be commingled with any funds of the community college system of New Hampshire.

IX. Invest any funds not needed for immediate use, including any funds held in reserve, in property and securities in which fiduciaries in the state may legally invest funds.

X. Establish and collect tuition, room and board, and fees, and to set policies related to these and other charges, including fees for the reasonable use of community college system of New Hampshire facilities.

XI. Enter into any contracts, leases, and any other instruments or arrangements that are necessary, incidental, or convenient to the performance of its duties and responsibilities.

XII. Acquire consumable supplies, materials, and services through cash purchases, sole-source purchase orders, bids, or contracts as necessary to fulfill the purposes of this chapter.

XIII. Acquire by purchase, gift, lease, or rent any property, lands, buildings, structures, facilities, or equipment necessary to fulfill the purposes of this chapter.

XIII–a. Enter into a contract for the sale of real property with the prior approval of the long range capital planning and utilization committee and governor and council, provided that the state shall retain the right of first refusal in any proposed sale of real property. This paragraph shall not apply to real property acquired by the community college system of New Hampshire after the effective date of this paragraph.

XIV. Grant or otherwise transfer utility easements.

XV. Authorize and enter any contracts, leases, and any other instruments or arrangements that are necessary, incidental, or related to the construction, maintenance, renovation, reconstruction, or other necessary improvements of community college system of New Hampshire buildings, structures, and facilities.

XVI. Develop and adopt personnel policies and procedures for the community colleges. The board of trustees shall determine the qualifications, duties, and compensation of its employees and shall allocate and transfer personnel within the community college system of New Hampshire as necessary to fulfill the purposes of this chapter.

XVII. Appoint or identify college or program advisory committees to advise the community colleges with respect to strategic directions, general, professional, career, and training policies and programs and their modification to meet the needs of the state's economy and the changing job market.

XVIII. Adopt principles of effective self-governance and to assess board processes, policies, and operations in light of such principles.

XIX. Delegate duties and responsibilities as necessary for the efficient operation of the community college system of New Hampshire and to do other acts or things necessary or convenient to carry out the powers and duties set forth in this chapter.

XX. By and with the consent of the governor and council, borrow on the credit of the community college system of New Hampshire in anticipation of income for the purpose of forwarding its building program, not exceeding $500,000 in any one fiscal year. All amounts so obtained in any fiscal year shall be repaid from the income of the next succeeding year.

XXI. Enter into program and service relationships with state departments, divisions, and other state entities through memoranda of understanding.

Source. 2007, 361:2, eff. July 17, 2007. 2009, 13:6, eff. April 17, 2009. 2010, 199:2, 4, 7, eff. Aug. 20, 2010. 2011, 35:2, eff. July 8, 2011; 199:3, eff. Aug. 19, 2011. 2016, 319:6, eff. July 1, 2016.

188–F:7 Employment; Benefits; Retirement System Status.

I. Any changes to the conditions of employment, compensation, and benefits of community college system of New Hampshire employees covered by collective bargaining agreements shall be negotiated through the collective bargaining process.

II. The community college system of New Hampshire shall, as of the effective date of this section, be considered an employer for the purposes of RSA 100–A:1, IV. Full-time employees of the community college system of New Hampshire as of the effective date of this section shall be considered employees for the purposes of RSA 100–A:1, V.

III. Service as an employee of the community college system of New Hampshire shall be creditable service for purposes of RSA 100–A, RSA 21–I:29, RSA 21–I:30, RSA 21–I:30–a, RSA 21–I:30–b, and RSA 21–I:30–c. Any community college system of New Hampshire employee who transfers, without a break in service, to a state classified, unclassified, or nonclassified service position shall retain and transfer all leave accruals and seniority and be entitled to all the rights and benefits of a permanent employee in the classified or unclassified service of the state based on the years of creditable state service. At the time of such a transfer, the employee shall immediately begin to accrue annual and sick leave as granted at the time of the transfer by the receiving agency according to the employee's continuous years worked. Any state employee in a classified, unclassified, or nonclassified service position who transfers, without a break in service, to the community college system of New Hampshire shall retain and transfer all leave accruals and seniority and be entitled to all the rights and benefits of a permanent employee in the classified or unclassified service of the state based on the years of creditable state service. At the time of such a transfer, the employee shall immediately begin to accrue annual and sick leave as granted at the time of the transfer by the receiving agency according to the employee's continuous years worked.

IV. Membership in the retirement system shall be optional for positions within the community college system of New Hampshire for which participation was optional as of June 30, 2007, and for such other positions within the community college system of New Hampshire as may be designated by the board of trustees.

V. The community college system of New Hampshire shall remit to the state on a monthly basis the cost of retiree health care benefits for employees who have retired on or after July 1, 2011. The amount due shall be based on current enrollment for that month and the working rate for the calendar year. Invoices from the department of administrative services shall contain retiree enrollment detail in regards to the amount due. The department shall provide the community college system an anticipated budget each biennium as part of the retiree health budget process.

Source. 2007, 361:2, eff. July 17, 2007. 2010, 199:5, eff. Aug. 20, 2010. 2015, 276:24, eff. July 1, 2015.

188–F:8 Use of Financial Services and Department of Administrative Services.

[Repealed 2007, 361:35, II, eff. July 1, 2011.]

History

Former RSA 188–F:8, which was derived from 2007, 361:2, related to the use of financial services and the department of administrative services.

188–F:9 The State Fund.

[Repealed 2017, 195:3, I, eff. Sept. 3, 2017.]

History

Former RSA 188–F:9, which was derived from 2007, 361:2, related to the community college system of New Hampshire fund.

188–F:10 Nonlapsing Account.

[Repealed 2017, 195:3, II, eff. Sept. 3, 2017.]

History

Former RSA 188–F:10, which was derived from 2007, 361:2, related to placement of excess revenue into a nonlapsing account.

188–F:11 Report.

I. The commissioner of the department of education and the chancellor of the community college system of New Hampshire shall annually issue a joint report on the proposed use and distribution of federal vocational funds. Such report shall be completed by October 15 of each year and a copy shall be delivered to the chairpersons of the house and senate education committees, the speaker of the house of representatives, the president of the senate, the governor, the house clerk, the senate clerk, and the state library.

II. The chancellor and the chairperson of the board of trustees of the community college system of New Hampshire shall issue a report annually which shall include updates on ongoing upgrades to the information technology systems used by the commu-

nity college system of New Hampshire and an assessment of the overall operation of the community college system of New Hampshire including financial status, enrollment data, and program administration. Such report shall be completed by October 15 of each year. A copy of this report shall be delivered to the chairmen of the house education committee and senate education committee, the speaker of the house of representatives, president of the senate, the governor, the senate clerk, the house clerk, and the state library.

III. Each year the chancellor of the community college system of New Hampshire, as well as one representative from the board of trustees and the president of each institution shall appear before the house finance committee and the senate finance committee to review the system's programs, cost analysis, revenue projections, and any other information detailed in the written report.

Source. 2007, 361:2, eff. July 17, 2007. 2009, 148:2, eff. June 30, 2009.

188–F:12 Tax Exemption. The property of the community college system of New Hampshire is exempt from taxation as provided in RSA 72:23.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:13 Names of the Colleges. The names of the respective colleges of the community college system of New Hampshire shall be established, and may be changed, upon approval by the board of trustees and approval by the governor and council.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:14 Accreditation. The community college system of New Hampshire colleges are authorized to seek accreditation and maintain membership in the regional accrediting association to satisfy the requirements necessary to achieve and maintain regional accreditation and to meet the requirements necessary for federal aid. Each individual program of study offered shall meet all of the requirements for professional accreditation or licensing, or both, of the particular specialty as appropriate.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:15 Tuition Waived.

I. If a person is domiciled in this state while serving in or with the armed forces of the United States and is, after February 28, 1961, reported or listed as missing, or missing in action, or interned in a neutral country, or beleaguered, besieged, or captured by the enemy during the Southeast Asian conflict, any child of such person, enrolled after March 23, 1972, in a community college system of New Hampshire institution shall, so long as said person is so reported, listed, interned, beleaguered, besieged, or captured, not be required to pay tuition for attendance at such school. Any person entitled to free tuition under this section shall apply to the community college system of New Hampshire institution he or she wishes to attend which may require such proof as deemed necessary in order for a person to qualify for free tuition under this section.

II. The board of trustees shall have the authority to allow full-time employees who have one year of previous service at the community college system, free tuition, and to the dependents of such employees a 50 percent discount of tuition, at the community college system of New Hampshire colleges.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:16 Tuition Waived for Children of Certain Firefighters and Police Officers.

I. A person who is a New Hampshire resident, who is under 25 years of age, and who enrolls in a community college system of New Hampshire institution shall not be required to pay tuition for attendance at such school if he or she is the child of a firefighter or police officer who died while in performance of his or her duties and whose death was found to be compensable under RSA 281–A.

II. Any person entitled to free tuition under this section shall apply to the community college system of New Hampshire institution he or she wishes to attend, which may require such proof as deemed necessary in order for a person to qualify for free tuition under this section.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:16–a Waiver of Residency Requirement for In-State Tuition For Veterans. A veteran of the armed forces who establishes a residence in New Hampshire shall immediately after establishing such residence be eligible for in-state tuition rates when attending any institution in the community college system of New Hampshire.

Source. 2014, 121:2, eff. June 16, 2014.

188–F:17 Federal Funds. The state board of education, acting as the state board for technical education, shall be the primary recipient of federal funds provided under the Carl D. Perkins Vocational Education Act of 1984. The state board shall, each year, provide the community college system of New Hampshire with funds available under the Titles I–IV of the act and subsequent amendments to the act. The board of trustees of the community college system of New Hampshire shall jointly plan with the

department of education for the expenditure of funds in the New Hampshire state plan for vocational education. The chancellor of the community college system of New Hampshire and the commissioner of education shall cooperate in the development of applications for such funds.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:18 Early Childhood Laboratory School Fund.

[Repealed 2017, 195:3, III, eff. Sept. 3, 2017.]

History

Former RSA 188–F:18, which was derived from 2007, 361:2, related to the early childhood laboratory school fund.

188–F:19 Liability Limited. Any person who, or any firm or corporation which donates the use of its premises, personnel or equipment to the community college system of New Hampshire to assist it in its training courses shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury arising out of the use by the community college system of New Hampshire of the equipment, facilities, or services to any person if:

I. The person, firm or corporation was acting pursuant to a prior written request or acceptance by the chancellor of the community college system of New Hampshire; and

II. The damage or injury was not caused by willful, wanton or grossly negligent misconduct by the person, firm, or corporation.

Source. 2007, 361:2, eff. July 17, 2007.

188–F:20 Motor Vehicle Regulations.

[Repealed 2008, 133:4, eff. June 3, 2008.]

History

Former RSA 188–F:20, which was derived from 2007, 361:2, related to motor vehicle regulations applicable to the community college system of New Hampshire.

188–F:21 Advice and Supervision.

[Repealed 2007, 361:35, III, eff. July 1, 2011.]

History

Former RSA 188–F:21, which was derived from 2007, 361:2, related to the attorney general's advice to and supervision of the community college system.

188–F:21–a Freedom of Association. No institution within the community college system of New Hampshire which accepts state funds shall prohibit, as a condition of admission or continued enrollment, any student from becoming a member of any group or organization, nor shall an institution take disciplinary action against a student based solely on the student's membership in a group or organization.

Source. 2012, 69:2, eff. July 14, 2012.

Police Standards and Training Council

188–F:22 to 188–F:29 Repealed.

[Repealed 2017, 206:26, I, eff. Sept. 8, 2017.]

History

Former RSA 188–F:22, which was derived from 1985, 152:1 and 1993, 331:1, related to the legislative findings and policy behind creation of the police standards and training council. See now RSA 106–L:1.

Former RSA 188–F:23, which was derived from 1985, 152:1, 307:2, 326:1; 1986, 67:16; 1987, 292:9, 13, 14; 1989, 303:1; 1993, 331:2; 1995, 182:29; 1996, 13:1; and 2007, 361:35, IV, related to definitions for the police standards and training council. See now RSA 106–L:2.

Former RSA 188–F:24, which was derived from 1985, 152:1; 1989, 303:1; 1993, 331:3; 1995, 133:5, 6, 182:29; 1998, 272:15; 2007, 361:20, 21; and 2014, 38:1, 2, related to establishment of the police standards and training council. See now RSA 106–L:3.

Former RSA 188–F:25, which was derived from 1985, 152:1; 1989, 303:1; 1995, 182:29; 1998, 272:16; and 2007, 361:22, related to the administrative attachment of the police standards and training council to the community college system. See now RSA 106–L:4.

Former RSA 188–F:26, which was derived from 1985, 152:1; 1988, 262:5; 1993, 331:4, 5; 1994, 172:1; 1995, 133:7, 155:6, 7, 9, 182:27; 1996, 13:2, 3; 1998, 108:1, 272:17; 2003, 59:1; 2006, 248:1; 2007, 361:23, 24; 2016, 278:8, related to the powers of the police standards and training council. See now RSA 106–L:5.

Former RSA 188–F:27, which was derived from 1985, 152:1; 1986, 67:17, 140:5; 1987, 292:10, 14, II; 1993, 331:6, 7; 1995, 133:8, 9; 1996, 13:4, 5; 1997, 138:2, 3; 1998, 272:18; 2004, 97:8, 257:2; 2008, 25:1; 2012, 264:1, III, IV, related to the education and training requirements for law enforcement officers. See now RSA 106–L:6.

Former RSA 188–F:28, which was derived from 1985, 152:1, related to additional training regarding intoxicated and incapacitated persons for peace officers. See now RSA 106–L:7.

Former RSA 188–F:28–a, which was derived from 2014, 67:3, related to Alzheimer's disease and related dementia training for the law enforcement community. See now RSA 106–L:8.

Former RSA 188–F:29, which was derived from 1985, 152:1, related to reimbursement of political subdivisions or the state for police training program expenses. See now RSA 106–L:9.

188–F:30 Police Standards and Training Council Training Fund.

[Repealed 2016, 319:5, I, eff. July 1, 2016.]

History

Former RSA 188–F:30, which was derived from 1985, 152:1, and 2014, 144:67, related to a police standards and training council training fund.

188–F:31 to 188–F:32–a Repealed.

[Repealed 2017, 206:26, I, eff. Sept. 8, 2017.]

History

Former RSA 188–F:31, which was derived from 1985, 152:1; 1988, 196:1, 2; 1989, 408:60, 61, 83, 84; 1990, 3:69, 70; 1992, 220:1, 2, 3, 4; 1995, 133:10; 1999, 261:3; 2005, 177:156; 2006, 259:29; 2007, 263:66; 2009, 144:109, 110; 2011, 224:201; 2015, 276:156; and 2016, 319:7, related to penalty assessments for criminal offenses and transmittal into certain funds. See now RSA 106–L:10.

Former RSA 188–F:32, which was derived from 1985, 152:1; 1989, 303:1; 1995, 182:29; 1998, 272:19; and 2007, 361:25, related to

attendance at training courses by persons other than police officers. See now RSA 106–L:11.

Former RSA 188–F:32–a, which was derived from 1989, 260:2; 1995, 155:13; 1998, 272:20, 21; and 2016, 319:8, related to tuition paying students at police and corrections academy programs. See now RSA 106–L:12.

188–F:32–b Transfers of Unappropriated Funds.

[Repealed 2013, 144:68, eff. June 30, 2013.]

History

Former RSA 188–F:32–b, which was derived from 1989, 260:2, related to transfers of unappropriated funds.

188–F:32–c, 188–F:32–d Repealed.

[Repealed 2017, 206:26, I, eff. Sept. 8, 2017.]

History

Former RSA 188–F:32–c, which was derived from 1989, 260:2 and 1995, 133:11, related to civil liability for volunteers assisting in police training programs. See now RSA 106–L:13.

Former RSA 188–F:32–d, which was derived from 2006, 248:2, related to liability of firearms instructors for actions taken by persons subsequent to their certification. See now RSA 106–L:14.

New Hampshire Regional Community-Technical Institute

188–F:33 to 188–F:36 Repealed.

[Repealed 2017, 206:26, II, eff. Sept. 8, 2017.]

History

Former RSA 188–F:33, which was derived from 1987, 53:1 and 1995, 133:12, 182:28, related to the security force for the regional community-technical institute.

Former RSA 188–F:34, which was derived from 1987, 53:1 and 1995, 182:30, related to the authority of officers of the security force for the regional community-technical institute.

Former RSA 188–F:35, which was derived from 1987, 53:1; 1995, 182:30; and 2012, 264:1, V, related to training of campus security officers for the regional community-technical institute.

Former RSA 188–F:36, which was derived from 1987, 53:1, related to membership of security officers for the regional community-technical institute in the state retirement system.

Postsecondary Technical Education Study Committee

188–F:37 to 188–F:41 Repealed.

[Repealed 1995, 10:16, VI, April 12, 1995.]

History

Former RSA 188–F:37 to 188–F:41, which were derived from 1987, 387:1 and 1989, 303:1, related to the postsecondary technical education study committee.

Equipment Challenge Grant Program

188–F:42 to 188–F:48 Repealed.

[Repealed 2000, 99:1, eff. June 26, 2000.]

History

Former RSA 188–F:42 to 188–F:48, which were derived from 1992, 259:2; 1993, 182:1, 2; 1995, 182:24, 29; and 1998, 272:22 related to the equipment challenge grant program.

Job Training Program for Economic Growth

188–F:49 to 188–F:56 Repealed.

[Repealed 2007, 204:4, eff. July 1, 2007.]

History

Former RSA 188–F:49, which was derived from 1993, 351:9, related to establishing a job training program for economic growth. See now RSA 12–A:51.

Former RSA 188–F:50, which was derived from 1993, 351:9, related to the purpose of a job training program for economic growth. See now RSA 12–A:52.

Former RSA 188–F:51, which was derived from 1993, 351:9, related to what job training programs for economic growth could include. See now RSA 12–A:53

Former RSA 188–F:52, which was derived from 1993, 351:9; 1995, 182:29; 1998, 272:23; 2001, 133:9; and 2002, 127:1, related to the administration and review committee for the job training program for economic growth. See now RSA 12–A:54.

Former RSA 188–F:53, which was derived from 1993, 351:9; 2001, 133:10; and 2002, 127:2, related to eligibility for job training grants for economic growth. See now RSA 12–A:55.

Former RSA 188–F:54, which was derived from 1993, 351:9 and 2001, 133:11, related to eligible costs under the job training program for economic growth. See now RSA 12–A:56.

Former RSA 188–F:55, which was derived from 1993, 351:9 and 1995, 182:29, related to the training facilities for the job training program for economic growth. See now RSA 12–A:57.

Former RSA 188–F:56, which was derived from 1993, 351:9; 1998, 272:24; and 2001, 133:12, related to performance and report requirements for the job training program for economic growth. See now RSA 12–A:58.

Christa McAuliffe Planetarium Commission

188–F:57 to 188–F:67 Repealed.

[Repealed 2001, 136:4, eff. July 1, 2001.]

History

Former RSA 188–F:57, which was derived from 1995, 133:13, related to definitions. See now RSA 12–L:1.

Former RSA 188–F:57–a, which was derived from 1998, 272:25, related to declaration of purpose. See now RSA 12–L:2.

Former RSA 188–F:58, which was derived from 1995, 133:13, related to establishment of the commission. See now RSA 12–L:3.

Former RSA 188–F:59, which was derived from 1998, 33:13, 272:26 and 1999, 363:3, related to commission membership. See now RSA 12–L:4.

Former RSA 188–F:60, which was derived from 1995, 133:13 and 1998, 33:2, related to offices and compensation. See now RSA 12–L:5.

Former RSA 188–F:61, which was derived from 1995, 133:13, related to administrative attachment.

Former RSA 188–F:62, which was derived from 1998, 272:28, related to powers and duties of the commission. See now RSA 12–L:7.

Former RSA 188–F:63, which was derived from 1995, 133:13 and 1998, 272:29, related to employment of a director and staff. See now RSA 12–L:8.

Former RSA 188–F:64, which was derived from 1995, 133:13 and 1998, 272:30, related to gifts, grants and donations. See now RSA 12–L:9.

Former RSA 188–F:65, which was derived from 1995, 133:13, related to establishment of the Christa McAuliffe planetarium fund. See now RSA 12–L:10.

Former RSA 188–F:66, which was derived from 1995, 133:13, related to the transfer of funds. See now RSA 12–L:11.

Former RSA 188–F:67, which was derived from 1995, 133:13, related to the operation of a gift store. See now RSA 12–L:12.

CHAPTER 188–G

PRIVATE POSTSECONDARY CAREER SCHOOLS

188–G:1 Definitions; Exclusions.

I. In this chapter:

(a) "Alternative delivery" means a mode of instruction which does not involve face-to-face instruction between instructor and student in the same geographic location. This mode of instruction shall include Internet, televised, video, telephonic, and correspondence media.

(b) "Conference" or "seminar" means a scheduled meeting of 2 or more persons for discussing matters of common concern and where, if training or education is offered, it shall be incidental to the purpose of the conference.

(c) "Commission" means the higher education commission established in RSA 21–N:8–a, II.

(d) "Commissioner" means the commissioner of the department of education.

(e) "Director" means the director of the division of higher education in the department of education.

(f) "Division" means the department of education, division of higher education.

(g) "Entity" means any individual, firm, partnership, association, company, corporation, organization, trust, school, or other legal entity or combination of these entities.

(h) "Physical presence" means a physical location for instructional purposes, maintaining an administrative office, including a mailing address or phone number, or face-to-face advising, mentoring, supervision, testing, or instruction taking place in New Hampshire.

(i) "Private postsecondary career school" means any for-profit or nonprofit postsecondary career entity maintaining a physical presence in this state providing education or training for tuition or a fee that enhances a person's occupational skills, or provides continuing education or certification, or fulfills a training or education requirement in one's employment, career, trade, profession, or occupation. Schools that offer resident or nonresident programs, including programs using modes of alternative delivery, beyond the secondary school level to an entity shall be included in this definition regardless of the fact that the school's tuition and fees from education and training programs constitute only a part of the school's revenue.

(j) "Workshop" means a brief, intensive education or training program that focuses on developing techniques and skills in a particular area.

II. In this chapter, "private postsecondary career school" shall not include:

(a) Schools authorized to grant degrees pursuant to RSA 292.

(b) Schools specifically licensed as an education or training school by a state agency other than the commission.

(c) Schools operated by a business organization exclusively for the training of that business' own employees and at no charge to its employees.

(d) Schools offering noncredit courses exclusively for avocational purposes.

(e) Schools established, operated, and governed by the state of New Hampshire or any of its political subdivisions, or any other state or its political subdivisions.

(f) Noncredit courses or programs sponsored by recognized trade, business, or professional organizations solely for the instruction of their members that do not prepare or qualify individuals for employment in any occupation or trade.

(g) Schools that offer programs and courses exclusively on federal military installations.

(h) Entities that offer training at seminars, workshops, or conferences, if:

(1) Any training or education offered is incidental to the purpose of the seminar, workshop, or conference; and

(2) The attendee receiving the training is not awarded any form of a certificate, diploma, or credit including continuing education units for having received the training.

(i) An entity training students under 14 C.F.R. part 91 or 14 C.F.R. part 141, or receiving flight or ground instruction required by the Federal Aviation Administration.

(j) Entities that license software, the content of which is focused on training or education, if the entity:

(1) Is primarily engaged in the business of licensing software;

(2) Licenses its software primarily to other legal entities, and not directly to an end user or individual student;

(3) Does not confer degrees, diplomas, continuing education units, or any other form of credit in connection with the software it licenses;

(4) Is not accredited and does not seek accreditation in connection with the software it licenses or the content it offers; and

(5) Does not offer an admissions process, financial aid, career advice, or job placement in connection with the software it licenses.

(k) Entities offering only training courses at a total cost, including tuition and all other fees and charges, of not more than $800 per course for which no payment, including a deposit, is required or collected prior to the first day of the course. This subparagraph shall not apply to entities that use alternative delivery methods.

(*l*) Government entities offering training in public safety related occupations including but not limited to the division of fire standards and training and emergency medical services, the division of fire safety, and the police standards and training council.

Source. 2011, 224:150, eff. July 1, 2011. 2014, 132:3, eff. June 16, 2014. 2016, 149:6, eff. Jan. 1, 2017.

188–G:2 Licenses and Fees.

I. Prior to registering or renewing a business or trade name, or soliciting students for enrollment, an entity maintaining a physical presence in this state shall be reviewed by the commission to determine if the entity requires a license. The commission shall establish procedures to accomplish this review.

II. A private postsecondary career school maintaining a physical presence in this state shall register to obtain a license or license renewal from the commission. The license shall be issued or renewed pursuant to rules, adopted under RSA 541–A, by the commission. The rules shall establish minimum criteria, including but not limited to, financial stability, educational program, administrative and staff qualifications, business procedures, facilities, equipment, and ethical practices to be met by licensees, and criteria for rejecting a licensing applicant and for suspending or revoking a license.

III. A school that is not required to obtain a license may apply for a license and, upon issuance of the license, shall be subject to the provisions of this chapter. Such school may voluntarily surrender its license and revert to its original status.

IV. The commission shall adopt rules pursuant to RSA 541–A to establish reasonable fees, fines, reimbursement rates for consultants, and procedures for complaint investigations and enforcement actions, which are necessary for the administration of this chapter.

V. A private postsecondary career school which the commission has determined requires a license shall, prior to the issuance of a license, comply with this section and RSA 188–G:3.

Source. 2011, 224:150, eff. July 1, 2011. 2013, 187:2, eff. June 30, 2013. 2014, 132:4, eff. June 16, 2014.

188–G:3 Surety Indemnification. Before a license is issued or renewed, a school shall furnish surety indemnification as required in this section.

I. A surety bond shall be provided by the school in an amount prescribed in this section. The obligation of the bond is that the school, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the school and entity enrolling as students. The bond shall be issued by a company authorized to do business in the state of New Hampshire. The bond shall be issued in the name of the commission, and is to be used only for payment of a refund of tuition and instructional fees due to a student or potential student, and the expense of investigating and processing the claims.

II. The amount of such bond shall be based on income from tuition at 10 percent of gross tuition, with a $10,000 minimum. If a school licensed under RSA 188–G:2 should fail to provide the services required in a contract with any entity, as determined by a court of competent jurisdiction, the bond shall be forfeited, and the proceeds distributed by the director in such manner as justice and the circumstances require.

III. The bond company may not be relieved of liability on the bond unless it gives the school and the commission 90 days written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the school's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replace-

ment bond is obtained and provided to the commission.

IV. For the purposes of this section the forms of indemnification other than a surety bond which may be furnished to the commission for licensure are the following:

(a) An irrevocable letter of credit, maintained for the licensing period as a minimum, issued by a financial institution authorized to do business in New Hampshire in an amount to be determined by the commission with the commission designated as the beneficiary; or

(b) A term deposit account held in the state treasury, payable to the commission, shall be held in trust for the benefit of students entitled thereto under this section. Said account shall be maintained for the licensing period as a minimum, in an amount determined by the commission. Any interest shall be paid annually to the appropriate school, unless the term deposit account is activated due to a school closing. Should the licensee for any reason, while not in default, discontinue operation, all moneys on deposit, including any interest, shall be released to the appropriate school subject to the approval of the commission.

Source. 2011, 224:150, eff. July 1, 2011. 2013, 187:3, eff. June 30, 2013.

188–G:4 Student Tuition Guaranty Fund.

[Repealed 2013, 187:1, I, eff. June 30, 2013.]

History

Former RSA 188–G:4, which was derived from 2011, 224:150, related to the student tuition guaranty fund.

188–G:5 Inspections. The commission may at any time inspect the premises, curriculum, teaching materials, faculty performance, sales literature, financial data, or other matters which are relevant to the educational and business activities of a licensed school in order to determine compliance with applicable laws and rules.

Source. 2011, 224:150, eff. July 1, 2011.

188–G:6 Revocation; Hearing. The commission may, after due notice and hearing, revoke the license of any school licensed pursuant to RSA 188–G:2 for violating the provisions of this chapter or rules adopted hereunder. The provisions of RSA 541 shall apply to actions taken pursuant to this section.

Source. 2011, 224:150, eff. July 1, 2011.

188–G:7 Waiting Period. Every contract that purports to bind any entity to pay money to a private postsecondary career school in return for training shall be construed to be a home solicitation sales contract under RSA 361–B and shall be subject to the provisions of RSA 361–B.

Source. 2011, 224:150, eff. July 1, 2011.

188–G:8 Veterans, Education and Services Approval. The division may approve for veterans' education and services any institution licensed under this chapter. The department of education may adopt rules, under RSA 541–A, relative to the procedures for approval of institutions for veterans' education and benefits.

Source. 2011, 224:150, eff. July 1, 2011.

188–G:9 Use of Fees. Notwithstanding any provision of law to the contrary, all license fees collected under the provisions of this chapter shall be retained by the commission for use in meeting the expenses of administering this chapter.

Source. 2011, 224:150, eff. July 1, 2011.

188–G:10 Penalty.

I. Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Whenever the commission determines that a person is violating any provision of this chapter or the rules adopted hereunder, the commission shall request the attorney general, or other appropriate official having jurisdiction, to provide appropriate relief.

III. The commission, upon verifying that a school is operating without a license, shall issue a cease and desist order to such school.

IV. The commission shall be notified whenever a cease and desist order is issued to a school, or if a school fails to provide the services required under a contract with any entity causing the bond to be forfeited, or if a school is required to have a license but is operating without a license.

Source. 2011, 224:150, eff. July 1, 2011.

CHAPTER 189

SCHOOL BOARDS, SUPERINTENDENTS, TEACHERS, AND TRUANT OFFICERS; SCHOOL CENSUS

School Boards, Transportation and Instruction of Pupils

School Boards, Transportation and Instruction of Pupils

189:1 Days of School. The school board of every district shall provide standard schools for at least 180 days in each year, or the equivalent number of hours as required in the rules of the department of education, at such places in the district as will best serve the interests of education and give to all the pupils within the district as nearly equal advantages as are practicable.

Source. 1883, 43:6. PS 92:1. 1919, 106:20. 1921, 85, II:1. PL 117:1. RL 135:1. RSA 189:1. 1959, 133:1. 2007, 71:1, eff. Aug. 10, 2007. 2011, 42:1, eff. July 8, 2011.

189:1–a Duty to Provide Education.

I. It shall be the duty of the school board to provide, at district expense, elementary and secondary education to all pupils who reside in the district until such time as the pupil has acquired a high school diploma or has reached age 21, whichever occurs first; provided, that the board may exclude specific pupils for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school, and further provided that this section shall not apply to pupils who have been exempted from school attendance in accordance with RSA 193:5.

II. Elected school boards shall be responsible for establishing the structure, accountability, advocacy, and delivery of instruction in each school operated and governed in its district. To accomplish this end, and to support flexibility in implementing diverse educational approaches, school boards shall establish, in each school operated and governed in its district, instructional policies that establish instructional goals based upon available information about the knowledge and skills pupils will need in the future.

III. School boards shall adopt a teacher performance evaluation system, with the involvement of teachers and principals, for use in the school district. A school board may consider any resources it deems reasonable and appropriate, including any resources that may be provided by the state department of education. In this paragraph, "teacher" shall have the same meaning as in RSA 189:14–a, V.

IV. Pursuant to RSA 193:3, VI, a school board may execute a contract with any approved nonsectarian private school approved by the school board as a school tuition program as defined in RSA 193:3, VII to provide for the education of a child who resides in the school district, and may raise and appropriate money for the purposes of the contract, if the school district does not have a public school at the pupil's grade level and the school board decides it is in the best interest of the pupil.

Source. 1969, 356:10. 1973, 72:28. 1975, 22:1. 1983, 84:1, eff. July 23, 1983. 2011, 108:1, eff. July 30, 2011. 2013, 243:1, eff. Sept. 22, 2013. 2017, 182:1, eff. Aug. 28, 2017.

189:1–b Freedom of Assembly; Freedom of Religion.

I. On each school day, before classes of instruction officially convene in the public schools of this sovereign state, a period of not more than 5 minutes shall be available to those who may wish to exercise their right to freedom of assembly and participate voluntarily in the free exercise of religion.

II. There shall be no teacher supervision of this free exercise of religion, nor shall there be any prescribed or proscribed form or content of prayer.

Source. 1977, 182:1, eff. Aug. 13, 1977.

189:1–c Student Member. In addition to the school board members authorized in RSA 671:4, the members of the school board may choose by a simple majority to add one or more nonvoting student members from a high school within its district to the board. The powers and duties of a student member shall be as described in RSA 194:23–f. In districts having more than one public high school, the school board may rotate the student member representation as determined by the board.

Source. 1983, 111:2, eff. July 24, 1983. 2009, 5:1, eff. June 16, 2009.

189:1–d Definitions. In this chapter:

I. "Attendance" means full-time participation in a program of instruction under the direction of a teacher employed by the school district. Educationally disabled home educated pupils educated at school district expense under the direction of a teacher employed by the school district shall be included.

II. "Membership" means pupils of whom attendance is expected, whether a pupil is present or absent on any given day.

III. "Average daily membership in attendance" means the aggregate half-day membership of pupils attending schools operated by a school district divided by the number of half-days of instruction offered. The average daily membership in attendance for preschool and kindergarten pupils shall be divided by the number of instructional days offered to higher-level elementary grades.

IV. "Average daily membership in residence" means the average daily membership in attendance of pupils who are legal residents of the school district pursuant to RSA 193:12 or RSA 193:27, IV and attend a state-approved public or nonpublic school as assigned by the school district in which the pupil resides, or by the state, or attend an approved chartered public school.

Source. 1993, 322:5. 2003, 241:9, eff. July 1, 2003. 2008, 354:1, eff. Sept. 5, 2008. 2009, 297:1, eff. Sept. 29, 2009.

189:1–e Directory Information. A local education agency which maintains education records may provide information designated as directory information consistent with the Family Educational Rights and Privacy Act (FERPA). Each year schools shall give parents public notice of the types of information designated as directory information. By a specified time after parents are notified of their review rights, parents shall request in writing to remove all or part of the information on their child that they do not wish to be available to the public. Such approval shall be renewed on an annual basis. Items of directory information, which is information not generally considered harmful or an invasion of privacy if disclosed, may include:

I. Name and address of a student.

II. Field of study.

III. Weight and height of athletes.

IV. Most recent previous school attended.

V. Date and place of birth.

VI. Participation in officially recognized activities and sports.

VII. Date of attendance, degrees, and awards.

Source. 1997, 255:1, eff. Aug. 18, 1997.

189:2 Reduction of Time. If the school board of any district shall decide that, by reason of special conditions or circumstances, the maintenance of standard schools for 180 days, or the equivalent number of hours if approved by the commissioner of the department of education, in said district is undesirable, said school board may so represent in writing to the state board. If, upon hearing, the state board, or the commissioner when authorized by the state board, shall be of the opinion that the representation is true, it may reduce the time of maintaining such schools in said district to such limits as it may deem wise. Provided, however, that the state board, or the commissioner if authorized, shall not reduce the days during which schools shall be in session, as provided in RSA 189:1, on account of workshops, conventions or teachers' institutes.

Source. 1919, 106:20. 1921, 85, II:1. PL 117:2. RL 135:2. RSA 189:2. 1959, 133:2. 1981, 318:5. 2007, 71:1, eff. Aug. 10, 2007.

189:3 Other Modifications. If any other provisions in the laws which relate to education shall be found by the state board to impose upon any district obligations which, by reason of unusual circumstances or of exceptional conditions in that district, result in an unnecessary expenditure of school money, or in a procedure which is inimical to the best interests of education therein, the state board, upon like proceedings, may suspend or modify such obligations as in its judgment may be reasonable.

Source. 1919, 106:20. 1921, 85, II:1. PL 117:3. RL 135:3.

189:4 Decisions of State Board. All such decisions of the state board shall be made in writing, recorded by it and a copy sent for record to the clerk of the district affected thereby.

Source. 1919, 106:20. 1921, 85, II:1. PL 117:4. RL 135:4.

189:5 Surplus Funds.

[Repealed 1969, 104:1, eff. June 24, 1969.]

History

Former RSA 189:5, which was derived from 1921, 125:5; PL 117:5; and RL 135:5, related to payment of surplus funds to the state.

189:6 Transportation of Pupils. The local school district shall furnish transportation to all pupils in grade 1 through grade 8 who live more than 2 miles from the school to which they are assigned. The local school board may furnish transportation to kindergarten pupils, pupils in grades above the eighth or to any pupils residing less than 2 miles from the school to which they are assigned, when it finds that this is appropriate, and shall furnish it when so directed by the commissioner of education.

Source. 1885, 43:6. PS 92:1. 1919, 106:20. 1921, 125:6. PL 117:6. RL 135:6. RSA 189:6. 1992, 159:1, eff. July 5, 1992.

189:6–a School Bus Safety. The district shall instruct all pupils, who are transported by the district as provided in RSA 189:6, in the following:

I. School bus safety.

II. The evacuation procedure for buses in emergency situations.

III. Any other matters regarding the safety of pupils being transported to school.

Source. 1996, 19:1, eff. July 1, 1996.

189:6–b Transportation Between Schools and Before-and-After-School Programs. To achieve maximum utilization of available before-and-after-school programs for school-age children, school districts shall be permitted to transport pupils between schools and legally-operating before-and-after-school

programs upon the approval of the school district in the same manner as the school budget is adopted by that district. Such approval shall continue until revoked in the same manner.

Source. 1997, 308:2, eff. Aug. 19, 1997.

189:6–c Pupils Transported in a Mixed Use School Bus.

I. Pupils may be transported to or from school activities in a mixed use school bus, as defined by RSA 259:96–a, which bears a valid state inspection sticker and is operated by a driver who holds a valid driver's license to operate that vehicle. An operator of a mixed use school bus that qualifies as a commercial motor vehicle as defined in RSA 259:12–e shall hold a valid commercial driver license pursuant to RSA 263:86 appropriate for the type and class of mixed use school bus being driven.

II. Pupils with disabilities may be transported to or from school activities in a mixed use school bus unless the pupil's individualized education program as defined in RSA 186–C:2, III, or the pupil's accommodation plan pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, states that such a vehicle shall not be used.

III. In this section, "school activities" shall include, but is not limited to, sporting events, intramural events, events associated with student clubs or organizations, job training programs, field trips, and special education transition services. "School activities" shall not include transportation between home and school.

Source. 2011, 44:1, eff. July 8, 2011. 2015, 100:1, eff. Aug. 4, 2015. 2016, 138:1, eff. July 26, 2016.

189:7 Pupils Under 14 Years of Age.

[Repealed 1992, 159:3, eff. July 5, 1992.]

History

Former RSA 189:7, which was derived from 1937, 47:1 and RL 135:7, related to providing transportation to pupils under the age of 14 years.

189:8 Limitations and Additions. Pupils entitled to transportation in accordance with RSA 189:6 may be required to walk a distance not to exceed one mile to a school bus stop established by the local school board. Pupils residing in areas which are inaccessible by a local school district's established mode of transportation may be required to walk a distance not to exceed 1–½ miles to a school bus stop, provided that the vehicle, route and schedule have been approved by the commissioner of education. School districts shall assure that pupils shall not be subject to unsafe conditions while walking the required distance to a school bus stop and that the school bus stop is established in a safe location.

Source. 1919, 106:20. 1921, 125:6. PL 117:7. 1933, 76:1. RL 135:8. RSA 189:8. 1992, 159:2, eff. July 5, 1992.

189:9 Pupils in Private Schools. Pupils attending approved private schools, up to and including the twelfth grade, shall be entitled to the same transportation privileges within any town or district as are provided for pupils in public schools.

Source. 1937, 199:1. RL 135:9. RSA 189:9. 1973, 501:3, eff. June 30, 1973.

189:9–a Pupils Prohibited for Disciplinary Reasons. Notwithstanding the provisions of RSA 189:6-8, the superintendent, or a representative as designated in writing, is authorized to suspend the right of pupils from riding in a school bus when said pupils fail to conform to the reasonable rules and regulations as may be promulgated by the school board. Any suspension to continue beyond 20 school days must be approved by the school board. Said suspension shall not begin until the next school day following the day notification of suspension is sent to the pupil's parent or legal guardian.

I. If a pupil has been denied the right to ride a school bus for disciplinary reasons, the parent or guardian of that pupil has a right of appeal within 10 days of suspension to the authority that suspended this pupil's right.

II. Until the appeal is heard, or if the suspension of pupil's right to ride the school bus is upheld, it shall be the parents' or guardians' responsibility to provide transportation to and from school for that pupil for the period of the suspension.

Source. 1973, 462:1. 1995, 174:1, eff. Jan. 1, 1996.

189:10 Studies. The school board shall ensure that health education and physical education are taught to pupils as part of the basic curriculum. The school board shall ensure that all studies prescribed by the state board of education are thoroughly taught, especially physiology, hygiene, and health and physical education as they relate to the effects of alcohol and other drugs, child abuse as established in the definition of "abused child" under RSA 169–C:3, II, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system.

Source. 1858, 208:2. GS 81:5. GL 89:5. 1883, 37:2. 1887, 52:1. PS 92:6. 1895, 40:1; 50:2. 1899, 12:1. 1903, 31:1. 1909, 49:1. 1911, 136:1. 1921, 85, II:2. PL 117:8. RL 135:10. RSA 189:10. 1959, 130:1. 1973, 242:2; 529:37. 1975, 183:1, eff. Sept. 1, 1975. 2008, 251:3, eff. Aug. 23, 2008. 2016, 56:1, eff. July 4, 2016.

189:11 Instruction in National and State History and Government.

I. In all public and private schools in the state there shall be given regular courses of instruction in the history, government and constitutions of the United States and New Hampshire, including the organization and operation of New Hampshire municipal, county and state government and of the federal government. Such instruction shall begin not later than the beginning of the eighth grade and shall continue in all high schools as a component of a one credit course of instruction required for high school graduation in United States and New Hampshire history and a one-half credit course of instruction required for high school graduation in United States and New Hampshire government/civics. A school district shall develop and offer the United States and New Hampshire government/civics course and at a minimum, the course shall include instruction in the following areas:

(a) Opportunities and responsibilities for civic involvement.

(b) Skills to effectively participate in civic affairs.

(c) The U.S. Constitution and the principles stated in the Articles and Amendments of the U.S. Constitution that provide the foundation for the democratic government of the United States.

(d) The New Hampshire constitution and the principles stated in the articles of the New Hampshire constitution that provide the foundation for the democratic government of New Hampshire.

(e) The structure and functions of the 3 branches comprising federal and state governments: legislative, judicial, and executive.

(f) The role, opportunities, and responsibilities of a citizen to engage in civic activity.

(g) The role and interactions of the state of New Hampshire and local governments within the framework of the U.S. Constitution and of extended powers and functions provided to local governments.

(h) How federal, state, and local governments address problems and issues by making decisions, creating laws, enforcing regulations, and taking action.

(i) The role and actions of government in the flow of economic activity and the regulation of monetary policy.

II. As a component of instruction under paragraph I, a locally developed competency assessment of United States government and civics that includes, but is not limited to, the nature, purpose, structure, function, and history of the United States government, the rights and responsibilities of citizens, and noteworthy government and civic leaders, shall be administered to students as part of the high school course in history and government of the United States and New Hampshire. Students who attain a passing grade on the competency assessment shall be eligible for a certificate issued by the school district. The United States Citizenship and Immigration Services (USCIS) test may be used to satisfy the requirement of this paragraph.

Source. 1923, 47:2. PL 117:9. RL 135:11. RSA 189:11. 1975, 183:2, eff. Sept. 1, 1975. 2016, 7:1, eff. Mar. 16, 2016. 2017, 107:1, eff. Aug. 7, 2017.

189:11–a Food and Nutrition Programs.

I. Each school board shall make a meal available during school hours to every pupil under its jurisdiction. Such meals shall be served without cost or at a reduced cost to any needy child who is unable to pay the full cost of said meals. The state board of education shall insure compliance with this section and shall establish minimum nutritional standards for such meals and shall further establish income guidelines setting forth the minimum family size annual income levels to be used in determining eligibility for free and reduced price meals. Nothing in this section shall prohibit the operation of both a breakfast and lunch program in the same school. Further any requirement of this section which conflicts with any federal statute or regulation may be waived by the state board of education.

II. Notwithstanding the provisions of paragraph I, the requirements thereof may be waived as hereinafter provided:

(a) The school board of any school may make application for a waiver to the state board.

(b) Requests for such waiver may be granted by the commissioner of education upon the receipt of such application and shall remain in force until the state board determines otherwise as hereinafter provided.

(c) The state board is authorized and directed to study the schools which have been granted a waiver and to formulate a plan to implement the requirements of this section in such schools.

(d) The state board shall, after formulating such a plan, notify the school board granted such a waiver of the date when said waiver will terminate.

(e) After the termination of a waiver, a school board shall comply with the requirements of RSA 189:11–a, I.

(f) The state board may also grant a waiver to any school which is being phased out of use; however, such waiver may not exceed the period of one school year.

III. The state board shall prepare and distribute a curriculum for nutrition education and such curriculum shall be integrated into the regular courses of instruction for kindergarten and grades one through 12 during the school year.

IV. [Repealed.]

V. The school board of each school district shall develop and adopt a policy recommending that all pupils participate in developmentally appropriate daily physical activity, exercise, or physical education as a way to minimize the health risks created by chronic inactivity, childhood obesity, and other related health problems.

VI. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to a model physical activity policy and distribute such policy to each public school in the state.

VII. (a) Each school district which participates in the National School Breakfast Program shall maintain annual statistics on the number of breakfast meals served to pupils.

(b) Such school which demonstrates to the department of education that an approved school wellness policy, as required under the Child Nutrition and WIC Reauthorization Act of 2004, is in effect, and that such school is providing breakfast meals to pupils that meet or exceed the United States Department of Agriculture's child nutrition criteria may apply for and receive a 3 cent reimbursement for each breakfast meal served to a pupil. The department of education shall request biennial appropriations in an amount sufficient to meet projected school breakfast reimbursements. The department of education shall prescribe forms as necessary under this paragraph.

VIII. A school lunch meal payment policy which is implemented by a school board either before or after the effective date of this section shall ensure that all students have access to a healthy school lunch, that the school district will make every reasonable effort to inform parents of the policy, and that no student will be subject to different treatment from the standard school lunch meal or school cafeteria procedures. The department of education or the state board of education, upon request of the local school board, may provide communication assistance to school districts and parents of school children regarding the school lunch meal payment policy.

Source. 1973, 170:1. 1977, 183:1. 1979, 82:1. 1981, 318:6. 2001, 83:2, I. 2004, 33:2. 2006, 127:2, eff. July 18, 2006. 2016, 48:1, eff. July 2, 2016.

189:11–b Learning Disability Teacher. The school board of each school district may provide the services of a learning disability teacher under such conditions and with such exceptions, as the state board of education may prescribe.

Source. 1973, 209:1, eff. Sept. 1, 1974.

189:11–c Cursive Handwriting and Memorization of Multiplication Tables. The school board of each school district is encouraged to provide instruction in cursive handwriting and memorization of multiplication tables.

Source. 2015, 41:1, eff. July 8, 2015.

189:11–d Drug and Alcohol Education.

I. Each public school in the state, as part of the school board-approved kindergarten through grade 12 health education program, shall provide age and developmentally appropriate drug and alcohol education to pupils based upon the needs of the pupils and the community. The school board may authorize the use of an evidence-based prevention program.

II. School boards shall develop policies authorizing school district personnel to provide pupils, parents, and legal guardians with information and resources relative to existing drug and alcohol counseling and treatment for pupils. Nothing in this section shall require a school district to add additional programs or services, but only to provide information about available programs and services.

Source. 2016, 301:1, eff. Aug. 20, 2016.

189:12 Fuel; Repairs.

[Repealed 1998, 389:10, eff. Oct. 1, 1998.]

History

Former RSA 189:12, which was derived from RS 70:10; CS 74:12; GS 79:14; GL 87:14; PS 92:2; 1895, 58:1; 1911, 136:1; 1921, 85, II:3; PL 117:10; and RL 135:12, related to the school board providing fuel for and repairs of schoolhouses.

189:13 Dismissal of Teacher. The school board may dismiss any teacher found by them to be immoral, or who has not satisfactorily maintained the competency standards established by the school district, or one who does not conform to regulations prescribed; provided, that no teacher shall be so dismissed before the expiration of the period for which said teacher was engaged without having previously been notified of the cause of such dismissal, nor without having previously been granted a full and fair hearing.

Source. GS 81:8. GL 89:8. PS 92:3. 1895, 51:1. 1905, 59:1. 1921, 85, II:5. PL 117:11. RL 135:13. 2005, 178:1, eff. Aug. 29, 2005.

189:13–a School Employee and Designated School Volunteer Criminal History Records Check.

I. (a) The employing school administrative unit, school district, or chartered public school shall complete a criminal history records check on every selected applicant for employment in any position in the school administrative unit, school district, or chartered public school prior to a final offer of employment. A public academy approved by the New Hampshire state board of education shall submit a criminal history records check on applicants for employment pursuant to this section to the division of state police. The superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed criminal history records check. No selected applicant may be extended a final offer of employment unless the school administrative unit, school district, chartered public school, or public academy has completed a criminal history records check. The school administrative unit, school district, chartered public school, or public academy shall not be held liable in any lawsuit alleging that the extension of a conditional or final offer of employment to an applicant, or the acceptance of volunteer services from a designated volunteer, with a criminal history was in any way negligent or deficient, if the school administrative unit, school district, chartered public school, or public academy fulfilled the requirements of this section.

(b) A nonpublic school may elect to require a criminal history records check on selected applicants for employment or selected volunteers. A nonpublic school that elects to conduct a criminal history records check shall comply with the procedures and requirements set forth in this section.

II. The selected applicant for employment or designated volunteer with a school administrative unit, school district, chartered public school, or public academy shall submit to the employer a notarized criminal history records release form, as provided by the division of state police, which authorizes the division of state police to conduct a criminal history records check through its state records and through the Federal Bureau of Investigation and to release a report of any misdemeanors and/or felony convictions and any charges pending disposition for any crimes listed in paragraph V to the superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the school administrative unit, school district, chartered public school, or public academy. In the event that the first set of fingerprints is invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the school administrative unit, school district, chartered public school, or public academy may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where an applicant has lived during the past 5 years.

III. The superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. If the criminal history records information indicates no criminal record, the superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy shall destroy the information received immediately following review of the information. If the criminal history records information indicates that the applicant has been convicted of any crime or has been charged pending disposition for or convicted of a crime listed in paragraph V, the superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy shall review the information for a hiring decision, and the division of state police shall notify the department of education of any such charges pending disposition or convictions. The superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy shall destroy any criminal history record information that indicates a criminal record within 60 days of receiving such information.

IV. The school administrative unit, school district, chartered public school, or public academy may require the selected applicant for employment or designated volunteer to pay the actual costs of the criminal history records check.

V. Any person who has been charged pending disposition for or convicted of any violation or attempted violation of RSA 630:1; 630:1–a; 630:1–b;

630:2; 632–A:2; 632–A:3; 632–A:4; 633:1; 639:2; 639:3; 645:1, II or III; 645:2; 649–A:3; 649–A:3–a; 649–A:3–b; 649–B:3; or 649–B:4; or any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene; in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, chartered public school, or public academy. The superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy may deny a selected applicant a final offer of employment if such person has been convicted of any crime, misdemeanor or felony, in addition to those listed above. The governing body of a school district, chartered public school, or public academy shall adopt a policy relative to hiring practices based on the results of the criminal history records check and report of misdemeanors and felonies received under paragraph II. Such policy may include language stating that any person who has been convicted of any misdemeanor, or any of a list of misdemeanors, may not be hired. Such policy may also include language stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

VI. This section shall apply to any employee, selected applicant for employment, designated volunteer, or volunteer organization which contracts with a school administrative unit, school district, chartered public school, or public academy to provide services, including but not limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the contractor or employees of the contractor provide services directly to students of the district, chartered public school, or public academy. The employing school administrative unit, school district, or chartered public school shall be responsible for completing the criminal history records check on the people identified in this paragraph. The cost for criminal history records checks for employees or selected applicants for employment with such contractors shall be borne by the contractor.

VII. The school administrative unit, school district, chartered public school, or public academy shall not be required to complete a criminal history records check on volunteers, provided that the governing body of a school administrative unit, school district, chartered public school, or public academy shall adopt a policy designating certain categories of volunteers as "designated volunteers" who shall be required to undergo a criminal history records check.

VIII. A school administrative unit, school district, chartered public school, public academy, or school official acting pursuant to a policy establishing procedures for certain volunteers shall be immune from civil or criminal liability, provided the school administrative unit, school district, chartered public school, public academy, or school official has in good faith acted in accordance with said policy. Nothing in this paragraph shall be deemed to grant immunity to any person for that person's reckless or wanton conduct.

IX. (a) Substitute teachers and other educational staff, not otherwise addressed in this section, shall apply for a criminal history records check at the employing school administrative unit, school district, chartered public school, or public academy. The division of state police shall complete the criminal history records check, as established in paragraph II, and, upon completion, shall issue a report to the applicant. The report shall be valid for 30 days from the date of issuance and shall constitute satisfactory proof of compliance with this section.

(b) Upon enrollment in an educator preparation program at an institution of higher education, a candidate shall submit to a criminal history records check. The institution of higher education in which the candidate is enrolled shall conduct the criminal history records check. Upon placement of a candidate as a student teacher, the receiving school administrative unit, school district, or chartered public school shall conduct another criminal history records check of the candidate and shall follow the same procedures for assessing the candidate's criminal history background as for applicants for employment. The governing body of the institution of higher education may adopt a policy relative to how often a candidate shall submit to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is enrolled in an educator preparation program at an institution of higher education in New Hampshire.

X. Violations of this section shall be jointly investigated by the state police and the department of education. Information obtained through such investigations shall remain confidential and shall not be subject to RSA 91–A.

XI. In this section, "public academy" shall have the same meaning as in RSA 194:23, II.

Source. 1993, 324:1. 1995, 260:5. 1997, 77:2. 1998, 256:6; 314:6. 2000, 214:1, 2. 2007, 319:1, 4, eff. Sept. 14, 2007. 2008, 323:8, 12, eff. Jan. 1, 2009; 354:1, eff. Sept. 5, 2008. 2010, 138:1, eff. Aug. 13, 2010; 318:1, eff. Sept. 18, 2010. 2013, 250:7, eff. Jan. 1, 2014. 2014, 55:1, eff. May 27, 2014. 2016, 117:1, eff. July 19, 2016. 2017, 245:2, eff. Sept. 16, 2017.

189:14 Liability of District. The district shall be liable in the action of assumpsit to any teacher dismissed in violation of the provisions of RSA 189:13, to the extent of the full salary for the period for which such teacher was engaged.

Source. 1845, 225. CS 77:3. GS 81:9. GL 89:8. PS 92:4. 1905, 59:1. 1921, 85, II:6. PL 117:12. RL 135:14.

189:14–a Failure to be Renominated or Reelected.

I. (a) Any teacher who has a professional standards certificate from the state board of education and who has taught for one or more years in the same school district shall be notified in writing on or before April 15 or within 15 days of the adoption of the district budget by the legislative body, whichever is later, if that teacher is not to be renominated or reelected, provided that no notification shall occur later than the Friday following the second Tuesday in May.

(b) School boards shall have a teacher performance evaluation policy.

(c) Any such teacher who has taught for 5 consecutive years or more in the teacher's current school district, or who taught for 3 consecutive years or more in the teacher's current school district before July 1, 2011, and who has been so notified may request in writing within 10 days of receipt of said notice a hearing before the school board and may in said request ask for reasons for failure to be renominated or reelected. For purposes of this section only, a leave of absence shall not interrupt the consecutive nature of a teacher's service, but neither shall such a leave be included in the computation of a teacher's service. Computation of a teacher's service for any other purposes shall not be affected by this section. The notice shall advise the teacher of all of the teacher's rights under this section. The school board, upon receipt of said request, shall provide for a hearing on the request to be held within 15 days. The school board shall issue its decision in writing within 15 days of the close of the hearing.

II. Any teacher who has a professional standards certificate from the state board of education shall be entitled to all of the rights for notification and hearing in paragraphs I(b), III, and IV of this section if:

(a) The teacher has taught for 5 consecutive years or more in any school district in the state and has taught for 3 consecutive years or more in the teacher's current school district; or

(b) Before July 1, 2011, the teacher taught for 3 consecutive years or more in any school district in the state and taught for 2 consecutive years or more in the teacher's current school district.

III. In cases of nonrenomination or nonreelection because of reduction in force, the reduction in force shall not be based solely on seniority.

IV. In all proceedings before the school board under this section, the burden of proof for nonrenewal of a teacher shall be on the superintendent of the local school district by a preponderance of the evidence. Except as provided in paragraph III, the grounds for nonrenomination and nonreelection shall be determined at the sole discretion of the school board.

V. "Teacher" means any professional employee of any school district whose position requires certification as a professional engaged in teaching. The term "teacher" shall also include principals, assistant principals, librarians, and guidance counselors.

Source. 1957, 285:1. 1981, 250:1. 1986, 39:1. 1995, 174:2. 2000, 16:8. 2003, 204:2, 3, eff. Aug. 29, 2003. 2011, 267:1, eff. July 1, 2011.

189:14–b Review by State Board.

I. A teacher aggrieved by such decision may either petition the state board of education for review thereof or request arbitration under the terms of a collective bargaining agreement pursuant to RSA 273–A:4, if applicable, but may not do both. Such petition must be in writing and filed with the state board within 10 days after the issuance of the decision to be reviewed. Upon receipt of such petition, the state board shall notify the school board of the petition for review, and shall forthwith proceed to a consideration of the matter. Such consideration shall include a hearing if either party shall request it. The state board shall issue its decision within 15 days after the petition for review is filed, and the decision of the state board shall be final and binding upon both parties. A petition for review under this section shall constitute the exclusive remedy available to a teacher on the issue of the nonrenewal of such teacher.

II. The state board of education shall uphold a decision of a local school board to nonrenew a teacher's contract unless the local school board's decision is clearly erroneous.

Source. 1957, 285:1. 2003, 204:4, eff. Aug. 29, 2003. 2008, 246:1, eff. Aug. 23, 2008. 2011, 267:2, eff. July 1, 2011.

189:14–c Revocation of Certification. Any teacher certified in this state who has been convicted of any felony involving child sexual abuse images or of a felonious physical assault on a minor or of any sexual assault, shall have such teacher certification

revoked by the New Hampshire state board of education.

Source. 1988, 257:3. 1995, 174:11, eff. Jan. 1, 1996. 2017, 91:5, eff. Aug. 6, 2017.

189:14–d Termination of Employment. Employees of a school administrative unit or school district in this state who have been convicted of homicide, an offense involving child sexual abuse images, aggravated felonious sexual assault, felonious sexual assault, or kidnapping, in this state or under any statute prohibiting the same conduct in another state, territory or possession of the United States, shall have their employment terminated by the school administrative unit or school district after it receives notice of the conviction.

Source. 1993, 324:2, eff. Jan. 1, 1994. 2017, 91:5, eff. Aug. 6, 2017.

189:14–e Speech-Language Specialists.

I. (a) The department of education shall certify speech-language specialists pursuant to RSA 21–N:9, II(s). Certified speech-language specialists shall provide speech-language pathology services for schools only.

(b) The department of education shall establish the criteria for certification as a speech-language specialist which shall include a minimum of a masters degree in speech-language pathology, or its equivalent as determined by the state board of education.

II. Speech-language pathologists licensed pursuant to RSA 326–F and 328–F shall automatically meet certification requirements under this section.

Source. 1996, 271:4. 1997, 287:2, eff. Jan. 1, 1998.

189:14–f Master Teacher.

I. The state board of education shall establish the educational credential of master teacher and grant it to those persons who have fulfilled at least the following requirements:

(a) Academic preparation which shall include a master's-level degree and graduate coursework in curriculum development, supervision, and evaluation;

(b) Teaching experience, including at least 7 years during which a teaching certificate was held; and

(c) Demonstrated quality teaching to be satisfied by meeting professional criteria developed by the professional standards board and approved by the state board of education, which criteria shall include:

(1) Quantitative evaluations of teaching quality from students, parents, peers, and administrators;

(2) At least 3 classroom observations of the candidate by an independent observer from outside the candidate's school district; and

(3) At least 4 significant and rigorous written tasks and exercises.

II. The purposes of the credential are to allow experienced teachers an opportunity for professional growth and development, and to identify highly qualified, experienced teachers to serve as resources in their areas of expertise in curriculum development, mentoring, supervising, evaluating teachers, and in other areas as may be determined by their schools and school districts.

III. Master teachers shall have no authority to effectively recommend any personnel action. However, their activities may form the basis for an independent administrative performance review.

Source. 1998, 314:4, eff. Aug. 25, 1998.

189:14–g Teacher Signature Certification.

I. A teacher applying for certification through the bureau of credentialing, department of education, shall complete and submit either a written application or an electronic application, both of which shall include a declaration and verification statement to read substantially as follows:

"I hereby certify that I am the individual listed in this application, and that all information provided herein, including all accompanying documentation, is true, accurate, and complete to the best of my knowledge."

II. Any willful misrepresentation or omission of facts shall constitute just cause for denial of certification or revocation of existing certifications, and possible criminal prosecution.

Source. 2001, 87:1. 2003, 39:2, eff. July 1, 2003.

189:14–h Notice to Education Support Personnel and Non-Certified School District Employees Required. No later than the last day of school each year, the superintendent shall notify, in writing, all education support personnel and non-certified school district employees who have completed their probationary employment period of the intent to continue or not to continue that employment into the next school year. The notification may contain special circumstances as may be defined by the employer. Nothing in this section shall be construed to amend, replace, or otherwise modify a school district's policy on dismissal, collective bargaining agreements, or any

employee benefits package. The receipt of notification under this section shall not constitute a private right of action against a school district.

Source. 2010, 279:1, eff. Sept. 6, 2010.

189:15 Regulations. The school board may, unless otherwise provided by statute or state board regulations, prescribe regulations for the attendance upon, and for the management, classification and discipline of, the schools; and such regulations, when recorded in the official records of the school board, shall be binding upon pupils and teachers.

Source. RS 73:2. GS 81:10. 1868, 9:1. GL 89:10. 1883, 37:3. 1887, 52:1. PS 92:5. 1898, 208:1. 1905, 59:1. 1921, 85, II:7. PL 117:13. RL 135:15. RSA 189:15. 1965, 110:1. 1969, 104:2, eff. June 24, 1969.

189:15–a Purchase of School Insurance. The school board may purchase, at the expense of the district, accident or injury insurance covering all students while participating in any school activity or may make such insurance available at the option and expense of the parent or guardian of each student.

Source. 1969, 104:3, eff. June 24, 1969.

189:16 Textbooks; Supplies. The school board shall purchase, at the expense of the city or town in which the district is situated, textbooks and other supplies required for use in the public schools; and shall loan the same to the pupils of such schools free of charge, subject to such regulations for their care and custody as the board may prescribe; and shall sell such books at cost to pupils of the school wishing to purchase them for their own use.

Source. RS 73:11. CS 77:12. 1863, 27:21. GS 81:17. GL 89:11. 1883, 37:2. 1889, 13:1. PS 92:7. 1895, 90:3. 1921, 85, II:8. PL 117:14. RL 135:16.

189:17 Flags; Penalty. The school board shall supply a United States and a New Hampshire state flag; the flags shall be made not less than 5 feet in length, with a flagstaff and appliances for displaying the same, for every schoolhouse in the district in which a public school is taught, at the expense of the district. They shall prescribe rules and regulations for the proper custody, care and display of these flags; the regulations shall require that wherever possible, the United States flag and the New Hampshire state flag shall be displayed on separate staffs of equal height. When the flags are displayed on the same staff, the United States flag shall be displayed above the New Hampshire flag. The regulations shall further require that such flags shall be displayed prominently outside of the schoolhouse. When they are otherwise displayed, the flags shall be placed conspicuously in the principal room of assembly of the schoolhouse. The governing board of every private school shall supply a United States flag, such flag to be made not less than 5 feet in length, with a flagstaff and appliances for displaying same. They shall make provisions similar to those required in the public schools for the display of said flag. Any members of a school board or the governing board who shall refuse or neglect to comply with the provisions of this section shall be guilty of a violation.

Source. 1903, 39:1. 1921, 85, II:9. 1925, 128:1. PL 117:15. RL 135:17. RSA 189:17. 1969, 104:4. 1971, 291:1. 1973, 531:45. 1977, 51:1, eff. June 13, 1977.

189:17–a Flags Provided by Other Than School District.

I. State agencies, private groups, or individual citizens may provide and have placed in a public school classroom an American flag or a New Hampshire state flag, or both, and appliances for displaying such flag or flags, where none is already displayed.

II. Upon receipt of an American flag or a New Hampshire state flag, or both, and appliances donated pursuant to paragraph I of this section, a school shall display such flag or flags in a classroom where none is already displayed.

III. The local school board shall have the authority to accept the donation of flags and appliances, and to determine the location of the flags in the classrooms.

Source. 1988, 30:1, eff. March 24, 1988.

189:18 Patriotic Exercises. In all public schools of the state one session, or a portion thereof, during the weeks in which Memorial Day and Veterans Day fall, shall be devoted to exercises of a patriotic nature, which shall include a discussion of the words, meaning, and history of the Pledge of Allegiance and the Star Spangled Banner.

Source. 1897, 14:1. 1921, 85, II:23. PL 117:16. 1933, 3:1. RL 135:18. 2016, 67:1, eff. July 4, 2016.

189:18–a Memorial or Memorial Plaque on School Property. The placement of a memorial or memorial plaque on school property in memory of an alumnus of a junior high school or high school in the district who died honorably during active duty shall require approval from the school board or approval of a warrant article acted upon at the annual school district meeting. The cost for design, manufacture, installation, or maintenance of the memorial shall not be a charge to the state, any municipality, or the school district. This section shall not apply to the addition of names to already existing memorials or to plans for memorials initiated by the municipality or school district.

Source. 2016, 77:1, eff. July 18, 2016.

189:19 English Required. In the instruction of children in all schools, including private schools, in reading, writing, spelling, arithmetic, grammar, geography, physiology, history, civil government, music, and drawing, the English language shall be used exclusively, both for the purposes of instruction therein and for purposes of general administration. Educational programs in the field of bilingual education shall be permitted under the provisions of this section with the approval of the state board of education and the local school district.

Source. 1919, 106:13. 1921, 85, II:10. PL 117:17. RL 135:19. RSA 189:19. 1969, 139:1. 1977, 110:1, eff. July 30, 1977.

189:20 Foreign Languages. A foreign language may be taught in elementary schools; provided, that the course of study (or its equivalent) outlined by the state board in the branches named in RSA 189:19 be not abridged but be taught in compliance with the law of the state.

Source. 1919, 106:13. 1921, 85, II:10. PL 117:18. RL 135:20.

189:21 Language of Devotional Exercises in Private Schools. The exclusive use of English for purposes of instruction and administration shall not prohibit the conduct of devotional exercises in private schools in a language other than English.

Source. 1919, 106:13. 1921, 85, II:10. PL 117:19. RL 135:21.

189:22 Copies of State Constitution and Election Laws to be Furnished. The secretary of state is hereby directed to furnish to the state board of education such number of copies of the state constitution and the election laws as may be necessary.

Source. 1937, 31:1. RL 135:22.

189:23 Distribution. The state board of education is hereby directed to distribute copies of the state constitution and election laws to all teachers of history and civics in the upper grades of elementary schools and to teachers of United States history in junior and senior high schools to be used by them in instructing their pupils relative to the laws governing election and voting.

Source. 1937, 31:1. RL 135:23.

189:24 Standard School. A standard school is one approved by the state board of education, and maintained for at least 180 days in each year, or the equivalent number of hours as required in the rules of the department of education, in a suitable and sanitary building, equipped with approved furniture, books, maps and other necessary appliances, taught by teachers, directed and supervised by a principal and a superintendent, each of whom shall hold valid educational credentials issued by the state board of education, with suitable provision for the care of the health and physical welfare of all pupils. A standard school shall provide instruction in all subjects prescribed by statute or by the state board of education for the grade level of pupils in attendance.

Source. 1919, 106:24. 1921, 85, II:11. PL 117:20. RL 135:24. RSA 189:24. 1959, 133:3. 1971, 371:1. 2007, 71:2, eff. Aug. 10, 2007. 2011, 42:2, eff. July 8, 2011.

189:25 Elementary School. An elementary school is any school approved by the state board of education in which the subjects taught are those prescribed by the state board for the grades kindergarten through 8 of the public schools. However, a separate organization consisting of grades 7 through 9, or any grouping of these grades, may be recognized as a junior high school and so approved by the board. Also a separate organization consisting of grades 4 through 8 or any grouping of these grades may be recognized as a middle school and so approved by the state board. Any elementary school may include a kindergarten program which, if it is provided, shall precede the other elementary grades.

Source. 1919, 106:25. 1921, 85, II:12. PL 117:21. RL 135:25. RSA 189:25. 1963, 288:1. 1971, 178:1. 2007, 71:2, eff. Aug. 10, 2007.

189:25–a Universal Service Fund; Definition of "School." For the purpose of obtaining discounts pursuant to the universal service fund, otherwise known as "E-rate" discounts, as established by section 254 of the Telecommunications Act of 1996, "school" means any public or private elementary or secondary school, and any regional career and technical educational center designated under RSA 188–E, including educational programs offered at such career and technical educational centers for pre-kindergarten, adult education programs, and juvenile justice programs.

Source. 2001, 84:1, eff. Aug. 18, 2001. 2015, 252:12, eff. July 1, 2015.

189:26 Books Excluded. No book shall be introduced into the public schools calculated to favor any particular religious sect or political party.

Source. RS 73:11, 12. CS 77:12, 13. GS 81:12. GL 89:12. PS 92:9. 1895, 50:5. 1921, 85, II:13. PL 117:22. RL 135:26.

189:27 Register. The school board shall furnish to the responsible person a supply of blank registers provided by the state board.

Source. RS 73:2. CS 72:2. 1861, 25:68. GS 81:14, 16. GL 89:15, 17. PS 92:10. 1921, 85, II:14. PL 117:23. RL 135:27. RSA 189:27. 1967, 448:2. 1971, 149:2, eff. July 25, 1971.

189:27–a Computerization of Pupil Registers. School boards, or the governing persons or governing bodies of public academies or non-public schools, may choose to maintain pupil registration and enrollment

information through the use of a computer, instead of using a register provided by the state board of education. The software program for any such computer application shall be capable of providing in printed form at least the information required by RSA 186:11, VI.

Source. 1988, 103:1, eff. July 1, 1988.

189:27–b Retention of Pupil Registers. Pupil registers, whether kept manually or by means of a computer, shall be retained as a permanent record of the school district, public academy or non-public school. When a computer is used, the permanent record shall consist, at a minimum, of a paper printout.

Source. 1988, 103:1, eff. July 1, 1988.

Reports

189:28 Statistical Reports; Failure to File Report.

I. The governing body of every public education agency, shall, on or before August 1 in each year, submit to the department of education those statistical reports necessary to compute the average daily membership of pupils attending each school district, and the average daily membership of pupils resident in each school district. Information relating to the fall enrollment, drop-outs, staffing census, and average teacher salary, as of October 1 of each school year, shall be submitted to the department of education on or before October 15. Private schools shall submit average daily membership in attendance, fall enrollment, and teacher staff census.

II. (a) The information needed to determine compliance with performance or accountability measures of public education agency under RSA 193–E:3 or federal law, shall be submitted to the department of education in a timely manner as determined by the department of education. The state board of education shall ensure the accuracy and completeness of such data and shall take enforcement or other actions when necessary, including verification checks, for the purpose of enforcing the provisions of this section.

(b) If the department of education requests verification of information relevant to reports submitted, the public education agency shall provide corrected information or verification within 10 business days of such request. The governing body of every public education agency shall maintain files of all records, data, and other information submitted pursuant to this section for not less than 5 years from the date of submission. The state board of education shall have access to such records, data, and information for the purpose of ensuring the accuracy of reported information.

III. Each statistical report submitted under this section by a public education agency shall include a certification, signed by the chief executive official that states: "I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete, and that the school board chairperson has received a copy of this document."

IV. The commissioner of the department of education may grant a school district, city, or public academy up to a 30-day extension of the reporting deadline set forth in paragraph I. The commissioner of the department of education shall notify the governing body of the public education agency that all state aid to education and all federal aid, if the report is required by federal law, shall be withheld until such time as complete and accurate information is submitted.

V. The department of education shall determine the average daily membership in attendance of every public education agency, and private institution that operates an elementary or secondary school, and the average daily membership in residence of each school district, municipality within a cooperative school district, and unincorporated place.

VI. In this section, "public education agency" means a school district, city, joint maintenance agreement, chartered public school, or approved public academy.

Source. 1874, 43:3. GL 92:3. 1887, 50:9, 10. PS 92:13. 1895, 50:7. 1903, 5:1. 1917, 122:1. 1921, 85, II:15. PL 117:24. RL 135:28. RSA 189:28. 1991, 169:1. 1998, 389:2. 2003, 314:2. 2005, 189:1. 2006, 60:1, eff. April 24, 2006. 2008, 354:1, eff. Sept. 5, 2008. 2016, 8:8, eff. Mar. 16, 2016.

189:28–a Report to the Public.

I. School boards shall publish in the next annual report, or post at the annual meeting, the general fund balance sheet from the most recently completed audited financial statements or from the most recently completed financial report filed pursuant to RSA 21–J:34, V.

II. In the case of an accumulated general fund deficit, the school board shall insert an article in the warrant recommending such action as they deem appropriate, which may include, but is not limited to, raising a sum of money for the purpose of reducing that deficit.

Source. 1994, 147:5, eff. July 22, 1994.

189:29 Penalty for Failure to Report.

[Repealed 1998, 389:11, eff. Oct. 1, 1998.]

History

Former RSA 189:29, which was derived from 1874, 43:4; GL 92:4; PS 92:14; 1921, 85, II:16; PL 117:25; RL 135:29; RSA 189:29; 1973, 531:46; and 1991, 169:2, related to the penalty for failing to file statistical reports.

189:29–a Records Retention and Disposition. Members of the school board shall establish a records retention and disposition schedule for all official records of the school district. If records are microfilmed, 2 films shall be made, properly labeled and stored in 2 different locations. At least one copy shall be stored in a fireproof container. Records which have been microfilmed may be retained or destroyed in accordance with the schedule determined by the members of the board. A complete record of all records destroyed or discarded shall be maintained along with notations of the methods and dates of disposal.

Source. 1983, 94:1, eff. July 23, 1983.

Superintendents

189:30 Payment of State Share of Salaries.

[Repealed 1986, 41:29, V, eff. April 3, 1988.]

History

Former RSA 189:30, which was derived from 1919, 106:9; 1921, 85, I:8; PL 117:26; RL 135:30; RSA 189:30; 1975, 505:7; and 1979, 459:4, related to payment of state share of salaries of superintendents, assistant superintendents, teacher consultants, and business administrators.

189:31 Removal of Teacher. Superintendents shall direct and supervise the work of teachers, and for cause may remove a teacher or other employee of the district. The person so removed shall continue as an employee of the district unless discharged by the local school board but may not return to the classroom or undertake to perform the duties of such person's position unless reinstated by the superintendent.

Source. RS 70:10. CS 74:12. GS 79:14. GL 87:14. PS 92:2. 1919, 106:12. 1921, 85, II:4. PL 117:27. RL 135:31. RSA 189:31. 1969, 196:4. 1995, 174:3, eff. Jan. 1, 1996.

189:32 Appeal. Any person so removed, unless dismissed by the school board, may appeal to the state board. The board shall prescribe the manner in which appeals shall be made, and when one is made shall investigate the matter in any way it sees fit, and make such orders as justice requires.

Source. 1919, 106:12. 1921, 85, II:4. PL 117:28. RL 135:32. RSA 189:32. 1969, 196:5. 1986, 41:19, eff. April 3, 1988.

189:33 Conferences; Reports. It shall be the duty of superintendents to attend all conferences called by the state board. Each superintendent shall report to the proper officers any violation of the provisions of the laws of this state in reference to the public schools, school buildings, the employment of persons under 18 years of age who cannot read and speak the English language understandingly, the protection of children and violations of the rules and regulations prescribed by the state board for the efficient administration of the public schools.

Source. 1919, 106:12. 1921, 85, I:4. 1925, 138:2. PL 117:29. RL 135:33. RSA 189:33. 1973, 72:13, eff. June 3, 1973.

Truant Officers

189:34 Appointment.

I. School boards shall appoint truant officers for their districts.

II. School board policies on truancy shall include but not be limited to:

(a) A definition of "excused absence" and a process for considering exceptions to absences not otherwise excused.

(b) A process for intervention designed to address individual cases of truancy as quickly as possible and to reduce the number of habitual truants in the school district. The process shall consider whether school record keeping practices and notification provided to parents or guardians of the child's absences have an effect on the child's attendance. The board shall provide for the participation of parents in the development of the policy. The policy shall include early parental involvement in the intervention process. The policy shall also designate an employee in each school as the person responsible for truancy issues.

Source. 1852, 1278. CS 78:2. GS 83:7. GL 91:7. 1881, 42:1. PS 92:15. 1899, 70:1. 1921, 85, II:17. PL 117:30. RL 135:34. 2010, 9:1, eff. July 6, 2010. 2013, 249:14, eff. Sept. 1, 2013.

189:35 Term; Removal. Truant officers shall hold office for one year and until their successors are appointed, but they may be removed by the school board at any time for cause.

Source. 1881, 42:2. PS 92:16. 1921, 85, II:18. PL 117:31. RL 135:35.

189:35–a Truancy Defined.

I. For the purposes of this subdivision, "truancy" means an unexcused absence from school or class and "unexcused absence" is an absence which has not been excused in accordance with RSA 189:34, II(a).

II. Ten half days of unexcused absence during a school year shall constitute habitual truancy.

III. A school district shall define the term "half day of absence."

IV. Nothing in this section shall affect or limit a school district's power to adopt bylaws concerning truancy pursuant to RSA 193:16.

V. Nothing in this section shall affect or limit the duties of a parent pursuant to RSA 193:1.

VI. School district attendance records shall be presumed to be true and accurate unless evidence to the contrary is presented.

Source. 2005, 7:1, eff. July 1, 2005. 2010, 9:2, eff. July 6, 2010.

189:36 Duties.

I. Truant officers shall, when directed by the school board, enforce the laws and regulations relating to truants and children between the ages of 6 and 18 years not attending school or who are not participating in an alternative learning plan under RSA 193:1, I(h); and the laws relating to the attendance at school of children between the ages of 6 and 18 years; and shall have authority without a warrant to take and place in school any children found employed contrary to the laws relating to the employment of children, or violating the laws relating to the compulsory attendance at school of children under the age of 18 years, and the laws relating to child labor. No home school pupil nor any person between the ages of 6 and 18 who meets any of the requirements of RSA 193:1, I(c)–(h) shall be deemed a truant.

II. A truant officer or school official shall not file a petition alleging that the child is in need of services pursuant to RSA 169–D:2, II until all steps in the school district's intervention process under RSA 189:34, II have been followed.

Source. 1852, 1278. CS 78:2. GS 83:7. GL 91:7. 1881, 42:3. PS 92:17. 1899, 70:2. 1911, 162:16. 1921, 85, II:19. PL 117:32. RL 135:36. RSA 189:36. 1973, 72:29. 2007, 350:4, eff. July 1, 2009. 2010, 9:3, eff. July 6, 2010. 2011, 224:281, eff. Sept. 30, 2011.

189:37 Additional Officers. The state board may require school boards to appoint additional truant officers if in its judgment such additional officers are necessary; and may require the school board of any school district to remove any truant officer found by it to be incompetent, and to appoint a competent successor; and upon the failure or neglect of the school board to do so, it may appoint such truant officer and fix compensation, which shall be paid by the district.

Source. 1911, 162:18. 1921, 85, III:33. PL 117:34. 1927, 29:1. RL 135:38. 1995, 174:4, eff. Jan. 1, 1996.

School Census

189:38 Enumeration of Children.

[Repealed 1992, 29:1, eff. June 2, 1992.]

History

Former RSA 189:38, which was derived from 1895, 46:1; 1905, 91:1; 1921, 85, II:20; PL 117:33; RL 135:37; 1951, 39:1; RSA 189:38; 1971, 149:1; and 1979, 89:1, related to biennial census of children in each school district.

Teachers

189:39 How Chosen. Superintendents shall nominate and school boards elect all teachers employed in the schools in their school administrative unit, providing such teachers hold a valid educational credential issued by the state board of education.

Source. RS 70:10. CS 74:12. GS 79:14. GL 87:14. PS 92:2. 1919, 106:12. 1921, 85, II:4. PL 117:35. RL 135:39. RSA 189:39. 1971, 371:2, eff. Aug. 27, 1971.

189:39–a Critical Staffing Shortages. Notwithstanding a determination of critical staffing shortage made by the department of education, a superintendent, with the approval of the local school board, may determine that a critical staffing shortage exists in one or more specific teaching areas within the school district. The department of education shall be notified of any critical staffing shortages which have been determined in a school district within 30 days of such determination.

Source. 2002, 117:1, eff. July 2, 2002.

189:39–b One-Year Certificate of Eligibility.

I. The local school board, in consultation with the superintendent, may offer a one-time, one year certificate of eligibility to any person interested in teaching on a full-time or part-time basis, without requiring a person to possess a teaching credential, teaching license, or other teaching certification provided that such person:

(a) Possesses at least a bachelor's degree from an accredited postsecondary institution.

(b) Is subject to a criminal history records check pursuant to RSA 189:13–a.

(c) Is qualified for the position by relevant experience and education.

II. The school board, with input from the superintendent, shall formulate the terms of the certificate of eligibility which shall contain no tenure provisions.

III. The department of education shall be notified of the issuance of all certificates of eligibility within 30 days of the date of issuance.

IV. Any person who has had a teaching credential, teaching license, or other teaching certification revoked under RSA 189:14–c or RSA 189:14–d, or who has been rendered ineligible to be employed as a teacher under another provision of law, shall not be eligible to teach under this section.

V. No person shall be offered more than one certificate of eligibility under this section.

Source. 2002, 117:1, eff. July 2, 2002. 2010, 318:2, eff. Sept. 18, 2010.

189:40 School Sessions. In the absence of express contract, a session of 3 hours in the forenoon and 3 hours in the afternoon shall constitute a school day, 5 such days a school week, and 4 such weeks a school month, in the public schools.

Source. 1883, 33:1. PS 92:20. 1921, 85, II:21. PL 117:36. RL 135:40.

189:41 Institutes.

[Repealed 1969, 104:5, eff. June 24, 1969.]

History

Former RSA 189:41, which was derived from PS 92:21; 1903, 29:1; 1909, 28:1; 1921, 85, II:22; PL 117:37; and RL 135:41, related to attendance of teachers at teachers' institutes.

189:42 Registers. The person responsible shall make the entries in the register required by the state board of education, and at the close of the term return the register to the school board.

Source. 1861, 250:81. GS 81:14, 15. GL 89:15, 16. PS 92:11. 1921, 85, II:24. PL 117:38. RL 135:42. RSA 189:42. 1967, 448:3. 2003, 41:1, eff. July 5, 2003.

School Administrative Units

189:43 to 189:47–a Repealed.

[Repealed 1996, 298:5, II, eff. Aug. 9, 1996.]

History

Former RSA 189:43, which was derived from 1899, 77:2; 1919, 106:11; 1921, 85, II:25; PL 117:39; 1927, 15:1; RL 135:43; RSA 189:43; 1961, 196:4; 1965, 199:2; 1979, 458:1, 459:4; 1986, 41:20; 1993, 322:4, 9, III; and 1995, 174:5, 6, related to the organization and duties of appointed school administration.

Former RSA 189:43–a, which was derived from 1965, 199:3; 1974, 28:7; and 1979, 459:4, related to the authorization of school administrative unit boards to cooperate with the federal government when receiving assistance for educational purposes.

Former RSA 189:44, which was derived from 1919, 106:9; 1921, 85, I:8; PL 117:40; RL 135:44; RSA 189:44; 1961, 196:5; 1965, 199:4; 1975, 505:8; 1979, 459:4; and was previously repealed by 1986, 41:29, V, related to payment of additional salaries to superintendents, assistant superintendents, teacher consultants and business administrators.

Former RSA 189:45, which was derived from 1935, 37:1; RL 135:45; RSA 189:45; and 1979, 459:1, related to each school district having a proportionate share of representatives.

Former RSA 189:46, which was derived from 1935, 37:1; RL 135:46; RSA 189:46; 1965, 199:5; 1973, 508:1; 1979, 459:2; 1991, 155:1; and 1993, 322:6, related to weighted voting at school administrative unit school board meetings.

Former RSA 189:47, which was derived from 1949, 172:1; 1951, 157:1; RSA 189:47; 1961, 196:6; 1965, 199:6; 1979, 458:2; 459:3, 8, 12; 1981, 318:2; 1991, 357:1; 1993, 1:2, I; and 1995, 174:7, related to the school administrative unit board adoption of a budget required for the expenses of the next fiscal year.

Former RSA 189:47–a, which was derived from 1969, 104:6; 1979, 459:4; and 1995, 174:8, related to a public hearing pertaining to a preliminary budget prepared by the school administrative unit board.

189:48 Reports.

[Repealed 1986, 41:29, V, eff. April 3, 1988.]

History

Former RSA 189:48, which was derived from 1953, 243:5; RSA 189:48; 1961, 196:7; 1965, 199:7; 1979, 459:4; and 1985, 92:1; related to annual salary, revenue and expenditure reports by superintendents of school administrative units.

Child Benefit Services

189:49 Optional Services. The school board of any school district may provide the following child benefit services for pupils in each public and nonpublic school in the district or in another school district in this state:

I. School physician services under the provisions of RSA 200:26-41.

II. School nurse services.

III. School health services.

IV. School guidance and psychologist services.

V. Educational testing services.

VI. Transportation under the provisions of RSA 189:9.

VII. Textbooks and instructional materials.

VIII. Health and welfare services equivalent to those provided by public schools including speech correction and remedial and diagnostic services.

IX. Driver education.

X. Educational television services.

XI. Programs for the deaf, blind, emotionally disturbed, children with disabilities; audio-visual aids; and programs for the improvement of the educational studies of pupils with disabilities.

XII. Physical education.

XIII. Hot lunch program.

In the event that a court rules invalid one or more of the above services the other services shall not be deemed void but shall continue in effect.

Source. 1970, 51:1. 1971, 499:4; 566:1. 1973, 501:1. 1990, 140:4, eff. June 18, 1990.

189:49–a Fingerprinting Program.

I. The state board of education in conjunction with the department of safety shall adopt a model fingerprinting program which shall be made available to the board of education of each school district in the state. The state board of education shall encourage each school district to adopt this program in the interest of uniformity throughout the state.

II. If the school district adopts the fingerprinting program it shall be for the sole purpose of providing a means by which a missing child might be located or identified and shall be operated on the following basis:

(a) No student shall be required to participate in the program.

(b) In order for a student to participate in the program, the parents, custodial parent, guardian, legal custodian, or other person responsible for the student shall authorize the student's participation by signing a form that shall be developed by the board of education or by the principal or chief administrative officer of the nonpublic school for the program.

(c) All fingerprint cards shall be given to the parents, custodial parent, guardian, legal custodian, or other person responsible for a student after the fingerprinting of the student. A copy of a fingerprint card may be retained by a school or school district, if written permission is given by the student's parent, guardian, or legal custodian. The student, upon reaching the age of 18, or the parent at any time, shall have the right to have the card returned and no copy shall be retained by the school or school district.

(d) The name, sex, hair and eye color, height, weight, and date and place of birth of the student and other information may be indicated on the fingerprint sheet or card.

III. Fingerprints obtained pursuant to this section, or any medical, psychological, guidance, counseling, or other information that is derived from the use of the fingerprints, shall not be admissible as evidence against the minor who is the subject of the fingerprints in any proceeding in any court, and shall not be used against the minor after the minor reaches the age of majority.

IV. A principal or chief administrative officer of a public school, or any employee of a public school who is authorized to handle school records, shall provide access to the relevant records of a student to a law enforcement officer who indicates that an investigation is being conducted by such officer and that the student is or may be a missing child. Copies of information in the relevant records of a student shall be provided, upon request, to the law enforcement officer, if prior approval is given by the student's parent, guardian, or legal custodian. Information obtained by the officer shall be used solely in the investigation of the case. The information may be used by law enforcement agency personnel in any manner that is appropriate to solving the case, including, but not limited to, providing the information to other law enforcement officers and agencies and to the office of the attorney general, division of public protection, bureau of criminal justice, for purposes of computer integration pursuant to RSA 7:10–a.

Source. 1985, 318:5. 1995, 174:9, 10, eff. Jan. 1, 1996.

189:50 Appropriations. A town may raise and appropriate money to carry the provisions of this subdivision into effect.

Source. 1970, 51:1, eff. May 4, 1970.

189:51 Limitation. Nothing in this subdivision shall be construed to allow either a deletion or diminution of a program or purchase adopted through normal budgetary procedure.

Source. 1971, 566:2, eff. Sept. 29, 1971.

Literacy Instruction and Dropout Prevention

189:52 Screening of Students.

[Repealed 1995, 288:3, I, eff. July 1, 1995.]

History

Former RSA 189:52, which was derived from 1988, 274:3, related to the screening of students and literacy instruction.

189:53 Literacy Skill Development in Elementary Grades. All school districts which provide elementary education shall have instruction in literacy for all students through grade 3, including instruction in reading, writing, speaking, listening, reasoning, and mathematics. All instruction shall be designed to assist students to achieve literacy and to provide the opportunity for each child to learn according to such child's needs and abilities as set forth by the state board of education in the minimum standards for New Hampshire public elementary schools.

Source. 1988, 274:3. 1995, 174:12, eff. Jan. 1, 1996.

189:54 Literacy Instruction.

[Repealed 1997, 13:1, eff. June 21, 1997.]

History

Former RSA 189:54, which was derived from 1988, 274:3; 1989, 301:6; 1991, 355:101; 1992, 289:54; and 1995, 174:13, related to literacy instruction.

189:55 Dropout Prevention.

[Repealed 2003, 288:2, eff. Sept. 16, 2003.]

History

Former RSA 189:55, which was derived from 1988, 274:3, related to dropout prevention.

189:56 Advisory Council on Literacy and Dropout Prevention.

[Repealed 1995, 288:3, II, eff. July 1, 1995.]

189:56 Repealed

History

Former RSA 189:56, which was derived from 1988, 274:3, related to the advisory council on literacy and dropout prevention.

189:57 Coordination With Special Population Programs. Educational and youth employment programs serving special population students shall be coordinated with the requirements of this subdivision. All such coordinating efforts shall not exempt participating school districts or public or private employers from meeting all requirements of state or federal laws.

Source. 1988, 274:3, eff. July 1, 1989.

189:58 Rulemaking. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to the procedures and guidelines necessary to effect the purposes of this subdivision.

Source. 1988, 274:3, eff. June 29, 1988.

Dropout Prevention and Dropout Recovery Program

189:59 Dropout Prevention and Dropout Recovery Program Established.

I. There is hereby established a dropout prevention and dropout recovery program in the department of education. The department is authorized to provide the services described in this subdivision to the state and to public, quasi-public, and private entities to assist pupils in successfully completing high school. The program shall:

(a) Provide and coordinate services designed to assist pupils in the successful completion of high school.

(b) Encourage individual, corporate, and state support and involvement to promote employment opportunities for New Hampshire's students.

(c) Render assistance in ensuring student placement in quality jobs with ample career opportunities.

(d) Encourage students to pursue postsecondary education by assisting in securing appropriate part-time work to accompany that education.

(e) Encourage lifelong learning by introducing students to the importance of skills training and demonstrating how learning is relevant to skills necessary in the workplace.

(f) Provide tutoring, study skills training, and instruction leading to successful completion of secondary school, including dropout prevention strategies through a school-site mentor.

(g) Provide alternative secondary school services with high academic standards.

(h) Deliver pre-employment and work maturity skill training, paid and unpaid work, work-based learning experiences that teach all aspects of industry-specific and general workplace competencies, including internships, job shadowing, and school sponsored workplace mentoring.

(i) Provide opportunities which may include community service and peer- centered activities encouraging responsibility and other positive social behaviors during non-school hours, including linking youth and adult mentoring, as appropriate.

(j) Provide support services and transitional links that assist students in the elimination of barriers.

(k) Establish an 85 percent graduation rate, and a 90 percent return to school rate as performance goals for program participants most likely to drop out. "Graduation rate" means the number of seniors who receive a diploma from a high school divided by the number enrolled in this program at such high school. "Return to school rate" means the percentage of students in grades 9–11 enrolled in the program who return to school for the next school year.

II. The commissioner of the department of education shall adopt rules pursuant to RSA 541–A, relevant to the implementation of this subdivision. Such rules shall include:

(a) Procedures for securing funds for participating entities.

(b) Methods for tracking compliance with program goals and reporting performance outcomes.

Source. 2003, 288:1, eff. Sept. 16, 2003.

189:60 Dropout Prevention and Dropout Recovery Oversight Council.

I. There is established a dropout prevention and dropout recovery oversight council consisting of the following members:

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

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

(c) The commissioner of the department of education, or designee.

(d) The chancellor of the community college system of New Hampshire, or designee.

(e) Three members of the public, qualified by education or experience, in dropout prevention and dropout reduction, appointed by the governor and council.

II. The council shall:

(a) Maintain programmatic and fiscal oversight of the program requirements as set forth in this subdivision.

(b) Develop and establish funding opportunities at the federal, state, and local levels for each entity participating in this program.

(c) Review each participating entity's performance outcomes and suggest strategies for improvement where appropriate.

(d) Apply for, receive, and expend any funds from federal, state, or non-state sources, including grants and matching funds which may be available, and accept private donations and gifts from any source.

III. (a) The term of office for council members in subparagraphs I(a)–(d) shall be coterminous with the term of office which qualifies that member to serve on the council. Two members in subparagraph I(e) shall serve a 2-year term of office and one member in subparagraph I(e) shall serve a 3-year term of office. Members of the council shall serve without compensation, except that legislative members shall receive mileage at the legislative rate while attending to the duties of the council.

(b) The council shall elect a member to serve as chairperson of the council. The chairperson shall serve a 2-year term. The council shall meet at least quarterly and may meet more frequently at the call of the chairperson.

(c) Members shall serve until a successor is appointed and confirmed. Vacancies shall be filled in the same manner as the original appointment and shall only be for the unexpired term.

Source. 2003, 288:1. 2007, 361:26, eff. July 17, 2007.

189:61 Local Matching Funds Required. A school district may receive dropout prevention and dropout recovery services by a favorable vote of its legislative body authorizing the expenditure of not less than 10 percent of estimated program costs for such school district.

Source. 2003, 288:1, eff. Sept. 16, 2003.

189:62 Eligible Program Participants.

I. All programs shall be eligible to apply for dropout prevention and dropout recovery programs and funds under this subdivision, provided that such programs and funds shall be targeted, to the extent available, to those high schools with the highest dropout rate, as determined by the department of education.

II. Program participants shall be certified by the department of education according to the following criteria:

(a) Programs which focus on youth development strategies.

(b) A minimum of 3 years and preferably 10 or more years of experience at the state and national levels in providing dropout prevention and dropout recovery programming to at-risk youth.

(c) Experience in program delivery in both rural and city high schools in New Hampshire.

(d) Programs shall be existing operations with boards of directors.

(e) Documentable accountability and performance measures with supporting data.

(f) State or national recognition for dropout prevention or dropout recovery.

(g) Ability to provide multiple sources of funds for the purposes of expansion and efficiency of service delivery.

(h) Programs which are members of the National Career Association.

(i) Provide nationally normed outcomes in the following areas:

(1) Basic academic competencies.

(2) Career development.

(3) Job attainment.

(4) Leadership and self development.

(5) Personal skills.

(6) Job survival competencies.

(j) Connection with an established tracking and reporting system.

Source. 2003, 288:1, eff. Sept. 16, 2003.

189:63 Report. The dropout prevention and dropout recovery oversight council shall annually submit a report to the speaker of the house of representatives, the president of the senate, the commissioner of the department of education, and the governor on the status of the dropout prevention and dropout recovery program. The report shall include details regarding an overall assessment of the effectiveness of the program, the utilization of available funds in the program, dropout rates of participating high schools or other participating entities, graduation rates of participating high schools, the percent of participating students pursuing postsecondary education, and the percent of participating students securing employment in the year following graduation.

Source. 2003, 288:1, eff. Sept. 16, 2003.

Emergency Response Plans

189:64 Emergency Response Plans.

I. Within 2 years of the effective date of this section, every public and nonpublic school shall develop a site-specific school emergency response plan which is based on and conforms to the Incident Command System and the National Incident Management System and submit such plan to the department of education by September 1 of each year. The plan should be documented at the time of school approval review. The plan shall provide that at least 2 of the currently required number of fire evacuation drills shall be emergency response drills. The plan shall address hazards including but not limited to acts of violence, threats, earthquakes, floods, tornadoes, structural fire, wildfire, internal and external hazardous materials releases, medical emergencies, and any other hazard deemed necessary by school officials and local emergency authorities. The first emergency response drill shall be conducted within one year of the completion of the plan. If the school has a building schematic floor plan diagram, the school may, with the approval of the local school board, submit the diagram to the division of homeland security and emergency management, department of safety, in a commonly used digital format. Submission of the diagram will enable the state to better prepare, respond, and mitigate potentially dangerous conditions should the need arise.

II. The plan shall be coordinated with local emergency authorities and with the emergency operations plan in the municipality in which the school is located. Each school shall review its plan at least annually and update the plan, as necessary, and shall submit the updated plan to the department of education by September 1. If after review, the plan is unchanged, the school shall notify the department by September 1 that the plan is unchanged. The director of homeland security and emergency management, department of safety shall assist school districts in conducting training for and providing support to school districts in the development, implementation, and review of an emergency response plan, as may be needed.

Source. 2007, 92:1, eff. July 1, 2007. 2014, 87:1, eff. Aug. 10, 2014. 2017, 14:1, eff. June 16, 2017.

Student and Teacher Information Protection and Privacy

189:65 Definitions. In this subdivision:

I. "Biometric" means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting.

II. "Board" means the state board of education.

III. "Department" means the department of education.

IV. "District", "school", or "school district" means a school district, including the school administrative unit to which it may belong, and the high school educational program at the state prison or county jail in which an inmate under the age of 21 is participating.

V. "Disclosure" means permitting access to, revealing, releasing, transferring, or otherwise communicating, personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic.

VI. "Statewide longitudinal data system" (SLDS) means the department's statewide longitudinal data system containing student information collected pursuant to RSA 193–E:5 and the state longitudinal database created to house data pursuant to RSA 193–E:5.

VII. "Student personally-identifiable data" means:

(a) The student's name.

(b) The name of the student's parents or other family members.

(c) The address of the student or student's family.

(d) Indirect identifiers, including the student's date of birth, place of birth, social security number, email, social media address, or other electronic address, telephone number, credit card account number, insurance account number, and financial services account number.

(e) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

VII–a. "Teacher personally-identifiable data" or "teacher data," which shall apply to teachers, paraprofessionals, principals, school employees, contractors, and other administrators, means:

(a) Social security number.

(b) Date of birth.

(c) Personal street address.

(d) Personal email address.

(e) Personal telephone number.

(f) Performance evaluations.

(g) Other information that, alone or in combination, is linked or linkable to a specific teacher, paraprofessional, principal, or administrator that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify any with reasonable certainty.

(h) Information requested by a person who the department reasonably believes or knows the identity of the teacher, paraprofessional, principal, or administrator to whom the education record relates.

VIII. "Testing entity" means a third party, within or outside of New Hampshire, contracted to administer the state assessment as defined in RSA 193–C:6.

IX. "Workforce information" means information related to unemployment insurance, wage records, unemployment benefit claims, or employment and earnings data from workforce data sources, such as state wage records, wage record interchange system (WRIS) data or the federal employment data exchange system (FEDES).

Source. 2014, 68:1, eff. July 1, 2014. 2015, 71:2, eff. Aug. 1, 2015.

189:66 Data Inventory and Policies Publication.

I. The department shall create, maintain, and make publicly available an annually-updated index of data elements containing definitions of individual student personally-identifiable data fields or fields identified in RSA 189:68 currently in the SLDS or any other database maintained by the department, or added or proposed to be added thereto, including:

(a) Any individual student personally-identifiable data required to be reported by state or federal law.

(b) Any individual student personally-identifiable data which has been proposed for inclusion in the SLDS with a statement explaining the purpose or reason for the proposed collection.

(c) Any individual student personally-identifiable data that the department collects or maintains.

(d) Any data identified in RSA 189:68.

II. The department shall develop a detailed data security plan to present to the state board, the legislative oversight committee established in RSA 193–C:7, and the commissioner of the department of information technology. The plan shall include:

(a) Privacy compliance standards.

(b) Privacy and security audits.

(c) Breach planning, notification, and procedures.

(d) Data retention and disposition policies.

III. The security plan shall:

(a) Require notification as soon as practicable to:

(1) Any teacher or student whose personally identifiable information could reasonably be assumed to have been part of any data security breach, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the integrity of the data system; and

(2) The governor, state board, senate president, speaker of the house of representatives, chairperson of the senate committee with primary jurisdiction over education, chairperson of the house committee with primary jurisdiction over education, legislative oversight committee established in RSA 193–C:7, and commissioner of the department of information technology.

(b) Require the department to issue an annual data security breach report to the governor, state board, senate president, speaker of the house of representatives, chairperson of the senate committee with primary jurisdiction over education, chairperson of the house committee with primary jurisdiction over education, legislative oversight committee established in RSA 193–C:7, and commissioner of the department of information technology. The breach report shall also be posted to the department's public Internet website and shall not include any information that itself would pose a security threat to a database or data system. The report shall include:

(1) The name of the organization reporting the breach.

(2) Any types of personal information that were or are reasonably believed to have been the subject of a breach.

(3) The date, estimated date, or date range of the breach.

(4) A general description of the breach incident.

(5) The estimated number of students and teachers affected by the breach, if any.

(6) Information about what the reporting organization has done to protect individuals whose information has been breached.

IV. The department shall make publicly available students' and parents' rights under the Family Edu-

cational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, et seq., and applicable state law including:

(a) The right to inspect and review the student's education records within 14 days after the day the school receives a request for access.

(b) The right to request amendment of a student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

(c) The right to provide written consent before the school discloses student personally identifiable data from the student's education records, provided in applicable state and federal law.

(d) The right to file a complaint with the Family Policy Compliance Office in the United States Department of Education concerning alleged failures to comply with the requirements of FERPA.

Source. 2014, 68:1, eff. July 1, 2014. 2015, 136:1, eff. Aug. 11, 2015.

189:67 Limits on Disclosure of Information.

I. A school shall, on request, disclose student personally-identifiable data about a student to the parent, foster parent, or legal guardian of the student under the age of 18 or to the eligible student.

II. A school or the department may disclose to a testing entity the student's name or unique pupil identifier, but not both, and birth date for the sole purpose of identifying the test taker. Except when collected in conjunction with the SAT or ACT, when such tests are used for the purpose of the state assessment as defined in RSA 193–C:6, the data shall be destroyed by the testing entity as soon as the testing entity has completed the verification of test takers, shall not be disclosed by the testing entity to any other person, organization, entity or government or any component thereof, other than the district, school or school district, and shall not be used by the testing entity for any other purpose whatsoever, including but not limited to test-data analysis.

II–a. Students taking the SAT or ACT, when such tests are used for the purpose of the state assessment as defined in RSA 193–C:6, may opt to have all personal information destroyed by the testing entity, following the completion and verification of the test.

III. Except when collected in conjunction with the SAT or ACT, when such tests are used for the purpose of the state assessment as defined in RSA 193–C:6, neither a school nor the department shall disclose or permit the disclosure of student or teacher personally-identifiable data, the unique pupil identifier, or any other data listed in RSA 189:68, I to any testing entity performing test-data analysis. The testing entity may perform the test analysis but shall not connect such data to other student data.

IV. Except as provided in RSA 193–E:5, or pursuant to a court order signed by a judge, the department shall not disclose student personally-identifiable data in the SLDS or teacher personally-identifiable data in other department data systems to any individual, person, organization, entity, government or component thereof, but may disclose such data to the school district in which the student resides or the teacher is employed.

V. Student personally-identifiable data shall be considered confidential and privileged and shall not be disclosed, directly or indirectly, as a result of administrative or judicial proceedings.

VI. The department shall report quarterly on its website the number of times it disclosed student personally-identifiable data to any person, organization entity or government or a component thereof, other than the student, his or her parents, foster parents or legal guardian and the school district, early childhood program or post-secondary institution in which the student was enrolled at the time of disclosure; the name of the recipient or entity of the disclosure; and the legal basis for the disclosure.

Source. 2014, 68:1, eff. July 1, 2014. 2015, 71:3, eff. Aug. 1, 2015. 2016, 69:1, eff. July 4, 2016.

189:68 Student Privacy.

I. The department shall not collect or maintain the following data in the SLDS:

(a) Name of the student's parents or other family members.

(b) Address of the student or student's family.

(c) Student email or other electronic address.

(d) Student or family telephone number.

(e) Student or parent credit card account number, insurance account number, or financial services account number.

(f) Juvenile delinquency records.

(g) Criminal records.

(h) Medical and dental insurance information.

(i) Student birth information, other than birth date and town of birth.

(j) Student social security number.

(k) Student biometric information.

(*l*) Student postsecondary workforce information including the employer's name, and the name of a college attended outside of New Hampshire.

(m) Height and weight.

(n) Body mass index (BMI).

(*o*) Political affiliations or beliefs of student or parents.

(p) Family income, excluding free and reduced lunch program eligibility as determined by Food Nutrition Services of the United States Department of Agriculture.

(q) Mother's maiden name.

(r) Parent's social security number.

(s) Mental and psychological problems of the student or the student's family.

(t) Sex behavior or attitudes.

(u) Indication of a student pregnancy.

(v) Religious or ethical practices, affiliations, or beliefs of the student or the student's parents.

II. No school shall require a student to use an identification device that uses radio frequency identification, or similar technology, to identify the student, transmit information regarding the student, or monitor or track the student without approval of the school board, after a public hearing, and without the written consent of a parent of legal guardian of an affected student which may be withheld without consequence.

III. No school shall install remote surveillance software on a school supplied computing device provided to a student without the approval of the school board, after a public hearing and without the written consent of a parent, foster parent, or legal guardian of the affected student which may be withheld without consequence. In this paragraph, "surveillance" means observing, capturing images, listening, or recording and shall not include locating equipment when there is reason to believe the equipment is about to be or has been stolen or damaged.

IV. No school shall record in any way a school classroom for the purpose of teacher evaluations without school board approval after a public hearing, and without written consent of the teacher and the parent or legal guardian of each affected student.

V. (a) Nothing in this section shall preclude the use of audio or video recordings for use with or by a child with a disability, or by such child's teacher or service provider when the child's individualized education program or accommodation plan includes audio or video recording as part of the child's special education, related services, assistive technology service, or methodology, so long as such audio or video recordings are made, used, and maintained in accordance with the Family Education Rights and Privacy Act, 20 U.S.C. section 1232g, and applicable state law.

(b) Nothing in this section shall preclude the use of audio or video recordings for student instructional purposes.

(c) Nothing in this section shall preclude the use of audio or video recordings for use in the instruction of teacher interns or student teachers after written notification to the parent or legal guardian of each affected student as to the purpose of, and privacy policy for, the recordings.

Source. 2014, 68:1, eff. July 1, 2014. 2015, 71:4, eff. Aug. 1, 2015. 2016, 87:1, eff. May 19, 2016.

189:68–a Student Online Personal Information.

I. For the purposes of this section:

(a) "Operator" means the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes.

(b) "Covered information" means personally identifiable information or materials, in any media or format that meets any of the following:

(1) Is created or provided by a student, or the student's parent or legal guardian, to an operator in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K–12 school purposes.

(2) Is created or provided by an employee or agent of the K–12 school, school district, local education agency, or county office of education, to an operator.

(3) Is gathered by an operator through the operation of a site, service, or application described in subparagraph (a) and is descriptive of a student or otherwise identifies a student, including, but not limited to, information in the student's educational record or email, first and last name, home address, date of birth, telephone number, unique pupil identifier, social security number, financial or insurance account numbers, email address, other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, reli-

gious information, text messages, documents, other student identifiers, search activity, photos, voice recordings, or geo-location information.

(c) "K–12 school purposes" means purposes that customarily take place at the direction of the K–12 school, teacher, or school district or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are for the use and benefit of the school.

(d) "Online service" includes cloud computing services, which shall comply with this section if they otherwise meet the definition of an operator.

II. (a) No operator shall knowingly engage in any of the following activities with respect to their site, service, or application:

(1) Targeted advertising on the operator's site, service, or application, or targeted advertising on any other site, service, or application when the targeting of the advertising is based upon any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application.

(2) Use of information, including persistent unique identifiers, created or gathered by the operator's site, service, or application, to amass a profile about a K–12 student.

(3) Sale, lease, rent, trade, or otherwise make available a student's information, including covered information. This prohibition does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, provided that the operator or successor entity continues to be subject to the provisions of this section with respect to previously acquired student information.

(4) Disclosing protected information unless the disclosure is made to respond to or participate in judicial process.

(b) An operator shall:

(1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, and protect that information from unauthorized access, destruction, use, modification, or disclosure.

(2) Delete a student's covered information if the school or district requests deletion of data under the control of the school or district.

(c) Nothing in this section shall prohibit an operator from using de-identified student covered information as follows:

(1) Within the operator's site, service, or application or other sites, services, or applications owned by the operator to improve educational products.

(2) To demonstrate the effectiveness of the operator's products or services, including in its marketing.

(d) Nothing in this section shall prohibit an operator from sharing aggregated de-identified student covered information for the development and improvement of educational sites, services, or applications.

III. This section shall not apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.

IV. This section shall not limit Internet service providers from providing Internet connectivity to schools or students and their families.

V. This section shall not be construed to prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents so long as the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section.

VI. This section shall not be construed to impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software.

VII. This section shall not be construed to impose a duty upon a provider of an interactive computer service, as defined in 47 U.S.C. section 230, to review or enforce compliance with this section by third-party content providers.

VIII. This section shall not impede the ability of students to download, export, or otherwise save or maintain their own student created data or documents.

IX. The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other

provisions or applications that can be given effect without the invalid provision or application.

Source. 2015, 128:1, eff. Jan. 1, 2016.

Commission to Study Sexual Abuse Prevention Education in Elementary and Secondary Schools

189:69 Commission Established.

[Repealed 2014, 143:2, eff. July 1, 2015.]

History

Former RSA 189:69, which was derived from 2014, 143:1, related to the establishment of a commission to study sexual abuse prevention education in elementary and secondary schools.

Educational Institution Policies on Social Media

189:70 Educational Institution Policies on Social Media.

I. An educational institution shall not:

(a) Require or request a student or prospective student to disclose or to provide access to a personal social media account through the student's or prospective student's user name, password, or other means of authentication that provides access.

(b) Require or request a student or prospective student to access a personal social media account in the presence of any employee of the educational institution in a manner that enables the employee to observe the contents of the personal social media account.

(c) Compel a student or prospective student to add anyone to his or her list of contacts associated with a personal social media account or require, request, suggest, or cause a student or prospective student to change the privacy settings associated with a personal social media account.

(d) Take or threaten to take any action against a student or prospective student to discipline or prohibit such student or prospective student from participation in curricular or co-curricular activities for refusal to disclose information or to take actions specified in subparagraphs (a)–(c).

(e) Fail or refuse to admit a prospective student as a result of the refusal by the prospective student to disclose information or to take actions specified in subparagraphs (a)–(c).

II. Nothing in this subdivision shall prohibit an educational institution from adopting a policy which permits:

(a) Conducting an investigation, without requiring or requesting access to a personal social media account through username, password, or other means of authentication, for the purpose of ensuring compliance with applicable law or educational institution's policies against student misconduct based on the receipt of specific information about activity associated with a student's social media account. In the case of a minor, the educational institution may request the student's parent or guardian to provide specific data from the student's social media account.

(b) Revoking a student's access, in whole or in part, to equipment or computer networks owned or operated by the educational institution.

(c) Monitoring the usage of the educational institution's computer network.

(d) Requesting a student voluntarily share a printed copy of a specific communication from the student's social media account that is relevant to an ongoing investigation.

III. This subdivision shall not apply to personal social media accounts that are created or provided by the educational institution if the student has been provided advance notice that the account may be monitored at any time by employees of the educational institution.

IV. In this section:

(a) "Educational institution" means a public or private school, college, university, or other institution that offers students, participants, or trainees an organized course of study or training that is academic, technical, vocational, trade-oriented, or designed to prepare a person for employment. "Educational institution" shall not include a military school.

(b) "Social media account" means an account, service, or profile on a social networking website that is used by a current or prospective student primarily for personal communications. This definition shall not apply to an account opened or provided by an educational institution and intended to be used solely on behalf of the educational institution.

Source. 2015, 270:1, eff. Sept. 19, 2015.

Military Uniforms

189:71 Military Uniform. A student shall have the right to wear a dress uniform issued to the student by a branch of the United States armed forces while participating in the graduation ceremony for the student's high school if that student meets the following requirements:

I. The student has fulfilled all of the requirements for receiving a high school diploma in the state of New Hampshire and the school district and is other-

wise eligible to participate in the graduation ceremony.

II. The student has completed basic training for and is an active member of a branch of the United States armed forces.

Source. 2016, 32:2, eff. July 1, 2016.

Child Abuse or Neglect Information

189:72 Child Abuse or Neglect Information. The school board of each public school and chartered public school shall post in a clearly visible location in a public area of the school that is readily accessible to students a sign that is provided in an electronic or printed form by the division for children, youth, and families, and that contains the telephone number operated by the New Hampshire division for children, youth, and families of the department of health and human services, to receive reports of child abuse or neglect and instructions on how to access the division for children, youth, and families website.

Source. 2017, 245:1, eff. Sept. 16, 2017.

CHAPTER 190

COUNCIL FOR TEACHER EDUCATION

190:1 Establishment. An advisory and coordinating council for teacher education, hereinafter called the council for teacher education, is hereby established.

Source. 1951, 143:1, eff. June 6, 1951.

190:2 Members. The council for teacher education shall consist of: the commissioner of education and the chairman of the department of education of the university of New Hampshire; 3 members appointed by them for terms not exceeding 3 years, one from a private educational institution, one from the professional personnel of the public schools and one layman; and the presidents of Keene state college and Plymouth state university, or staff members designated by them; provided that additional members may be appointed by these 7 for such terms as they may determine. Members of the council shall be entitled to reimbursement by the state board of education for mileage and expenses incurred in the performance of their required duties. The state board of education shall furnish the council with suitable meeting facilities, administrative assistance, and necessary supplies.

Source. 1951, 143:2. 2003, 159:2. 2007, 21:1, eff. July 1, 2007.

190:3 Duties. The council for teacher education shall coordinate teacher education in the state in an advisory capacity through a continuing study and discussion of its problems and shall issue advisory reports to agencies and institutions, public and private, concerned with teacher education or its financing in this state.

Source. 1951, 143:3, eff. June 6, 1951.

190:4 Meetings. The council shall meet at least twice each year.

Source. 1951, 143:4, eff. June 6, 1951.

190:5 Officers. The council members shall elect a chairman and secretary annually to serve for the ensuing year.

Source. 1951, 143:5, eff. June 6, 1951.

190:6 Meeting Room; Clerical Assistance. The state board of education shall provide a meeting room, filing space and clerical assistance to the council.

Source. 1951, 143:6, eff. June 6, 1951.

190:7 Employment of Consultant. The council is empowered to employ consultant services subject to the approval of the state board of education. The said board shall pay the expenses of such employment.

Source. 1951, 143:7, eff. June 6, 1951.

CHAPTER 191

TEACHERS' LOYALTY

191:1 Advocacy of Subversive Doctrines Prohibited. No teacher shall advocate communism as a political doctrine or any other doctrine which includes the overthrow by force of the government of the United States or of this state in any public or state approved school or in any state institution.

Source. 1949, 312:1, eff. July 28, 1949.

191:2 Oath Required.

[Repealed 1992, 137:1, eff. July 3, 1992.]

History

Former RSA 191:2, which was derived from 1949, 312:2; RSA 191:2; and 1969 372:6, related to loyalty oath requirement.

191:3 to 191:5 Repealed.

[Repealed 1993, 145:1, eff. July 16, 1993.]

History

Former RSA 191:3, which was derived from 1949, 312:3; RSA 191:3; and 1969, 372:7, related to certification and recording of teachers' loyalty oath.

Former RSA 191:4, which was derived from 1949, 312:4, related to enforcement duty of attorney general.

Former RSA 191:5, which was derived from 1949, 312:4, related to inapplicability of provisions to exchange professors and non-citizens.

CHAPTER 192

TEACHERS' RETIREMENT SYSTEM

[Repealed 1989, 400:4, VI, eff. July 1, 1989.]

History

Former RSA 192:1, which was derived from 1950, 6:1, par. 1; RSA 192:1; 1957, 48:9; 1963, 75:1; 1969, 467:1; and 1973, 275:3, related to definitions, was previously repealed by 1973, 540:3.

Former RSA 192:2, which was derived from 1950, 6:1, par. 2, related to the name and date of establishment, was previously repealed by 1973, 540:3.

Former RSA 192:3, which was derived from 1950, 6:1, par. 3 and 1967, 134:2, related to membership, was previously repealed by 1973, 540:3.

Former RSA 192:4, which was derived from 1950, 6:1, par. 4 and 1951, 229:3, 245:7, related to creditable service, was previously repealed by 1973, 540:3.

Former RSA 192:4–a, which was derived from 1955, 161:1 to 4, related to prior service credits, was previously repealed by 1973, 540:3.

Former RSA 192:5, which was derived from 1950, 6:1, par. 5; 1953, 181:1; RSA 192:5; and 1957, 48:10, related to service retirement benefits, was previously repealed by 1973, 540:3.

Former RSA 192:6, which was derived from 1950, 6:1, par. 6; 1953, 181:2; RSA 192:6; and 1957, 48:11, related to disability retirement benefits, was previously repealed by 1973, 540:3.

Former RSA 192:6–a, which was derived from 1973, 495:5, related to ordinary death benefits, was previously repealed by 1973, 540:3.

Former RSA 192:7, which was derived from 1950, 6:1, par. 7; 1953, 181:3; RSA 192:7; and 1963, 104:1, related to restoration of service following disability, was previously repealed by 1973, 540:3.

Former RSA 192:8, which was derived from 1950, 6:1, par. 8, related to return of members' contributions, was previously repealed by 1973, 540:3.

Former RSA 192:9, which was derived from 1950, 6:1, par. 9; RSA 192:9; 1957, 200:1; and 1961, 259:1, related to optional allowances, was previously repealed by 1973, 540:3.

Former RSA 192:10, which was derived from 1950, 6:1, par. 10 and 1967, 134:3, related to administration, was previously repealed by 1973, 540:3.

Former RSA 192:10–a, which was derived from 1959, 9:1, related to the destruction of records, was previously repealed by 1973, 540:3.

Former RSA 192:11, which was derived from 1950, 6:1, par. 11 and 1965, 115:1, related to the management of funds, was previously repealed by 1973, 540:3.

Former RSA 192:12, which was derived from 1950, 6:1, par. 12; 1953, 75:1, 181:4, 5; RSA 192:12; 1957, 48:12 to 14; and 1967, 134:4, related to the method of financing, was previously repealed by 1973, 540:3.

Former RSA 192:13, which was derived from 1950, 6:1, par. 13 and 1951, 60:1, related to rights and privileges of present members of former retirement system, was previously repealed by 1973, 540:3.

Former RSA 192:14, which was derived from 1950, 6:1, par. 14, related to public academies, was previously repealed by 1973, 540:3.

Former RSA 192:15, which was derived from 1950, 6:1, par. 15, related to tax exemption and execution, was previously repealed by 1973, 540:3.

Former RSA 192:16, which was derived from 1950, 6:1, par. 16 and 1973, 528:105, related to protection against fraud, was previously repealed by 1973, 540:3.

Former RSA 192:17, which was derived from 1950, 6:1, par. 17, related to limitation on membership, was previously repealed by 1973, 540:3.

Former RSA 192:18, which was derived from 1950, 6:1, par. 19 and 1953, 169:1, related to bonds and notes, was previously repealed by 1973, 540:3.

Former RSA 192:19, which was derived from 1950, 6:1, par. 20, related to public bidding on bonds and notes, was previously repealed by 1973, 540:3.

Former RSA 192:20, which was derived from 1950, 6:3 and 1967, 134:5, related to the transfer of powers and duties, was previously repealed by 1973, 540:3.

Former RSA 192:21, which was derived from 1957, 48:15, related to refunds of past contributions, was previously repealed by 1973, 540:3.

Former RSA 192:22, which was derived from 1959, 301:1, related to payment of supplemental retirement allowances to certain persons, was previously repealed by 1973, 540:3.

Former RSA 192:23, which was derived from 1961, 85:1, related to payment of supplemental retirement allowances to certain persons, was previously repealed by 1973, 540:3.

Former RSA 192:24, which was derived from 1963, 236:1, related to 1964 allowances, was previously repealed by 1973, 540:3.

Former RSA 192:25, which was derived from 1965, 159:1, related to additional bonds and notes, was previously repealed by 1973, 540:3.

Former RSA 192:26, which was derived from 1965, 265:1, related to 1966 allowances, was previously repealed by 1973, 540:3.

Former RSA 192:27, which was derived from 1967, 370:1, related to 1968 allowances, was previously repealed by 1973, 540:3.

Former RSA 192:28, which was derived from 1969, 441:1, related to 1970 allowances, was previously repealed by 1973, 540:3.

Former RSA 192:29, which was derived from 1971, 431:1, related to 1972 allowances, was previously repealed by 1973, 540:3.

Former RSA 192:30, which was derived from 1973, 276:1; 1975, 470:1; 1977, 578:1, I to VI; 1979, 333:1, 2; 1981, 524:1, 2; 1983, 183:1 to 3; 1985, 278:1 to 3; and 1987, 363:2 to 4, related to increases in monthly retirement allowances.

Former RSA 192:31, which was derived from 1974, 35:1 and 1975, 469:1, related to supplementary allowances, and was previously repealed by 1977, 528:9.

Former RSA 192:32, which was derived from 1974, 35:1 and 1975, 469:2, related to supplementary cost of living allowances for persons retiring between 1961 and 1968, and was previously repealed by 1977, 528:10.

Former RSA 192:33, which was derived from 1974, 35:1 and 1975, 469:3, related to supplementary cost of living allowances for persons retiring between 1968 and 1973, and was previously repealed by 1977, 528:11.

CHAPTER 193

PUPILS

School Attendance

School Attendance

193:1 Duty of Parent; Compulsory Attendance by Pupil.

I. A parent of any child at least 6 years of age and under 18 years of age shall cause such child to attend the public school to which the child is assigned in the child's resident district. Such child shall attend full time when such school is in session unless:

(a) The child is attending a New Hampshire public school outside the district to which the child is assigned or an approved New Hampshire private school for the same time;

(b) The child is receiving home education pursuant to RSA 193–A and is therefore exempt from this requirement;

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186–C:18 and adequate education grants under RSA 198:41;

(d) The child is attending a public or private school located in another state which has been approved by the state education agency of the state in which the school is located, or is attending a nonsectarian private school located in New Hampshire that is approved as a school tuition program by the school board pursuant to RSA 193:3, VII;

(e) The pupil has been exempted from attendance pursuant to RSA 193:5;

(f) The pupil has successfully completed all requirements for graduation and the school district is prepared to issue a diploma or the pupil has successfully achieved the equivalent of a high school diploma by either:

(1) Obtaining a high school equivalency certificate; or

(2) Documenting the completion of a home school program at the high school level by submitting a certificate or letter to the department of education;

(g) The pupil has been accepted into an accredited postsecondary education program; or

(h) The pupil obtains a waiver from the superintendent, which shall only be granted upon proof that the pupil is 16 years of age or older and has an alternative learning plan for obtaining either a high school diploma or its equivalent.

(1) Alternative learning plans shall include age-appropriate academic rigor and the flexibility to incorporate the pupil's interests and manner of learning. These plans may include, but are not limited to, such components or combination of components of extended learning opportunities as independent study, private instruction, performing groups, internships, community service, apprenticeships, and on-line courses.

(2) Alternative learning plans shall be developed, and amended if necessary, in consultation with the pupil, a school guidance counselor, the school principal and at least one parent or guardian of the pupil, and submitted to the school district superintendent for approval.

(3) If the superintendent does not approve the alternative learning plan, the parent or guardian of the pupil may appeal such decision to the local school board. A parent or guardian may appeal the decision of the local school board to the state board of education consistent with the provisions of RSA 21–N:11, III.

II. A child who reaches the sixth birthday after September 30 shall not be required to attend school under the provisions of this section until the following school year.

III. In this section, "parent" means a parent, guardian, or person having legal custody of a child.

IV. [Repealed].

Source. 1903, 13:1. 1911, 139:1. 1917, 52:1. 1919, 84:1. 1921, 85, III:1. PL 118:1. RL 137:1. 1949, 92:1. 1953, 223:1. RSA 193:1. 1985, 47:1. 1990, 279:1. 1994, 121:1. 1996, 157:1. 1997, 183:1. 1999, 17:42; 39:1. 2005, 257:15. 2007, 242:5, eff. July 1, 2009; 270:3, eff. June 29, 2007; 350:1, eff. June 30, 2009; 350:2, eff. July 1, 2009. 2008, 173:11, eff. July 1, 2009. 2013, 215:1, eff. Sept. 8, 2013. 2017, 182:2, eff. Aug. 28, 2017.

193:1–a Dual Enrollment.

I. Notwithstanding any other provision of the law, the full-time attendance requirement may be met by attendance at more than one school provided the total time spent in the schools is equivalent to full-time attendance and further that the attendance at more than one school may include attendance at a nonpublic school provided that the school district and the state board of education have given prior approval to the detailed dual enrollment agreement, which is to be effectuated for this purpose.

II. [Repealed.]

Source. 1969, 356:1. 1994, 130:1. 2002, 202:2, eff. July 14, 2002.

193:1–b Rulemaking Authority; Dual Enrollment Programs.

I. In order to accomplish the secular educational purposes of RSA 193:1–a, the state board of education shall adopt rules, pursuant to RSA 541–A and RSA 21–N:9, II(h), relative to:

(a) Providing for shared or released time programs.

(b) Leasing of space.

(c) Requirements for optional services permitted under RSA 189:49.

II. In the event that a court rules invalid a particular lease or rule, that action shall not be deemed to have invalidated other leases or rules adopted under this section.

Source. 1973, 501:5. 1986, 41:21, eff. April 3, 1988.

193:1–c Access to Public School Programs by Nonpublic, Public Chartered Schools or Home Educated Pupils.

I. Nonpublic, public chartered school, or home educated pupils shall have access to curricular courses and cocurricular programs offered by the school district in which the pupil resides. The local school board may adopt a policy regulating participation in curricular courses and cocurricular programs, provided that such policy shall not be more restrictive for non-public, public chartered school, or home educated pupils than the policy governing the school district's resident pupils. In this section, "cocurricular" shall include those activities which are designed to supplement and enrich regular academic programs of study, provide opportunities for social development, and encourage participation in clubs, athletics, performing groups, and service to school and community. For purposes of allowing access as described in this section, a "home educated pupil" shall not include any pupil who has graduated from a high school level program of home education, or its equivalent, or has attained the age of 21.

II. Nothing in this section shall be construed to require a parent to establish a home education program which exceeds the requirements of RSA 193:1.

Source. 2002, 202:1, eff. July 14, 2002. 2016, 4:1, eff. March 26, 2016.

193:2 Duty of Custodian.

[Repealed 1990, 279:5, eff. July 1, 1991.]

History

Former RSA 193:2, which was derived from 1901, 61:14; 1917, 154:1; 1921, 85, III:2; PL 118:2; and RL 137:2, related to duty of custody.

193:3 Change of School or Assignment.

I. Any person having custody of a child may apply to the school board for relief if the person thinks the attendance of the child at the school to which such child has been assigned will result in a manifest educational hardship to the child. If the person having custody of the child is aggrieved by the decision of the school board, the person may appeal to the state board of education, and the state board of education, after investigating the case and giving notice to the school board, may order such child to attend another school in the same district, if such a school is available, or to attend school in another district. In case the child is assigned to attend school in another district, the district in which such child resides shall pay tuition computed as provided in RSA 193:4 to the district in which such child attends. The state board of education may also permit such child to withdraw from school attendance for such time as it may deem necessary or proper or may make such other orders with respect to the attendance of such child at school as in its judgment the circumstances require. Children with disabilities as defined in RSA 186–C:2 shall be accorded a due process review pursuant to rules adopted under RSA 186–C:16.

II. The state board of education shall adopt rules pursuant to RSA 541–A, relative to manifest educational hardship and related issues which affect a child's attendance at school. Each school district shall establish a policy, consistent with the state board's rules, which shall allow a school board, with the recommendation of the superintendent, to take appropriate action including, but not limited to, assignment to a public school in another district when manifest educational hardship is shown.

III. (a) Each school board shall establish a change of school assignment policy, based on the best interest of the pupil and requiring a vote of the school board to reassign a pupil from the public school to which he or she is currently assigned to another public school, or to approve a request from another superintendent to accept a transfer of a pupil from a school district that is not part of the school administrative unit, provided that the following conditions are met:

(1) The pupil's parent or legal guardian petitions the superintendent for a change of school assignment or consents to the superintendent's recommendation for such a change; and

(2) The superintendent determines that such a change would be in the pupil's best interest; and

(3) The school board of each school district involved in the reassignment of the pupil votes to approve the reassignment; and

(4) The total reassignments or transfers in any one school year shall not exceed one percent of the average daily membership in residence of a school district, or 5 percent of the average daily membership in residence of any single school, whichever is greater, unless the school board votes to exceed this limit.

(b) In accordance with the number of pupils authorized in this paragraph, a superintendent may recommend reassignment of a pupil:

(1) To another school within the same school district; or

(2) To another school district within the same school administrative unit; or

(3) To a school district in another school administrative unit, subject to the pupil meeting the admission requirements of such school, and subject to the agreement of the superintendent of the receiving school administrative unit and the approval of the school boards of each school district.

(c) A pupil reassigned under this paragraph shall be counted in the average daily membership in residence of the pupil's resident school district. The pupil's resident district shall forward any tuition payment due to the district to which the pupil was reassigned.

(d) The superintendents involved in the reassignment of a pupil shall jointly establish a tuition rate for each such pupil. Some or all of the tuition may be waived by the superintendent of the receiving district for the good cause shown or pursuant to school board policy of the receiving district. The cost of transportation shall be the responsibility of the parent or legal guardian.

(e) The superintendent of the pupil's resident school administrative unit shall notify the department of education within 30 days of any reassignment of pupils under this paragraph.

(f) Nothing in this paragraph shall alter or impair the right of a child with a disability, as defined in RSA 186–C:2, to be accorded a due process review pursuant to rules adopted under RSA 186–C:16.

(g) Notwithstanding RSA 21–N:11, III, for the purposes of this paragraph, the decision of the superintendent shall be final.

IV. (a) Any person having custody of a child may apply to enroll that child in a public school or public academy outside the school district in which the person and child reside. If the non-resident school district or public academy agrees to enroll the child it may charge tuition to the parent or may enter into an agreement for payment of tuition with the school district in which the child resides.

(b) When a child is enrolled pursuant to subparagraph (a), the district in which the child is enrolled shall immediately notify the district in which the child resides of the name, date of birth, address, and grade assignment of the child. This same notification shall be made at the beginning of each school year for which the child is enrolled.

(c) When a child is enrolled pursuant to subparagraph (a), the district in which the child resides shall retain all responsibility for the provision of special education and related services pursuant to RSA 186–C.

(d) The decision by a school district or a public academy to deny enrollment of a non-resident pupil shall not be based, in whole or in part, on whether such pupil is a child with a disability as defined in RSA 186–C:2, I, or a child that requires an accommodation under the Rehabilitation Act of 1973, as amended.

(e) The decision of a parent to enroll a child in a charter school shall not be subject to the provisions of this section.

(f) Disputes related to the provision of special education services under this paragraph shall be governed by RSA 186–C.

V. A placement made by a child's special education team pursuant to that child's individualized education program shall not be deemed a change of school assignment for purposes of this section.

VI. If there is no public school for the child's grade in the resident district, the school board may assign the child to another public school in another school district or to any nonsectarian private school that has been approved as a school tuition program by the school board. The school board may execute a contract with an approved nonsectarian private school to provide for the education of a child who resides in the school district, and may raise and appropriate money for the purposes of the contract, if the school district does not have a public school at the pupil's grade level and the school board decides it is in the best interest of the pupil.

VII. In this section, "approved as a school tuition program" means a school that has been approved and contracted by the school board to provide students with the opportunity to acquire an adequate education as defined in RSA 193–E:2. Upon approval by the school board, the school shall receive status as an approved school tuition program, shall be deemed in compliance with the provisions of RSA 193–E:3–b, I(a) and (b), and shall qualify as a school approved to provide the opportunity for an adequate education. The school shall be required to submit to the school board an annual student performance progress report in a format selected by the school board, which may include reporting of aggregate achievement data to protect student privacy, and that demonstrates that students are afforded educational opportunities that are substantially equal in quality to state performance standards for determining an adequate education. A private school that receives tuition program students shall:

(a) Comply with statutes and regulations relating to agency approvals such as health, fire safety, and sanitation;

(b) Be a nonsectarian school;

(c) Be incorporated under the laws of New Hampshire or the United States; and

(d) Administer an annual assessment in reading and language arts, mathematics, and science as defined in RSA 193–C:6 to tuition program students. The assessment may be any nationally recognized standardized assessment used to measure student academic achievement, shall be aligned to the school's academic standards, and shall satisfy the requirements of RSA 193–C:6 for school tuition program students. The school's annual assessment results for tuition program students shall be submitted to the commissioner and school board. If the school enrolls 10 or more publicly-funded tuition program students and if the school's group assessment percentile score for tuition program students is less than the 40th percentile, the commissioner may require a site visit to determine if the school provides the opportunity for an adequate education in accordance with RSA 193–E:3–b. After the third consecutive year of a tuition program school being unable to demonstrate that it provides an opportunity for an adequate education, the school may be subject to revocation of tuition program status.

Source. 1871, 2:1. GL 91:14. PS 93:14. 1901, 61:14. 1903, 13:1. 1911, 139:9. 1913, 22:1. 1919, 84:1. 1921, 85, III:3. PL 118:3. RL 137:3. 1949, 139:3. RSA 193:3. 1969, 356:2. 1973, 240:1. 1985, 48:1. 1990, 140:2, X. 1995, 98:1. 1997, 183:2. 2001, 292:1, 2. 2002, 138:6, eff. May 9, 2002. 2008, 274:30, 31, eff. July 1, 2008. 2010, 316:1, 2, eff. Sept. 11, 2010. 2015, 125:1, eff. Aug. 8, 2015. 2016, 44:1, eff. July 2, 2016. 2017, 182:3, eff. Aug. 28, 2017.

193:3–a Classroom Placement of Twins or Other Multiples.

I. No school board shall adopt a policy of automatically separating or placing together twins or other multiples. In this section, "multiples" means triplets or more.

II. A parent or guardian of twins or other multiples in elementary school may, no later than 60 days before the first day of each school year or upon registration in the case of children enrolling in a new school, request that the twins or multiples be placed in the same classroom or in separate classrooms. This request shall be granted unless the principal, after meeting with the parents or guardians and after careful consideration of the reasons for their recommendation and of the best interests of their children and other children in the school affected by this decision, decides that a different placement is necessary.

III. This section is not intended to limit a parent's or guardian's right to appeal.

Source. 2007, 309:1, eff. Sept. 11, 2007.

193:4 District Liability for Elementary or Junior High School Tuition. Any district shall pay for the tuition of any pupil who, as a resident of the district, has been assigned to attend a public elementary or junior high school or school of corresponding grade in another district or a nonsectarian private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII, and any district not maintaining an elementary or junior high school or school of corresponding grade shall pay for the tuition of any pupil who, as a resident of the district, is determined to be entitled to have such tuition paid by the district where the pupil resides, and who attends an approved public elementary or junior high school or public school of corresponding grade in another district, or a nonsectarian private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII. Except under contract, the liability of any school district under this section for the tuition of any pupil shall be the current expenses of operation of the receiving district for its elementary or junior high school or public school of corresponding grade, as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils.

Source. 1949, 139:4. RSA 193:4. 1957, 52:1. 1959, 117:1. 1963, 288:2. 1975, 45:1. 1997, 183:3. 1998, 271:1, eff. Aug. 25, 1998. 2017, 182:4, eff. Aug. 28, 2017.

193:4–a Tuition Liability; Dual Enrollment. Any district shall be liable for the tuition of any child who as a resident of the district has been assigned to attend public school in another district in accordance with an approved dual enrollment plan; such payment shall be made as provided in RSA 193:4.

Source. 1971, 273:1. 1973, 501:4, eff. June 30, 1973.

193:5 Exemption From Attendance. Whenever it shall appear to the superintendent of schools that the welfare of any child will be best served by the withdrawal of such child from school, the superintendent or a majority of the members of the school board shall make recommendation to the commissioner of education, who shall, if the facts warrant it, make an order exempting such child from attendance for such period of time as seems best for the interest of such child.

Source. 1911, 139:1. 1913, 22:1. 1919, 84:1. 1921, 85, III:3. PL 118:4. RL 137:4. RSA 193:5. 1969, 356:3. 1997, 183:4, eff. Jan. 1, 1998.

193:6 Substitution of Private Instruction in Music.

[Repealed 1961, 98:1, eff. June 19, 1961.]

History

Former RSA 193:6, which was derived from 1919, 84:1; 1921, 85, III:3; PL 118:5; and RL 137:5, related to excusing of pupils for private music instruction.

193:7 Penalty. Any person who does not comply with the requirements of this subdivision shall be guilty of a violation and any fines collected hereunder shall be for the use of the district.

Source. 1871, 2:1. GL 91:14. PS 93:14. 1921, 85, III:4. PL 118:6. RL 137:6. RSA 193:7. 1973, 531:47, eff. Oct. 31, 1973 at 11:59 p.m.

193:8 Notice of Requirements. The school board of every district shall cause a copy of RSA 193:1-7 to be sent to every person who they have reason to believe does not comply with the requirements thereof.

Source. 1871, 2:3. 1874, 58:1. GL 91:16. PS 93:16. 1921, 85, III:5. PL 118:7. RL 137:7. RSA 193:8. 1969, 356:4, eff. July 1, 1969.

193:9 Illiterates.

[Repealed 2013, 215:3, eff. Sept. 8, 2013.]

History

Former RSA 193:9, which was derived from 1919, 106:14; 1921, 85, III:6; PL 118:8; RL 137:8; RSA 193:9; 1973, 72:14; and 1997, 183:5, related to illiterates.

193:10 Exception. The provisions relating to illiterates and non-English-speaking persons over 16 years of age shall not apply to persons employed in cutting, harvesting or driving pulp-wood and timber, nor to persons temporarily employed in any sort of construction or agricultural work.

Source. 1921, 85, III:7. PL 118:9. RL 137:9.

193:11 Disturbance. Any person not a pupil who shall wilfully interrupt or disturb any school shall be guilty of a misdemeanor.

Source. GL 91:17. 1887, 15:1. PS 93:17. 1921, 85, III:8. PL 118:10. RL 137:10. RSA 193:11. 1973, 528:106, eff. Oct. 31, 1973 at 11:59 p.m.

193:12 Legal Residence Required.

I. Notwithstanding any other provision of law, no person shall attend school, or send a pupil to the school, in any district of which the pupil is not a legal resident, without the consent of the district or of the school board except as otherwise provided in this section or in RSA 193:28.

II. For purposes of this section, the legal residence of a pupil shall be as follows:

(a) In the case of a minor, legal residence is where his or her parents reside, except that:

(1) If the parents live apart and are not divorced, legal residence is the residence of the parent with whom the child resides.

(2)(A) In a divorce decree where parents are awarded joint decision making responsibility or joint legal custody, the legal residence of a minor child is the residence of the parent with whom the child resides. In a divorce decree, or parenting plan developed pursuant to RSA 461–A, a child's legal residence for school attendance purposes may be the school district in which either parent resides, provided the parents agree in writing to the district the child will attend and each parent furnishes a copy of the agreement to the school district in which the parent resides. The parents shall update their parenting plan to reflect this agreement. If a parent is awarded sole or primary residential responsibility or physical custody by a court of competent jurisdiction in this or any other state, legal residence of a minor child is the residence of the parent who has sole or primary residential responsibility or physical custody. If the parent with sole or primary physical custody lives outside the state of New Hampshire, the pupil does not have residence in New Hampshire. If the court order is for equal or approximately equal periods of residential responsibility, the child's legal residence for school attendance purposes shall be as stated in the order. If a child is in a court-ordered residential placement, foster home, or group home pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, residence shall be determined in accordance with RSA 193:28.

(B) Nothing in this subparagraph shall require a school district to provide transportation for a child to another school in the school district in which the child resides, or beyond the designated attendance area for the school to which the child is assigned, or beyond the geographical limits of the school district in which the child resides.

(3) If the minor is in the custody of a legal guardian appointed by a New Hampshire court of competent jurisdiction or a court of competent jurisdiction in another state, territory, or country, legal residence is where the guardian resides. If the department of health and human services has been appointed legal guardian, the residence of the minor is where the child is placed by the department or the court. Legal guardianship shall not be appointed solely for the purpose of allowing a pupil to attend school in a district other than the district of residence of the minor's parent or parents. Whenever a petition for guardianship or legal custody is filed in a court of competent jurisdiction on behalf of a relative of a child, other than a parent, the child shall be permitted to attend school in the district in which the relative of the child resides pending a court determination relative to custody or guardianship.

(b) No minor placed in a home for children or health care facility, as defined in RSA 193:27, by another state which charges the state of New Hampshire, a political subdivision of the state of New Hampshire, or a New Hampshire school district, for the regular or special education costs for New Hampshire children placed in that state, shall be deemed a legal resident for purposes of school assignment, unless the sending state agrees to reimburse the receiving district, as defined in RSA 193:27, for regular education and special education costs.

(c)(1) If a parent with legal custody of a child moves from New Hampshire to another state while the child is in a court-ordered residential placement in this state or another state pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, the departments of education and

health and human services shall make a written request of the receiving state to assume the programmatic and financial liability of the child's placement in this state or another state until physical custody of the child is returned to a parent or legal guardian. In this subparagraph, "receiving state" shall mean the state to which the child's parents move.

(2) If the receiving state refuses to accept financial liability, the departments of education and health and human services shall enter into an agreement to provide the child with general and special education and residential services until legal custody of the child is returned to a parent or legal guardian.

III. For the purposes of this title, "legal resident" of a school district means a natural person who is domiciled in the school district and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent. A married person may have a domicile independent of the domicile of his or her spouse. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time. A person may have only one legal residence at a given time.

IV. The term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence, and shall include the following:

(a) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

(b) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(c) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

(d) Migratory children, as defined in 20 U.S.C. 6399 who qualify as homeless because such children are living in circumstances as described in subparagraphs (a)–(c).

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

V–a. Whenever a parent or guardian voluntarily places a child with a relative at the recommendation or request of the department of health and human services, that child shall be permitted to attend the public schools of the school district in which that relative resides provided that:

(a) Upon request of the school district, the department of health and human services shall confirm that the department recommended or requested that the child be placed with the relative to promote the child's well being, and not for the purpose of allowing the child to attend school in the district where the relative resides; and

(b) Upon request of the school district, the relative shall take reasonable steps to secure a court award of guardianship over the child, the child being allowed to attend school in that district while the relative seeks guardianship.

V–b. Whenever a dispute arises among one or more school districts, the department of health and human services, or one or more of the previously mentioned parties, as to the residency of a child who is in the legal custody or guardianship of the department of health and human services, or who has been placed pursuant to a court order in a proceeding under RSA 169–B, RSA 169–C, RSA 169–D, or RSA 463, the department of health and human services shall request in writing that the superintendents involved resolve the dispute. If the residency dispute remains unresolved 10 days after such request, the department of health and human services shall request that the commissioner of the department of education determine the residence of the child. The child shall be permitted to attend school in the district in which the child has been placed by the court or the department of health and human services pending the resolution of the residency dispute. Lia-

bility as to the cost of school attendance provided under this paragraph shall be determined by the commissioner of education.

VI. (a) The commissioner of the department of education, or designee, shall decide residency issues for all pupils, excluding homeless children and youths, in accordance with this section. If more than one school district is involved in a residency dispute, or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision. In those instances when an agreement cannot be reached, the commissioner of the department of education, or designee, shall make a determination within 30 days of notice of the residency dispute and such determination shall be final. If the unresolved residency dispute has resulted in an interruption of educational or related services, or such an interruption is likely to occur if the determination cannot be made before the expiration of 30 days, the determination shall be made within 14 days. With the agreement of the school districts involved and of the minor child's parent or legal representative, the time for determination of the residency dispute may be extended. Residency disputes may be submitted to the commissioner for determination by a school district involved in a dispute. In cases where the failure to resolve a residency dispute has resulted in or is likely to result in the interruption of educational or related services, a minor child's parent or legal representative may submit a residency dispute for determination to the commissioner. In all cases, all parties with an interest in the dispute shall be notified of the pendency of the proceedings, shall have an opportunity to review all information provided to the commissioner, and shall have an opportunity to present facts and legal arguments to the commissioner. The commissioner's decision, including a written explanation for that decision, shall be provided to the parties of record and a copy of such explanation shall be kept on file by the department of education. No school district shall deny a pupil attendance or implementation of an existing individualized education program.

(b) A pupil shall remain in attendance in the pupil's school of origin during the pendency of a determination of residency. If a child does not have a school of origin within this state, the child shall be immediately admitted to the school in which enrollment is sought pending determination of the residency dispute, provided such school is in the school district in which the child temporarily resides. For the purpose of this paragraph, "school of origin" means the school the child attended when permanently housed or the school in which the child was last enrolled.

(c) Notwithstanding the provisions of RSA 21–N:11, III any person aggrieved by a determination of the commissioner may appeal such determination to a court of competent jurisdiction.

VII. Nothing in this section shall require a district to provide transportation for a student beyond the geographical limits of that district.

VIII. Each school district shall adopt an admission and attendance of non-resident students policy.

IX. The commissioner of education may enter into agreements with other states relative to liability for educational costs, including special education costs, of students placed in New Hampshire by those states, or of students placed outside the state of New Hampshire.

X. For the purpose of determining liability for a child placed and cared for in any home for children or health care facility, the provisions of RSA 193:29 shall apply.

Source. RS 73:7. CS 77:7. GS 83:1. GL 91:1. PS 93:1. 1921, 85, III:9. PL 118:11. 1927, 58:1. RL 137:11. RSA 193:12. 1955, 227:2; 263:1. 1997, 183:6. 1998, 206:1-3, 7, 8. 2001, 294:1. 2002, 138:7. 2003, 222:1, 2. 2005, 273:19. 2006, 236:1, 2, eff. July 31, 2006. 2008, 274:16 to 19, 32, eff. July 1, 2008. 2011, 178:1, 2, eff. Aug. 13, 2011. 2012, 257:1, eff. June 18, 2012. 2013, 165:1, eff. Aug. 28, 2013.

193:13 Suspension and Expulsion of Pupils.

I. (a) The superintendent or chief administering officer, or a representative designated in writing by the superintendent, is authorized to suspend pupils from school for a period not to exceed 10 school days for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school and shall make educational assignments available to the suspended pupil during the period of suspension.

(b) The school board or a representative designated in writing of the school board is authorized, following a hearing, to continue the suspension of a pupil for a period in excess of 10 school days. The school board's designee may be the superintendent or any other individual, but may not be the individual who suspended the pupil for the first 10 days under subparagraph (a). Any suspension shall be valid throughout the school districts of the state, subject to modification by the superintendent of the school district in which the pupil seeks to enroll.

(c) Any suspension in excess of 10 school days imposed under subparagraph (b) by any person other than the school board is appealable to the school board, provided that the superintendent re-

ceived such appeal in writing within 10 days after the issuance of the decision being appealed. The school board shall hold a hearing on the appeal, but shall have discretion to hear evidence or to rely upon the record of a hearing conducted under subparagraph (b). The suspension under subparagraph (b) shall be enforced while that appeal is pending, unless the school board stays the suspension while the appeal is pending.

II. Any pupil may be expelled from school by the local school board for gross misconduct, or for neglect or refusal to conform to the reasonable rules of the school, or for an act of theft, destruction, or violence as defined in RSA 193–D:1, or for possession of a pellet or BB gun, rifle, or paint ball gun, and the pupil shall not attend school until restored by the local board. Any expulsion shall be subject to review if requested prior to the start of each school year and further, any parent or guardian has the right to appeal any such expulsion by the local board to the state board of education. Any expulsion shall be valid throughout the school districts of the state.

III. Any pupil who brings or possesses a firearm as defined in section 921 of Title 18 of the United States Code in a safe school zone as defined in RSA 193–D:1 without written authorization from the superintendent or designee shall be expelled from school by the local school board for a period of not less than 12 months.

IV. The local school board shall adopt a policy which allows the superintendent or chief administering officer to modify the expulsion requirements set forth in paragraphs II and III on a case by case basis.

V. Any pupil expelled by a local school board under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in another school district in New Hampshire for the period of such expulsion. Nothing in this section shall be construed to prevent the local school district that expelled the student from providing educational services to such students in an alternative setting.

VI. A pupil expelled from school in another state under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in a school district in New Hampshire for the period of such expulsion.

VII. For purposes of paragraphs I, II, and III, school board may be either the school board or a subcommittee of the board duly authorized by the school board.

Source. RS 73:4. CS 77:4. GS 83:3. GL 91:3. PS 93:3. 1921, 85, III:10. PL 118:12. RL 137:12. RSA 193:13. 1969, 356:5. 1971, 371:6. 1994, 355:2. 1995, 231:1. 1996, 168:1, 2. 1999, 44:2, eff. Jan. 1, 2000. 2017, 12:1, eff. June 16, 2017.

193:14 Assignment of Pupils to Schools.

[Repealed 2017, 63:9, III, eff. Aug. 1, 2017.]

History

Former RSA 193:14, which was derived from GS 83:4; GL 91:4; PS 93:4; 1921, 85, III:11; PL 118:13; RL 137:13; RSA 193:14; and 1969, 356:6, related to assignment of pupils to schools.

193:14–a Change of School Assignment; Duties of Board of Education. The state board of education in conjunction with the department of education shall make available to local school boards information regarding the responsibilities of the local boards when parents request a change in school assignment. Such information shall include an explanation of local board's authority and responsibilities, as well as the rights and responsibilities of parents seeking a change of assignment as set forth in RSA 193:3 and applicable rules adopted under RSA 541–A.

Source. 1994, 126:6, eff. May 23, 1994. 2017, 63:7, eff. Aug. 1, 2017.

193:15 Penalty for Unauthorized Attendance, etc. Any pupil who, after notice, attends or visits a school which the pupil has no right to attend, or interrupts or disturbs such school, shall for the first offense be guilty of a violation, and shall for any subsequent offense be guilty of a misdemeanor.

Source. 1849, 85:41. CS 78:5. GS 83:5. GL 91:5. PS 93:5. 1921, 85, III:12. PL 118:14. RL 137:14. RSA 193:15. 1973, 528:107. 1997, 183:7, eff. Jan. 1, 1998.

193:16 Bylaws as to Nonattendance. Districts may make bylaws, not repugnant to law, concerning habitual truants and children between the ages of 6 and 18 years not attending school or who are not participating in an alternative learning plan under RSA 193:1, I(h), and to compel the attendance of such children at school; failure to comply with such bylaws shall constitute a violation for each offense.

Source. 1852, 1278. CS 78:1. GS 83:6. GL 91:6. PS 93:6. 1921, 85, III:13. PL 118:15. RL 137:15. RSA 193:16. 1973, 531:48. 2007, 350:3, eff. July 1, 2009.

193:17 Sentence for Violation.

[Repealed 1975, 502:15, eff. Aug. 28, 1975.]

History

Former RSA 193:17, which was derived from 1852, 127:8; CS 78:3; GS 83:8; GL 91:8; PS 93:7; 1913, 101:15; 1921, 85, III:14; PL 118:16; and RL 137:16, related to sentences to the state industrial school during minority.

193:18 Suspension of Sentence. Any offender so convicted may give bond to the district in the sum of $25, with sufficient sureties, approved by the court or justice before whom such offender was convicted, conditioned to attend regularly a school assigned by

the local school board for one term next ensuing, to comply with the regulations thereof, and to be obedient and respectful to the teacher, and such offender's sentence may be suspended.

Source. 1852, 1278. CS 75:5. GS 83:10. GL 91:10. PS 93:9. 1921, 85, III:15. PL 118:17. RL 137:17. RSA 193:18. 1969, 356:7. 1997, 183:8, eff. Jan. 1, 1998.

Education of Children Placed in Homes for Children

193:18–a, 193:18–b Repealed.

[Repealed 1981, 326:2, eff. Sept. 1, 1981.]

History

Former RSA 193:18–a, 193:18–b, which were derived from 1955, 227:1, pars. 17–a, 17–b; 263:1; 1961, 250:1; and 1969, 356:8, related to definition of "home for children" and child's right of attendance.

193:18–c Procedure.

[Repealed 1961, 250:2, eff. July 1, 1961.]

History

Former RSA 193:18–c, which was derived from 1955, 227:1, par. 17–c, and 1955, 263:1, related to procedure for determining liability of school districts for education of children in homes for children.

Scholarships for Orphans of Veterans

193:19 Purpose of Appropriations. The sums appropriated under the provisions of this section shall be nonlapsing and continually appropriated for the sole purpose of contributing to the payment of board, room rent, books and supplies, at an institution of higher education, for veteran's natural or adopted children between the ages of 16 and 25 years, who are legal residents of the state at the time of application, whose parent served on active duty in the armed services of the United States from December 7, 1941 to December 31, 1946; or from June 27, 1950 to January 31, 1955; or from February 28, 1961 to May 7, 1975; or from August 2, 1990 through a final date of the Gulf War conflict to be prescribed by Presidential proclamation or law; or in any operation not otherwise covered by this section for which the armed forces expeditionary medal or a theater of operations service medal, as defined in RSA 72:29, has been awarded to the veteran, and the veteran, who was a New Hampshire resident at the time of his or her death, either died while on active duty during the service described above, or has since died from a service-connected disability so rated by the federal government. Not more than $2,500 shall be paid under this section to any one student in any one year, provided that no individual shall be eligible to receive such benefits for a period of more than 4 years.

Source. 1943, 35:1. 1945, 196:1. 1951, 220:1. RSA 193:19. 1973, 278:1. 1981, 409:2. 2003, 44:1. 2005, 97:1. 2006, 28:6, eff. July 1, 2006. 2009, 280:3, eff. Sept. 27, 2009.

193:20 Tuition. Children, as described in RSA 193:19, enrolled at a New Hampshire public institution of higher education shall receive free tuition.

Source. 1943, 35:2. RSA 193:20. 1981, 409:3. 1987, 171:3. 2005, 97:2, eff. Aug. 7, 2005.

193:21 Payment. The amounts payable to recipients shall be determined by the department of education, division of higher education. The higher education commission established in RSA 21–N:8–a shall determine the eligibility in accordance with rules adopted under RSA 541–A of the children who make application for the benefits provided for in this subdivision.

Source. 1943, 35:3. RSA 193:21. 1981, 409:4. 1987, 171:4. 2005, 97:3, eff. Aug. 7, 2005. 2011, 224:132, eff. July 1, 2011. 2013, 164:2, eff. June 28, 2013.

193:22 Fund.

[Repealed by 2005, 97:4, eff. Aug. 7, 2005.]

History

Former RSA 193:22, which was derived from 1943, 35:4; 1951, 220:2; RSA 193:22; and 1987, 171:5, related to fund for scholarship payments to orphans of armed service veterans.

Payment to Outside Schools Furnishing Instruction Not Available in New Hampshire

193:23 to 193:25 Repealed.

[Repealed 1959, 214:2, eff. July 1, 1959.]

History

Former RSA 193:23 to 193:25, which were derived from 1953, 197:1 to 3, related to payments to outside colleges and universities in connection with New Hampshire students unable to secure certain courses of study in any institution of public education in New Hampshire. See now RSA 187–A:16, XII, XX.

Loans to Students

193:26 Powers of Minors to Borrow for Educational Expense. Notwithstanding any statutory provisions or rule of law to the contrary, any minor who contracts to borrow money to defray the expenses of attending any institution of higher education shall have full legal capacity to act in the minor's own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

Source. 1959, 241:1. 1961, 189:1. 1997, 183:9, eff. Jan. 1, 1998.

Education of Children Placed in Homes for Children, Health Care Facilities, or State Institutions

193:27 Definitions. As used in this subdivision:

I. "Home for children" means any orphanage; institution for the care, treatment, or custody of

children; child care agency as defined by RSA 170–E:25, II and III; or any residential school approved under RSA 186:11, XXIX.

II. "Health care facility" means any hospital, nursing home, sheltered home, or other institution licensed under RSA 151.

III. "State institution" means the New Hampshire hospital, Laconia developmental services, and the youth development center.

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

V. "Receiving district" means the school district in which a home for children or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district.

VI. "School district" means a school district in the state.

Source. 1981, 326:1. 1982, 39:6. 1985, 241:1, 2; 355:3, 4. 1988, 107:5. 1990, 257:9. 1998, 206:4. 2006, 139:1, eff. July 21, 2006. 2008, 274:20, eff. July 1, 2008.

193:28 Right of Attendance. Whenever any child is placed and cared for in any home for children, or is placed by the department of health and human services in the home of a relative or friend of such child pursuant to RSA 169–B, RSA 169–C, RSA 169–D, RSA 170–C, or RSA 463, such child, if of school age, shall be entitled to attend:

I. The public schools of the school district that the child attended prior to placement, if continuing in the same school district is in the best interest of the child as determined by the court, if the home is within a reasonable distance of the school to be attended, and if suitable transportation can be arranged without imposing additional transportation costs on a school district or the department of health and human services; or

II. The public schools of the school district in which said home is located, unless such placement was solely for the purpose of enabling a child residing outside said district to attend such schools, provided that the school district for a child placed in a group home, as defined in RSA 170–E:25, II(b), within a cooperative school district, shall be the cooperative school district, not the pre-existing district within the cooperative.

Source. 1981, 326:1. 1993, 322:7. 1998, 206:5. 2001, 294:2, eff. Sept. 15, 2001. 2008, 274:21, eff. July 1, 2008.

193:29 Liability for Education of Children in Homes for Children or Health Care Facilities.

I. For any child placed and cared for in any home for children or health care facility, the sending district shall make payments to the receiving district as follows:

(a) For a child attending a public school in the receiving district who receives special education as required by RSA 186–C, the sending district is liable for either the average per pupil cost of the receiving district as estimated by the state board of education under RSA 193:4, or for the actual prorated cost of the special education and any related services, as defined in RSA 186–C:2, provided by the receiving district, whichever is greater.

(b) For a child attending a public school to which the receiving district as defined in RSA 193:27 shall pay tuition under an AREA or other contractual agreement, the sending district as defined in RSA 193:27 is liable for all costs which said receiving district must pay under that agreement.

(c) If a child is assigned to an out-of-district special education program, the sending district is liable for all costs under RSA 186–C.

II. Actual fiscal liability under paragraph I commences upon enactment of this statute. However, the determination of liability as applied in paragraph I refers to children placed in a home for children or health care facility prior to as well as subsequent to enactment.

III. If the receiving district receives any state or federal aid for educating a child in any home for children or health care facility, including but not limited to aid for foster children under RSA 198:23, that amount shall be deducted from the liability of the sending district for that child.

IV. The agency responsible for placing the child shall inform the sending and receiving districts of

where the child presently resides and where the child last resided before placement in a home for children, health care facility, or state institution or where the parent of the child resides if the child is in the legal custody of a parent who resides within the state.

V. The cooperative school district, not the preexisting district, shall be liable for the cost associated with the education of children placed in a group home, as defined in RSA 170–E:25, II(b), within such cooperative school district provided, however, that the provisions of RSA 193:29, I(a) shall apply to children receiving special education.

Source. 1981, 326:1. 1982, 39:7. 1983, 286:1. 1993, 322:8, eff. July 1, 1993. 2008, 274:33, eff. July 1, 2008.

193:30 Rulemaking Authority. The state board of education shall adopt rules, pursuant to RSA 541–A and RSA 21–N:9, II(*l*), relative to education of children placed in homes for children, health care facilities or state institutions. Such rules may include provisions for administrative hearings to resolve disputes between school districts relative to reimbursement under RSA 193:29.

Source. 1981, 326:1. 1986, 41:22, eff. April 3, 1988.

Missing Child Education Program

193:31 Program Established; Rules. The department of education, in cooperation with the department of health and human services, shall establish the "missing child educational program" that shall perform the functions specified in this subdivision. The program shall operate under the supervision and control of the commissioner of education in accordance with procedures that the commissioner shall adopt by rule, pursuant to RSA 541–A, to implement this subdivision.

Source. 1985, 318:6. 1994, 212:2. 1995, 310:181, eff. Nov. 1, 1995.

193:32 Educational Materials.

I. The program shall acquire or prepare educational materials relating to missing children issues and matters. These issues and matters include, but are not limited to, the following:

(a) The types of missing children.

(b) The reasons why and how minors become missing children, the potential adverse consequences of a minor becoming a missing child, and, in the case of minors who are considering running away from home or from the care, custody, and control of their parents, custodial parent, guardian, legal custodian, or another person responsible for them, alternatives that may be available to address their concerns and problems.

(c) How to avoid becoming a missing child and what to do if one becomes a missing child.

(d) Efforts that schools, parents, and members of a community can undertake to reduce the risk that a minor will become a missing child and to quickly locate or identify a minor who becomes a missing child, including, but not limited to, fingerprinting programs.

II. The program shall provide, upon request, a reasonable number of copies of the educational materials acquired or prepared pursuant to paragraph I to boards of education in this state and to nonpublic schools in this state. The program shall provide assistance, upon request, to a board of education or nonpublic school that is developing an educational program concerning missing children issues and matters.

III. The program shall provide, upon request, a copy of any educational material to another person or entity.

Source. 1985, 318:6. 1997, 183:10, eff. Jan. 1, 1998.

193:33 Report. Each year the program shall issue a report describing its performance of the functions specified in this subdivision and shall provide a copy of the report to the speaker of the house of representatives, the president of the senate, the governor, the attorney general, and the commissioner of the department of health and human services.

Source. 1985, 318:6. 1994, 212:2. 1995, 310:182, eff. Nov. 1, 1995.

Parents as Teachers Program

193:34 Policy and Purposes.

I. This act recognizes the importance of the early childhood years upon children's brain development. Given appropriate stimulation, babies develop critical cognitive and social skills from birth to age 3. These early years provide a window of opportunity to enrich a child's cognitive and social development. The least intrusive and most successful way to impact early childhood experiences is to educate parents as to how they can best teach their children. Studies have shown that parents who are trained as to how to interact with their children can help their children enter school ready to learn and are more likely to stay involved with their child's educational process throughout the school years.

II. The Parents as Teachers Program was established in 1981 and has a presence in 49 states, including New Hampshire. The New Hampshire program is operated at 8 sites in New Hampshire by the Parent Information Center with funds from Goals 2000. The Parents as Teachers Program creates a

partnership between parents and early childhood development professionals. Early childhood development professionals conduct monthly home visits and group meetings to help parents understand what to expect from their children in each stage of development and to teach parents how to encourage learning, manage challenging behavior and strengthen parent-child relationships.

III. The purpose of this subdivision is to expand the Parents as Teachers Program in New Hampshire by developing 2 school district based programs, one of which shall be in a rural community and one in an urban community.

Source. 2000, 140:1, eff. May 15, 2000.

193:35 Parents as Teachers Program Established.

I. The department of education shall establish the school district based Parents as Teachers Program for a rural community in Sullivan county in cooperation with School Administrative Unit 6 and the Parent Information Center. Sullivan county will be the rural site for the program because of its unique demographic profile, including the high number of risk factors affecting its children, the demonstrated interest of its public officials in the program, and the capacity to link the program to existing programs within the county including Good Beginnings, the Parent Information Center, and department of education programs in Sullivan county. The department shall use the following criteria to measure the effectiveness of the program:

(a) Whether the pilot program was implemented according to the criteria established by the Parents as Teachers National Center.

(b) The number of families served, the number of contacts with each family, and family profile information for the families served, including the percentages of families served by town.

(c) The total cost and the cost per family for the program.

(d) The number of children identified with Parents as Teachers participants that were identified as having developmental delays who have received services during the pilot program to address these delays.

(e) The number of children identified with Parents as Teachers participants who were, during the pilot program, the subject of a founded report of abuse or neglect pursuant to RSA 169–C.

(f) The results of 3–year–old developmental screening for all children of appropriate age identified with Parents as Teachers participants.

(g) The level of parental participant knowledge and achievement including, but not limited to high school equivalency completion, employment, and volunteerism.

II. The department shall, consistent with available funding and the expressed commitment of an urban community, establish a school district based Parents as Teachers Program in an urban community on or before January 1, 2002.

III. The programs established by this subdivision shall serve parents of children aged birth through 3 years of age. The programs shall utilize at least ½ of the appropriated funds to serve areas with high concentrations of low income families in order to serve parents who are educationally or economically disadvantaged.

Source. 2000, 140:1. 2003, 317:2, eff. July 1, 2003. 2013, 215:2, eff. Sept. 8, 2013.

193:36 Rulemaking. The commissioner of the department of education shall adopt rules, pursuant to RSA 541–A, necessary to carry out the provisions of this subdivision.

Source. 2000, 140:1. 2003, 317:3, eff. July 1, 2003.

193:37 Report and Recommendation.

[Repealed 2012, 264:1, VI, eff. Aug. 17, 2012.]

History

Former RSA 193:37, which was derived from 2000, 140:1 and 2003, 317:4, related to an evaluation and report on the parents as teachers program and recommendations for expansion of the program.

CHAPTER 193–A

HOME EDUCATION

193–A:1 Definitions. In this chapter:

I. "Child" means a child or children at least 6 years of age and under 18 years of age who is a resident of New Hampshire.

II. "Nonpublic school" means a nonpublic school approved pursuant to rules adopted by the state board of education and administered by the department of education and which has agreed to administer the relevant provisions of this chapter.

III. "Parent" means a parent, guardian, or person having legal custody of a child.

IV. "Resident district" means the school district in which the child resides.

Source. 1990, 279:3. 2007, 242:4, eff. July 1, 2009.

193–A:2 Program Established. There is established the home education program to be administered by the department of education.

Source. 1990, 279:3, eff. July 1, 1991.

193–A:3 Rulemaking. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to administering the home education program. The state board of education shall, in addition to the provisions of RSA 541–A, submit any notice of proposed rulemaking under RSA 541–A:6 and any final proposed rule under RSA 541–A:12 to the home education advisory council established in RSA 193–A:10 for review and comment.

Source. 1990, 279:3, eff. July 1, 1991. 2012, 203:1, eff. Aug. 12, 2012.

193–A:4 Home Education; Defined.

I. Instruction shall be deemed home education if it consists of instruction in science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music. Home education shall be provided by a parent for his own child, unless the provider is as otherwise agreed upon by the appropriate parties named in paragraph II.

II. The department of education, resident district superintendent, or a nonpublic school shall work with parents upon request in meeting the requirements of this section.

Source. 1990, 279:3. 2006, 13:1, eff. May 12, 2006.

193–A:5 Notification and Other Procedural Requirements. A parent may provide home education to a child or children at home, subject to the following requirements:

I. Any parent commencing a home education program for a child, for a child who withdraws from a public school, or for a child who moves into a school district shall notify the commissioner of the department of education, resident district superintendent, or principal of a nonpublic school of such within 5 business days of commencing the program.

II. Notification made by the parent pursuant to paragraph I shall include a list of the names, addresses, and birth dates of all children who are participating in the home education program.

III. Written notice of termination of a home education program shall be filed by the parent with the commissioner of education, and, in addition, the resident district superintendent or nonpublic school principal within 15 days of said termination.

IV. The commissioner of education, resident district superintendent, or nonpublic school principal shall acknowledge receipt of notification within 14 days of such receipt.

Source. 1990, 279:3. 1996, 222:1. 2006, 13:2, 3, eff. May 12, 2006. 2008, 344:1, eff. July 7, 2008. 2012, 203:2, eff. Aug. 12, 2012; 227:1, eff. June 16, 2012.

193–A:6 Records; Evaluation.

I. The parent shall maintain a portfolio of records and materials relative to the home education program. The portfolio shall consist of a log which designates by title the reading materials used, and also samples of writings, worksheets, workbooks, or creative materials used or developed by the child. Such portfolio shall be preserved by the parent for 2 years from the date of the ending of the instruction.

II. The parent shall provide for an annual educational evaluation in which is documented the child's demonstration of educational progress at a level commensurate with the child's age and ability. The child shall be deemed to have successfully completed his annual evaluation upon meeting the requirements of any one of the following:

(a) A certified teacher or a teacher currently teaching in a nonpublic school who is selected by the parent shall evaluate the child's educational progress upon review of the portfolio and discussion with the parent or child;

(b) The child shall take any national student achievement test, administered by a person who meets the qualifications established by the provider or publisher of the test. Composite results at or above the fortieth percentile on such tests shall be deemed reasonable academic proficiency;

(c) The child shall take a state student assessment test used by the resident district. Composite results at or above the fortieth percentile on such state test shall be deemed reasonable academic proficiency; or

(d) The child shall be evaluated using any other valid measurement tool mutually agreed upon by the parent and the commissioner of education, resident district superintendent, or nonpublic school principal.

III. The parent shall maintain a copy of the evaluation. The results of the evaluation:

(a) May be used to demonstrate the child's academic proficiency in order to participate in public school programs, and co-curricular activities which are defined as school district-sponsored and directed athletics, fine arts, and academic activities. Home educated students shall be subject to the same participation policy and eligibility conditions as apply to public school students.

(b) Shall not be used as a basis for termination of a home education program.

(c) Provides a basis for a constructive relationship between the parent and the evaluator, both working together in the best interest of the child.

Source. 1990, 279:3. 2006, 13:4, eff. May 12, 2006. 2012, 227:2, eff. June 16, 2012.

193–A:7 Hearing, Notice, and Procedure.

[Repealed 2012, 227:4, I, eff. June 16, 2012.]

History

Former RSA 193–A:7, which was derived from 1990, 279:3 and 2006, 13:5, related to a due process hearing given parents conducting a home education program.

193–A:8 Order; Appeals.

[Repealed 2012, 227:4, II, eff. June 16, 2012.]

History

Former RSA 193–A:8, which was derived from 1990, 279:3 and 2006, 13:6, related to issuance of orders of continuance or termination of home education programs under scrutiny and appeals.

193–A:9 Liability Limited. The resident school district, the board of such district, and any employees of the resident school district associated with a child who is or has been receiving home education are not liable in damages in a civil action for any injury, death or loss to person or property allegedly sustained by that child, the child's parent, or any other person as a result of the child's receipt of home education, including but not limited to, any liability allegedly based on the failure of the child to receive a free appropriate or adequate public education.

Source. 1990, 279:3, eff. July 1, 1991. 2012, 227:3, eff. June 16, 2012.

193–A:10 Home Education Advisory Council.

I. There is established the home education advisory council which shall consist of the following members:

(a) Two members of the house of representatives from the house education committee, appointed by the speaker of the house of representatives, who shall be nonvoting members.

(b) One member of the senate from the senate education committee, appointed by the president of the senate, who shall be a nonvoting member.

(c) The following individuals who shall be appointed by the commissioner of the department of education from persons named as follows:

(1) Six members nominated by home educator associations organized within New Hampshire.

(2) Two members nominated by the commissioner of the department of education, or designee.

(3) One member nominated by the New Hampshire School Administrators Association.

(4) One member nominated by the New Hampshire School Boards Association.

(5) One member nominated by the New Hampshire Association of School Principals.

(6) One member nominated by the nonpublic school advisory council established by the state board of education pursuant to RSA 21–N:9, II(f).

II. The duties of the council and the terms of office of the members appointed under subparagraph I(c) shall be prescribed in accordance with rules proposed by the commissioner of education and adopted by the state board of education pursuant to RSA 541–A. Legislative members of the council shall serve a term which is coterminous with their elected office.

III. The chair of the council shall be elected by the council members from the home educator membership on the council appointed under subparagraph I(c). All vacancies on the council shall be filled in the same manner as that of the original appointment.

IV. Legislative members of the council shall receive mileage at the legislative rate when attending to the duties of the council.

Source. 1990, 279:3, eff. July 1, 1990. 2008, 344:2, eff. July 7, 2008. 2012, 203:3, eff. Aug. 12, 2012.

193–A:11 Authority of School District Officials. No superintendent, school board, school principal, or other school district official shall propose, adopt, or enforce any policy or procedure governing home educated pupils that is inconsistent with or more restrictive than the provisions of this chapter and any rules adopted pursuant to RSA 193–A:3.

Source. 2012, 203:4, eff. Aug. 12, 2012.

CHAPTER 193–B

DRUG-FREE SCHOOL ZONES

193–B:1 Definitions. In this chapter:

I. "Controlled drug or its analog" means those drugs or substances included within the definitions provided in RSA 318–B:1, VI and VI–a.

II. "Drug-free school zone" means an area inclusive of any property used for school purposes by any school, whether or not owned by such school, within 1,000 feet of any such property, and within or immediately adjacent to school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school or Head Start facility in New Hampshire.

IV. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

Source. 1991, 364:1. 1996, 290:1, eff. Aug. 9, 1996.

193–B:2 Drug-Free School Zones. Except as otherwise provided by law, it shall be unlawful for any person to manufacture, sell, prescribe, administer, dispense, or possess with intent to sell, dispense, or compound any controlled drug or its analog, within a drug-free school zone at any time of the year.

Source. 1991, 364:1. 1994, 28:1, eff. June 21, 1994.

193–B:3 Maps of Drug-Free Zones; Exemption.

I. Each school administrative unit within the state shall, in consultation with the local police authority having jurisdiction over drug enforcement where each drug-free zone is located, publish a map clearly indicating the boundaries of each permanent drug-free school zone in accordance with the provisions of RSA 193–B:1, II. Such map shall be posted in a prominent place in the district or municipal court of jurisdiction, the local police department, and in all schools existing in the drug-free school zone.

II. The mapping requirements under paragraph I shall not apply to Head Start facilities.

Source. 1991, 364:1. 1996, 290:2, eff. Aug. 9, 1996.

193–B:4 Rulemaking; Notice; Posting. The state board of education, in consultation with the New Hampshire Police Chiefs' Association, shall adopt rules pursuant to RSA 541–A relative to:

I. Developing a procedure by which to mark drug-free zones, including the use of signs or other markings as appropriate. Such signs or other markings shall:

(a) Be posted in a prominent place:

(1) On or near each school;

(2) In each school bus; and

(3) On or near non-school-owned property serving as a temporary drug-free zone by virtue of its use for the school's instructional program, for the duration of such use;

(b) Indicate that the posted area is a drug-free zone which extends to 1,000 feet surrounding such property; and

(c) Warn that violation of this chapter shall subject the offender to severe penalties under the law.

II. Assisting each school administrative unit in providing for the posting required in this section.

Source. 1991, 364:1. 1994, 28:2, 3, eff. June 21, 1994.

193–B:5 Toll-Free Hotline; Rulemaking; Local Hotlines; Notice.

I. There is hereby established a toll-free statewide hotline for the purpose of reporting anonymous information on drug activity to local law enforcement agencies. The department of safety shall coordinate and adopt rules pursuant to RSA 541–A for the establishment and operation of the hotline.

II. The toll-free statewide telephone number established under paragraph I shall be displayed in the drug-free zone signs developed and posted pursuant to RSA 193–B:4, I. If a local police hotline telephone exists in a community, such telephone number shall be posted on relevant signs in lieu of the toll-free statewide telephone number.

Source. 1991, 364:1, eff. Jan. 1, 1992.

193–B:6 Penalties.

I. It shall be a violation for any person to cover, remove, deface, alter or destroy any sign or other marking identifying a drug-free zone as provided in RSA 193–B:4, I.

II. Lack of knowledge that the prohibited act as defined in RSA 193–B:2 occurred on or within 1,000 feet of school property shall not be a defense.

III. A violation of RSA 193–B:2 shall not include an act which occurs entirely within a private residence wherein no person 17 years of age or under is present.

Source. 1991, 364:1, eff. Jan. 1, 1992.

193–B:7 Penalty Assessment. In addition to the penalties imposed under RSA 193–B:6, I and RSA 318–B:26, V, every court shall levy a penalty assessment of $100 for an offense in violation of RSA 193–B:2. The clerk of each court shall collect all penalty assessments and, notwithstanding RSA 6:11, shall transmit the amount collected to the general fund.

Source. 1994, 28:4, eff. Jan. 1, 1995. 2011, 224:225, eff. July 1, 2011.

CHAPTER 193–C

STATEWIDE EDUCATION IMPROVEMENT AND ASSESSMENT PROGRAM

193–C:1 Statement of Purpose.

I. Improvement and accountability in education are of primary concern to all of the citizens of New Hampshire. A well-educated populace is essential for the maintenance of democracy, the continued growth of our economy, and the encouragement of personal enrichment and development.

II. A statewide education improvement and assessment program built upon the establishment of academic standards specifying what students should know and be able to do is an important element in educational improvement. Such a program also serves as an effective measure of accountability and student performance when the assessment exercises or tasks are valid and appropriate representations of the knowledge and skills that students are expected to achieve.

III. Widespread participation in the establishment of a statewide education improvement and assessment program is essential. Consultation with educators at all levels, business people, government officials, community representatives, and parents must occur in the development of academic standards. In turn, widespread dissemination of those standards, once established, must occur. Teachers, administrators, and school board members must be fully apprised of these state-developed standards. They must, in turn, communicate these expectations to students and parents, and find and implement methods to enable students to acquire and apply the requisite knowledge and skills.

IV. In addition, the assessment results must be reported to students, parents, teachers, administrators, school board members, and to all other citizens of New Hampshire in order that informed decisions can be made concerning curriculum, in-service education, instructional improvement, teacher training, resource allocation, and staffing.

V. [Repealed.]

VI. The purpose of the statewide education improvement and assessment program is not to establish a statewide curriculum. It is, rather, to establish what New Hampshire students should know and be able to do and to develop and implement effective methods for assessing that learning and its application so that local decisions about curriculum development and delivery can be made.

Source. 1993, 290:2, eff. June 22, 1993. 2013, 263:7, I, eff. Sept. 22, 2013. 2016, 84:3, eff. July 18, 2016.

193–C:2 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of education.

II. "Committee" means the legislative oversight committee established to review the statewide education improvement and assessment program.

III. "Department" means the department of education.

IV. "Program" means the New Hampshire statewide education improvement and assessment program.

Source. 1993, 290:2, eff. June 22, 1993.

193–C:3 Program Established; Goals. There is established within the department of education a statewide education improvement and assessment program. The commissioner shall develop and implement this program in conjunction with the state board of education and the legislative oversight committee. In carrying out this program, the commissioner shall consult widely with educators at all levels, business people, government officials, community representatives, and parents.

I. The aims of this program shall be to:

(a) Define what students should know and be able to do.

(b) Develop and implement methods for assessing that learning and its application.

(c) Report assessment results to all citizens of New Hampshire.

(d) Help to provide accountability at all levels.

(e) Use the results, at both the state and local levels, to improve instruction and advance student learning.

II. Since the program is not a minimum competency testing program, assessment instruments should be designed to reflect the range of learning exhibited by students. The assessment portion of the program shall consist of a variety of assessment tasks which can be objectively scored. The assessment instruments shall include, but not be limited to:

(a) Constructed response items which require students to produce answers to questions rather than to select from an array of possible answers.

(b) A writing sample.

(c) Other open-ended performance tasks.

III. The following criteria shall be used in the development of the program:

(a) Academic standards specifying what students should know and be able to do shall be clearly defined before assessment procedures and exercises are developed.

(b) The assessment exercises or tasks shall be valid and appropriate representations of the academic standards the students are expected to achieve.

(c) At each grade level assessed, the standards and expectations shall be the same for every New Hampshire student.

(d) Teachers shall be involved in designing and using the assessment system.

(e) Assessment frameworks and reports shall be understandable and widely disseminated to parents, teachers, administrators, other school personnel, school board members, teacher preparation programs, business people, government officials, and community members.

(f) The assessment system shall be subject to continuous review and improvement.

IV. The assessment system shall generate data which may be used:

(a) At the student level, by students, parents, and teachers, to determine what the student knows and is able to do in relationship to the state-established academic standards.

(b) At the classroom and school building levels, to monitor student progress and to enhance learning.

(c) At the district level, to measure school and district-wide progress toward meeting goals and outcomes, to revise curriculum, to design in-service education programs, and to improve instruction.

(d) At the state level, to measure what students know and are able to do in relation to the attainment of goals and outcomes from the assessment frameworks, and to report the results to the citizens of New Hampshire.

(e) At the state level, to target services to schools, improve existing programs, develop new initiatives, and revise standards for school improvement, teacher certification, etc.

(f) At the college level, to integrate into teacher preparation programs instruction in state-established standards, techniques for enhancing student learning in these areas, and the use of assessment results to improve instruction.

(g) At all levels, to correlate, to the extent possible, with national goals and international standards.

(h) At all levels, to provide a basis for accountability.

(i) At the end of grade 3, to determine if pupils are at grade level in reading and mathematics on a standardized test to be developed by the department or an authorized, locally-administered assessment developed in consultation with the department, as part of a statewide assessment program, and to provide differentiated aid to schools pursuant to RSA 198:40–a for pupils not proficient on the reading component of the statewide or locally-administered assessment.

(j) At the school, district, and state levels, to provide performance reports on specific subgroups of pupils as required by federal law.

Source. 1993, 290:2. 2003, 314:7, eff. July 22, 2003. 2016, 20:1, eff. July 1, 2017; 84:4, 5, eff. July 18, 2016. 2017, 100:1, eff. Aug. 7, 2017.

193–C:4 Rulemaking. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to the exemption of certain students from participation in the program. Nothing in this section shall be construed to limit the ability of the state board of education to adopt rules pursuant to the authority granted by the general court.

Source. 1993, 290:2, eff. June 22, 1993.

193–C:5 Areas of Assessment. The statewide academic areas to be assessed shall include reading

and language arts, mathematics, and science. History, geography, civics, and economics remain required critical areas of study. Therefore, assessment of these subjects remains within the purview of the local school board. The statewide assessment program shall only measure student understanding of key content-specific concepts, skills, and knowledge applied within or across academic content domains.

Source. 1993, 290:2. 2007, 3:1, eff. June 19, 2007. 2014, 321:1, eff. Sept. 30, 2014. 2016, 75:1, eff. July 18, 2016.

193–C:6 Assessment Required. A statewide assessment shall be administered in all school districts in the state once in an elementary school grade, once in a middle school grade, and one grade in high school. For those years in grades 3 through 8 in which the school district does not administer the statewide assessment, the school district, in consultation with the department and as part of the statewide education improvement and assessment program, shall develop and administer its own assessment or shall administer a standardized assessment that identifies a pupil's range of learning and yields objective data to use in improving instruction and learning. All public school students in the designated grades shall participate in the assessment, unless such student is exempted, or provided that the commissioner of the department of education may, through an agreement with another state when such state and New Hampshire are parties to an interstate agreement, allow pupils to participate in that state's assessment program as an alternative to the assessment required under this chapter. Home educated students may contact their local school districts if they wish to participate in the statewide assessment. Private schools may contact the department of education to participate in the statewide assessment. The department may use the College Board SAT or ACT college readiness assessment to satisfy the high school assessment requirements of this chapter. The statewide assessment results of a student or the student's school district shall not be included as part of the student's transcript unless the student, if 18 years of age or older, or the student's parent or legal guardian if the student is under 18 years of age, consents.

Source. 1993, 290:2. 1999, 224:2. 2007, 3:2, eff. June 19, 2007. 2015, 226:1, eff. Sept. 11, 2015. 2017, 16:1, eff. June 16, 2017; 88:1, eff. Aug. 4, 2017; 142:2, eff. Aug. 15, 2017.

193–C:7 Legislative Oversight Committee. An oversight committee shall be established consisting of:

I. The chairperson of the house education committee, or a designee.

II. The chairperson of the senate education committee, or a designee.

III. One member of the house of representatives, appointed by the speaker of the house.

IV. One member of the senate, appointed by the senate president.

V. One member of the house finance committee, appointed by the speaker of the house.

VI. One member of the senate finance committee, appointed by the senate president.

Source. 1993, 290:2. 1995, 9:24, eff. June 11, 1995.

193–C:8 Duties of the Legislative Oversight Committee. The committee shall:

I. Review the development and implementation of the school performance and accountability program set forth in RSA 193–H to ensure compliance with state and federal law. Implementation of the program shall be in conjunction with the committee's review.

II. Review the provisions of RSA 193–H and submit a report of such review annually to the speaker of the house of representatives, the president of the senate, the governor, and the chairpersons of the house and senate education committees.

III. Propose legislation that is needed as a result of the review of the progress and results of the policies implemented under this chapter and under RSA 193–H, including any changes necessitated by federal law.

IV. Confer with the commissioner and the state board of education to identify operational principles which should guide the work of the department of education in supporting improved school performance and accountability.

V. Analyze existing department of education programs and initiatives which support improved school performance and accountability.

VI. Receive reports from the commissioner regarding the status of public education in New Hampshire, updates on the improvement made by local school districts toward achieving satisfactory progress in statewide student performance under RSA 193–H:2 and status reports on the on-going issues and implications of school accountability at the state and federal level. Reports by the commissioner shall occur at least once annually or more frequently as needed, as determined by the committee and the commissioner.

VII. Review and approve statewide performance targets required under RSA 193–H:2 developed by the department of education and recommended to the legislative oversight committee by the state board of education.

VIII. Receive reports from the state board of education including rules recommended by the department to be adopted by the state board of education under RSA 541–A relative to statewide performance targets required under RSA 193–H:2. The legislative oversight committee shall propose legislation to be submitted to establish such statewide performance targets in state statute during the legislative session following the approval of any recommendations which the state board of education is required to make.

IX. Review the unique pupil identification system established in RSA 193–E:5 and propose legislation needed as a result of the review.

X. Review the implementation and results of the program relative to accountability for the opportunity for an adequate education established in RSA 193–E, consult and receive reports on such program, evaluate and review existing and emergent performance-based measurement tools, and propose legislation for improvements to the accountability program, as necessary.

XI. Receive security breach reports from the department of education pursuant to RSA 189:66, consult with the commissioner of the department of information technology, and propose legislation needed as a result of the review.

XII. Review and make recommendations relating to academic standards under consideration by the state board of education pursuant to RSA 193–E:2–a, IV(c).

Source. 1993, 290:2. 2003, 314:8. 2004, 147:4, eff. Aug. 1, 2004. 2009, 198:3, eff. July 14, 2009. 2015, 136:2, eff. Aug. 11, 2015. 2017, 252:2, eff. Sept. 16, 2017.

193–C:9 Local Education Improvement and Assessment Plan; Local Education Improvement Fund.

[Repealed 2013, 263:7, II, eff. Sept. 22, 2013.]

History

Former RSA 193–C:9, which was derived from 1993, 290:2; 1996, 300:4, 5; and 2003, 314:8, related to the establishment of local education improvement fund.

193–C:10 Accessibility of Assessment Materials. After the assessment results are released by the department, a pupil's parent or legal guardian shall have the right to inspect and review the pupil's assessment, including the questions asked, the pupil's answers, instructions or directions to the pupil, and other supplementary materials related or used to administer the pupil's assessment. A parent or legal guardian shall direct a request for inspection or review to the pupil's school, and the school shall comply with such request within 45 days of its receipt. The department of education shall make available released assessment items on the department's website as soon as possible after the statewide assessment results are released. The commissioner shall adopt rules, pursuant to RSA 541–A, to implement procedures for the review and inspection of assessment materials. These rules shall provide parents and legal guardians with no fewer rights accorded to them under the Family Educational and Privacy Rights Act, 20 U.S.C. 1232g.

Source. 1998, 290:1, eff. Jan. 1, 1999. 2014, 219:1, eff. Sept. 12, 2014.

193–C:11 Anonymity of Pupil Assessment Results; Parental Authorization Required. Individual pupil names or codes contained in the statewide assessment results, scores, or other evaluative materials shall be deleted for the purposes of records maintenance and storage of such results or scores at the department of education, unless a parent or legal guardian provides written authorization otherwise, or as required under federal law. Individual pupil results shall be made available to a parent, a legal guardian, or the pupil's school in accordance with the Family Educational and Privacy Rights Act, 20 U.S.C. 1232g.

Source. 1998, 290:1, eff. Jan. 1, 1999.

CHAPTER 193–D

SAFE SCHOOL ZONES

193–D:1 Definitions. In this chapter:

I. "Act of theft, destruction, or violence" means an act set forth in the following statutes regardless of the age of the perpetrator:

(a) Homicide under RSA 630.

(b)(1) Any first or second degree assault under RSA 631.

(2) Any simple assault under RSA 631:2–a.

(c) Any felonious or aggravated felonious sexual assault under RSA 632–A.

(d) Criminal mischief under RSA 634:2.

(e) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.

(f) Arson under RSA 634:1.

(g) Burglary under RSA 635.

(h) Robbery under RSA 636.

(i) Theft under RSA 637.

(j) Illegal sale or possession of a controlled drug under RSA 318–B.

(k) Criminal threatening under RSA 631:4.

II. "Safe school zone" means an area inclusive of any school property or school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall not include home schools under RSA 193–A.

IV. "School employee" means any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contract services for any public or private school, school district, school department, or school administrative unit.

V. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

VI. "School purposes" means school-sponsored programs, including but not limited to educational or extra-curricular activities.

Source. 1994, 355:3. 1995, 231:2. 2007, 139:1, eff. Aug. 17, 2007.

193–D:2 State Board Rulemaking Authority; Public School District Policies.

I. The state board of education shall adopt rules relative to safe school zones, under RSA 541–A, for public school pupils and public school employees regarding:

(a) Disciplinary proceedings, including procedures assuring due process.

(b)(1) Standards and procedures for suspension and expulsion of pupils, including procedures assuring due process.

(2) Standards and procedures which shall require expulsion of a pupil for knowingly possessing a firearm in a safe school zone without written authorization from the superintendent or designee.

(c) Procedures pertaining to discipline of pupils with special needs, including procedures assuring due process.

(d) Procedures for reporting acts of theft, destruction, or violence under RSA 193–D:4.

II. Nothing in this chapter shall prohibit local school boards from adopting and implementing policies relative to pupil conduct and disciplinary procedures.

Source. 1994, 355:3, eff. June 8, 1994.

193–D:3 Criminal Penalties. Any person convicted of an act of theft, destruction, or violence as defined in RSA 193–D:1 committed in a safe school zone at any time of year may be subject to an extended term of imprisonment as provided in RSA 651:6.

Source. 1994, 355:3, eff. Sept. 1, 1994.

193–D:4 Written Report Required.

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in RSA 169–C:3, XXII, that a report was made to the local law enforcement authority.

(b) The provisions of subparagraph (a) shall not apply to any simple assault involving pupils in kindergarten through grade 12 if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.

(c) Each school district, in conjunction with the local law enforcement authority, shall establish a memorandum of understanding for administering the provisions of RSA 193–D:4, I(a)–(c).

II. The report required under paragraph I shall include:

(a) The name and home address, if known, of any person suspected of committing an act of theft, destruction, or violence in a safe school zone.

(b) The name and home address, if known, of any witness to the act of theft, destruction, or violence in a safe school zone.

(c) Identification of the act of theft, destruction, or violence as defined in RSA 193–D:1 that was allegedly committed.

Source. 1994, 355:3. 1995, 231:3. 2000, 194:1, eff. Jan. 1, 2001.

193–D:5 Waiver of Written Report Requirement. The written report required under RSA 193–D:4 shall be waived by law enforcement officials when there is a law enforcement response at the time of the incident which results in a written police report.

Source. 1994, 355:3, eff. Sept. 1, 1994.

193–D:6 Penalties for Failure to Report. Any person who knowingly fails to comply with the reporting requirements under RSA 193–D:4 for acts of theft, destruction, or violence, unless such report is waived under RSA 193–D:5, shall be guilty of a violation.

Source. 1994, 355:3, eff. Sept. 1, 1994.

193–D:7 Confidentiality. Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identity of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as a child in need of services under RSA 169–D or a child in need of protection under RSA 169–C.

Source. 1994, 355:3, eff. Sept. 1, 1994.

193–D:8 Transfer Records; Notice. All elementary and secondary educational institutions, including academies, private schools, and public schools, shall upon request of the parent, pupil, or former pupil, furnish a complete school record for the pupil transferring into a new school system. Such record shall include, but not be limited to, records relating to any incidents involving suspension or expulsion, or delinquent or criminal acts, or any incident reports in which the pupil was charged with any act of theft, destruction, or violence in a safe school zone.

Source. 1994, 355:3, eff. Sept. 1, 1994.

193–D:9 Liability for Reporting. Any public or private school employee or employee of a company under contract to a school or school district who in good faith has made a report under RSA 193–D shall not be subject to liability for making the report.

Source. 2010, 155:5, eff. July 1, 2010.

CHAPTER 193–E

ADEQUATE PUBLIC EDUCATION

193–E:1 Policy and Purpose.

I. It is the policy of the state of New Hampshire that public elementary and secondary education shall provide all students with the opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and political systems of a free government, now and in the years to come; an education that is consistent with the minimum standards for public school approval, the state-established academic standards, and school district or school curriculum.

II. Respecting New Hampshire's long tradition of community involvement, it is the purpose of this chapter to ensure that appropriate means are established to provide an adequate education through an integrated system of shared responsibility between state and local government. In this system, the state establishes minimum standards for public school approval and academic standards for inclusion and delivery of educational services at the local level. School districts then have responsibility and flexibility in implementing diverse educational approaches to instruction and curriculum tailored to meet student needs.

Source. 1998, 389:1. 2005, 257:15. 2007, 270:3, eff. June 29, 2007. 2016, 84:6, eff. July 18, 2016.

193–E:2 Criteria for an Adequate Education. An adequate education shall provide all students with the opportunity to acquire:

I. Skill in reading, writing, and speaking English to enable them to communicate effectively and think creatively and critically.

II. Skill in mathematics and familiarity with methods of science to enable them to analyze information, solve problems, and make rational decisions.

III. Knowledge of the biological, physical, and earth sciences to enable them to understand and appreciate the world around them.

IV. Knowledge of civics and government, economics, geography, and history to enable them to participate in the democratic process and to make informed choices as responsible citizens.

V. Grounding in the arts, languages, and literature to enable them to appreciate our cultural heritage and develop lifelong interests and involvement in these areas.

VI. Sound wellness and environmental practices to enable them to enhance their own well-being, as well as that of others.

VII. Skills for lifelong learning, including interpersonal and technological skills, to enable them to learn, work, and participate effectively in a changing society.

Source. 1998, 389:1. 2005, 257:15. 2007, 270:3, eff. June 29, 2007.

193–E:2–a Substantive Educational Content of an Adequate Education.

I. Beginning in the school year 2008–2009, the specific criteria and substantive educational program that deliver the opportunity for an adequate education shall be defined and identified as the school approval standards in the following areas:

(a) English/language arts and reading.

(b) Mathematics.

(c) Science.

(d) Social studies.

(e) Arts education.

(f) World languages.

(g) Health education.

(h) Physical education.

(i) Technology education, and information and communication technologies.

II. The standards shall cover kindergarten through twelfth grade and shall clearly set forth the opportunities to acquire the communication, analytical and research skills and competencies, as well as the substantive knowledge expected to be possessed by students at the various grade levels, including the credit requirement necessary to earn a high school diploma.

III. Public schools and public academies shall adhere to the standards identified in paragraph I.

IV. (a) The minimum standards for public school approval for the areas identified in paragraph I shall constitute the opportunity for the delivery of an adequate education. The general court shall periodically, but not less frequently than every 10 years, review, revise, and update, as necessary, the minimum standards identified in paragraph I and shall ensure that the high quality of the minimum standards for public school approval in each area of education identified in paragraph I is maintained. Changes made by the board of education to the school approval standards through rulemaking after the effective date of this section shall not be included within the standards that constitute the opportunity for the delivery of an adequate education without prior adoption by the general court. The board of education shall provide written notice to the speaker of the house of representatives, the president of the senate, and the chairs of the house and senate education committees of any changes to the school approval standards adopted pursuant to RSA 541–A.

(b) Neither the department of education nor the state board of education shall by statute or rule require that the common core standards developed jointly by the National Governors Association and the Council of Chief State School Officers be implemented in any school or school district in this state. If the local school board elects not to implement the common core standards or the common core state standards adopted by the state board pursuant to RSA 541–A, the local school board shall determine, approve, and implement alternative academic standards.

(c) On or after the effective date of this subparagraph, the state board of education shall not amend any existing academic standards and shall not approve any new academic standards without prior review and recommendation of the legislative oversight committee established in RSA 193–C:7.

(d) In this paragraph, "academic standards" shall have the same meaning as in RSA 193–E:2–a, VI(b).

V. The general court requires the state board of education and the department of education to insti-

tute procedures for maintaining, updating, improving, and refining the minimum standards for public school approval for each area of education identified in paragraph I. Each school district shall be responsible for maintaining, updating, improving, and refining curriculum. The curriculum shall present educational goals, broad pedagogical approaches and strategies for assisting students in the development of the skills, competencies, and knowledge called for by the minimum standards for public school approval for each area of education identified in paragraph I. It is the responsibility of local teachers, administrators, and school boards to identify and implement approaches best suited for the students in their communities to acquire the skills and knowledge included in the curriculum, to determine the scope, organization, and sequence of course offerings, and to choose the methods of instruction, the activities, and the materials to be used.

VI. In this section:

(a) "Minimum standards for public school approval" mean the applicable criteria that public schools and public academies shall meet in order to be an approved school, as adopted by the state board of education through administrative rules.

(b) "Academic standards" mean what a student should know and be able to do at each grade level.

(c) "Curriculum" means the lessons and academic content taught in school or in a specific course or program.

Source. 2007, 270:2, eff. June 29, 2007. 2016, 84:7, eff. July 18, 2016. 2017, 252:1, eff. Sept. 16, 2017.

193–E:2–b Cost of an Adequate Education.

I. The general court shall use the definition of the opportunity for an adequate education in RSA 193–E:2–a to determine the resources necessary to provide essential programs, considering educational needs. The general court shall make an initial determination of the necessary specific resource elements to be included in the opportunity for an adequate education.

II. The general court shall create a process for the periodic determination of the specific resource elements essential to providing the substantive educational content of an adequate education. This review should occur no less frequently than every 10 years.

III. [Repealed.]

Source. 2007, 270:2, eff. June 29, 2007. 2012, 264:1, VII, eff. Aug. 17, 2012.

193–E:2–c Resource Elements.

The general court recognizes that schools with greater educational challenges will benefit from varying resources. Schools with varying educational challenges often exist within a single school district. The general court is committed to addressing the varying educational challenges that exist among the schools of the state.

Source. 2007, 270:2, eff. June 29, 2007.

193–E:2–d Duties of the Legislative Oversight Committee.

[Repealed 2009, 198:4, eff. July 14, 2009.]

History

Former RSA 193–E:2–d, which was derived from 2007, 270:2, related to the legislative oversight committee on costing an adequate education.

193–E:3 Delivery of an Adequate Education.

I. Annually, beginning with the 2002–2003 school year, each school district shall report data to the department of education at the school and district levels on the indicators set forth in this paragraph. The report shall not contain personally identifiable information including but not limited to name, gender, or social security number. The department of education shall develop a reasonable schedule to phase-in the reporting of new data required by federal law. The requirements for data keeping and the form of the report shall be established in accordance with rules adopted by the state board of education. Indicators shall include the following areas:

(a) Attendance rates.

(b) Annual and cumulative drop-out rates of high school pupils and annual drop-out rates for pupils in grades 7 and 8.

(c) School environment indicators, such as safe-schools data.

(d) Number and percentage of graduating pupils going on to post-secondary education, military service, and advanced placement participation.

(e) Performance on state tests administered pursuant to RSA 193–C and other standardized tests administered at local option.

(f) Expulsion and suspension rates, including in-school and out-of-school suspensions, which shall be reported for each school year.

(g) Number and percentage of classes taught by highly qualified teachers.

(h) Teacher and administrative turnover rates at the school and district levels.

(i) Pupil course information.

II. (a) The department of education, with the approval of the legislative oversight committee established in RSA 193–C:7, may implement and report data on any additional indicators deemed relevant to the purposes of this section.

(b) The department of education shall enter into an agreement with the board of trustees of the university system of New Hampshire or the community college system of New Hampshire, or both, if necessary, to determine additional indicators applicable to postsecondary institutions within their respective jurisdictions which are not required under paragraph VI.

III. (a) Not later than December 1, 2003, and annually thereafter, the department of education shall issue a public report on the condition of education statewide and on a district-by-district and school-by-school basis. This report shall be entitled "New Hampshire School District Profiles" and shall be made available at every school administrative unit for public review. It shall include demographic and pupil performance data reported in paragraph I and other relevant statistics as determined by the department of education. Comparisons with state averages shall be provided for all data reported. Comparisons of each district and school to itself based on its own statewide improvement and assessment performance for the prior school year and its most recent 3-year rolling averages shall be provided. Statewide rankings of each district and school shall be provided, including a statewide ranking of each school and school district based on the percentage increase of improvement as compared with the same school district's performance in the previous year. The report shall be organized and presented in a manner that is easily understood by the public and that assists each school district with the identification of trends, strengths, and weaknesses and the development of its local school education improvement plan.

(b) Beginning with the annual report issued in 2013, the department of education shall include data provided by early childhood programs, districts, and postsecondary institutions.

IV. Data reported in paragraph I shall be disaggregated as required by federal law and shall include numbers and percentages of pupils with disabilities, limited English proficient pupils, pupils in advanced placement programs, economically disadvantaged pupils, and pupils of major ethnic, racial, and multi-racial groups.

V. In order to reduce school districts' administrative time and costs, the department of education shall develop and utilize user-friendly, computer forms and programs to collect the data set forth in paragraphs I, VI, and VII.

VI. (a) Annually, beginning with the 2011–2012 school year, each postsecondary institution as defined in RSA 193–E:4 shall submit a report, which shall not include any personally identifiable information such as, but not limited to, name, gender, or social security number, to the department of education containing information on indicators in the following areas:

(1) Remedial education courses.

(2) Entry, withdrawal, and transfers.

(3) Degrees and certificates granted.

(b) The department of education shall integrate all data collected into the data warehouse. The department of education shall have access to data solely to conduct studies, track and report annual and longitudinal pupil outcomes, and improve postsecondary readiness, retention, and articulation between educational institutions.

(c) The state board of education, in consultation with the university system of New Hampshire board of trustees and the community college system of New Hampshire board of trustees shall adopt rules, pursuant to RSA 541–A, for developing a form to be used for the report and to establish requirements for data maintenance.

VII. (a) Annually, beginning with the 2011–2012 school year, each early childhood program as defined in RSA 193–E:4 shall submit a report, which shall not include any personally identifiable information such as, but not limited to, name, gender, or social security number, to the department of education containing information on indicators in the following areas:

(1) Program participation.

(2) Entry, exit, and type of program.

(3) Participant demographics as identified in RSA 193–E:3, IV.

(b) The department of education shall integrate all data collected into the data warehouse. The department of education shall have access to data solely to conduct studies, track and report annual and longitudinal pupil outcomes, and improve education programs.

(c) The state board of education, in consultation with the department of health and human services, shall adopt rules, pursuant to RSA 541–A, for developing a form to be used for the report and to establish requirements for data maintenance.

Source. 1998, 389:1. 2003, 314:1. 2004, 147:2. 2005, 257:15. 2007, 270:3, eff. June 29, 2007. 2010, 356:1, eff. Sept. 18, 2010.

193–E:3–a Definitions. In this section:

I. "Commissioner" means the commissioner of the department of education.

II. "Department" means the department of education.

III. "Input-based school accountability system" means the certified narrative explanation describing how a school has demonstrated compliance with the school approval standards included in the opportunity for an adequate education required under RSA 193–E:3–b.

IV. "Performance-based school accountability system" means the scoring system required under RSA 193–E:3–b and implemented by the department in rules adopted pursuant to RSA 541–A.

V. "State board" means the state board of education.

Source. 2009, 198:1, eff. July 14, 2009.

193–E:3–b Accountability for the Opportunity for an Adequate Education. Beginning with the 2009–2010 school year, a school shall demonstrate by the end of the school year that it provides the opportunity for an adequate education under RSA 193–E:2–a by meeting the requirements of subparagraphs I(a) and (b) of this section. Beginning with the 2011–2012 school year, a school shall demonstrate, by the end of the school year, that it provides the opportunity for an adequate education by meeting the requirements of either paragraph I or II of this section. Following the adoption of the performance-based accountability system as provided in RSA 193–E:3–c and RSA 193–E:3–d, the department shall evaluate all schools using both the input-based school accountability system under subparagraphs I(a) and (b) of this section and the performance-based accountability system under RSA 193–E:3–c and RSA 193–E:3–d. A school that satisfies the requirements of either paragraph I or II shall be providing the opportunity for an adequate education.

I. (a) A school may demonstrate that it provides the opportunity for an adequate education as set forth in RSA 193–E:2–a by establishing that it meets the following input-based school accountability standards in effect as of the effective date of this section:

(1) English/language arts and reading as set forth in Ed 306.37.

(2) Mathematics as set forth in Ed 306.43.

(3) Science as set forth in Ed 306.45.

(4) Social studies as set forth in Ed 306.46.

(5) Arts education as set forth in Ed 306.31.

(6) World languages as set forth in Ed 306.48.

(7) Health education as set forth in Ed 306.40.

(8) Physical education as set forth in Ed 306.41.

(9) Technology education, and information and communication technologies as set forth in Ed 306.42 and Ed 306.47.

(10) School year as set forth in Ed 306.18.

(11) Minimum credits required for a high school diploma as set forth in Ed 306.27(f) and (m).

(b)(1) The commissioner shall require school officials to submit a narrative explanation detailing how the school has complied with each of the standards included in the opportunity for an adequate education contained in subparagraph (a). The school principal and school district superintendent shall certify in writing that the responses submitted are accurate. The commissioner shall develop a form which conforms to the provisions of this paragraph.

(2) The commissioner shall review the responses to each school's self-assessment required under this section and shall verify that the responses comply with the standards included in the opportunity for an adequate education specified under subparagraph (a).

(3) Schools that successfully demonstrate that they provide the opportunity for an adequate education through the input-based school accountability system for any year beginning with the 2009–2010 school year shall be required by the commissioner to resubmit the narrative explanations at least once every 2 years.

(4) Schools that are unable to demonstrate that they provide the opportunity for an adequate education through the input-based school accountability system for the 2009–2010 school year, or for any year thereafter, shall be required by the commissioner to resubmit the narrative explanations annually until such demonstration has been made.

(5) The commissioner shall integrate, to the maximum extent practicable, the input-based school accountability system to demonstrate the opportunity for an adequate education with the school approval process pursuant to RSA 21–N:6, V.

(6) Beginning September 1, 2012, the department shall annually conduct site visits at 10 percent of schools statewide to assess the validity of the input-based school accountability system and to determine whether those schools

demonstrate the opportunity for an adequate education by meeting the school standards identified in this paragraph. To the extent feasible, the commissioner shall conduct these site visits together with other site visits conducted by the department for other purposes and programs. The commissioner may require more frequent site visits at schools which have been unable to demonstrate that they provide the opportunity for an adequate education. To the extent that the department conducts school site visits for other state and/or federal programs after the commencement of the 2009-2010 school year, but prior to September 1, 2012, the department shall, to the maximum extent practicable, endeavor to audit the input-based school accountability self-reporting completed by the visited school.

(c) A school that furnishes the commissioner with evidence that it has received full accreditation from the New England Association of Schools and Colleges (NEASC) shall be deemed to be in compliance with the provisions of subparagraphs (a) and (b). The school shall submit to the commissioner copies of documentation necessary during the school's accreditation process including, but not limited to, the accreditation self-study report, peer review reports, reports of any follow-up activities taken by the school in response to NEASC's recommendations for accreditation, and the annual school update report as required by NEASC each fall. In the fifth year of the 10-year accreditation, the school shall submit a progress report to the commissioner. A school accredited by NEASC shall meet or exceed NEASC's standards and shall use those standards to measure improvement.

II. Beginning with the 2011–2012 school year, a school may demonstrate by the end of the school year that it provides the opportunity for an adequate education through the performance-based school accountability system to be developed and implemented by the department, pursuant to RSA 193–E:3–c and RSA 193–E:3–d and designed to measure educational outcomes.

Source. 2009, 198:1, eff. July 14, 2009. 2011, 255:1, eff. Sept. 11, 2011.

193–E:3–c Development of the Performance-Based Accountability System.

I. There is hereby established a task force to develop a performance-based school accountability system that, beginning with the 2011–2012 school year, will serve as one method a school may use to demonstrate by the end of the school year that it is providing the opportunity for an adequate education. The commissioner shall be the chairman of the task force and shall appoint no fewer than 9 and no more than 13 members to the task force which shall consist of department personnel, one or more representatives of a school district including at least one school board member, educational experts, parents or guardians of a current public school pupil, members of a public interest group concerned with education, members of the business community, and other individuals with information or expertise of benefit to the task force's duties. The task force shall include one member of the house of representatives, appointed by the speaker of the house of representatives, and one member of the senate, appointed by the president of the senate.

II. The task force shall have the following duties:

(a) Define the performance-based accountability system to be used by schools that will ensure that the opportunity for an adequate education is maintained.

(b) Identify performance criteria and measurements.

(c) Establish performance goals and the relative weights assigned to those goals.

(d) Establish the basis, taking into account the totality of the performance measurements, for determining whether the opportunity for an adequate education exists, which may include the assignment of a value for performance on each measurement.

(e) Ensure the integrity, accuracy, and validity of the performance methodology as a means of establishing that a school provided the opportunity for an adequate education as defined in RSA 193–E:2–a.

III. The task force shall develop a performance-based scoring system using only the best available data and indicators which are already provided to the department and/or performance measures that schools are already required to provide the department under other state or federal law. In establishing the performance-based system, the task force may consider one or more of the following data and indicators:

(a) Performance on state assessments administered pursuant to RSA 193–C and, upon the prior approval of the department, other assessments administered at local option that are consistent with the state's academic standards.

(b) Number and percentage of pupils participating in an advanced placement course.

(c) Number and percentage of graduating pupils going on to post-secondary education and military service.

(d) Attendance rates.

(e) Annual cumulative drop-out rates of high school pupils.

(f) School environment indicators, such as safe schools data.

(g) Expulsion and suspension rates, including in-school and out-of-school suspensions, which shall be reported for each school year.

(h) Number and percentage of classes taught by highly qualified teachers.

(i) Teacher and administrative turnover rates at the school and district levels.

IV. No later than April 1, 2010, the task force shall submit an interim report of its findings and recommendations for future legislation for the performance-based accountability system to the chairpersons of the house and senate education committees, the speaker of the house of representatives, and the senate president. After the interim report is reviewed by the house and senate education committees, the department shall verify the integrity, accuracy, and validity of the performance-based accountability system utilizing actual school data as provided in RSA 193–E:3–d and shall submit a final report no later than November 1, 2010, including recommendations for future legislation and legislative adoption of the performance-based accountability system, to the chairpersons of the house and senate education committees, the speaker of the house of representatives, the senate president, the governor, the house clerk, and the senate clerk.

V. During the department's verification process, the task force may further evaluate and review whether there are any new or emerging performance measures, or modifications to the performance-based accountability system based upon the verification process that should be considered by the department for implementation beginning with the 2012–2013 school year. No later than November 1, 2011, the task force shall present any further recommendations for legislation regarding the performance-based school accountability system to the same individuals receiving the final report under paragraph IV.

VI. The department shall annually prepare a detailed report documenting the results of each school on the performance-based school accountability system to be developed pursuant to RSA 193–E:3–c, and identifying all schools that can demonstrate the opportunity for an adequate education through the performance-based methodology. The report shall be submitted no later than January 15 annually to the same individuals receiving the final report under paragraph IV.

Source. 2009, 198:1, eff. July 14, 2009. 2016, 84:8, 9, eff. July 18, 2016.

193–E:3–d Performance-Based School Accountability System; Verification Process. Prior to the submission of the final report pursuant to RSA 193–E:3–c, IV the department shall undertake a process to verify and test the integrity, accuracy, and validity of the performance-based accountability system utilizing the best available data from one school from each of the counties in the state. The commissioner shall ensure, to the greatest extent possible, that the verification process utilizes the best available data from a balance of elementary and secondary schools representing diverse socioeconomic conditions throughout the state. The commissioner shall work with school officials and faculty from the selected schools to implement the performance-based school accountability program and to develop a data collection system which will allow schools to easily report results to the department for analysis and reporting.

Source. 2009, 198:1, eff. July 14, 2009.

193–E:3–e Corrective and Technical Assistance. The department shall implement corrective and technical assistance to schools that do not demonstrate that they provide the opportunity for an adequate education under RSA 193–E:3–b, I or II as follows:

I. In the first year of a school being unable to demonstrate that it provides the opportunity for an adequate education under either RSA 193–E:3–b, I or II, school officials shall submit an action plan to the commissioner. The plan shall detail the specific actions the school will take and the timeline to be followed to demonstrate that the school provides the opportunity for an adequate education. The plan shall:

(a) Identify areas where the school failed to meet the requirements under paragraph RSA 193–E:3–b, I or II.

(b) Identify and explain the strategy the school intends to implement to achieve compliance and improve performance.

(c) Detail how the school budget reflects the goals of the action plan.

II. After the second consecutive year of a school being unable to demonstrate that it provides the opportunity for an adequate education under either RSA 193–E:3–b, I or II, school officials shall submit an action plan to the commissioner. The plan shall:

(a) Describe procedures for providing mentoring or coaching to school personnel.

(b) Include ongoing technical assistance and a liaison from the department.

(c) Provide an accounting of how education funds are being expended to provide opportunities for an adequate education as defined in RSA 193–E:2–a.

(d) Establish and explain a strategy designed to promote family and community involvement.

III. After the third consecutive year of a school being unable to demonstrate that it provides the opportunity for an adequate education under either RSA 193–E:3–b, I or II, the commissioner shall:

(a) Assess how the school is expending its education funds and may order that adequacy funds be redirected to address those areas that are contributing to the failure of the school to provide the opportunity for an adequate education.

(b) Assign a coach or mentor to the school until the school demonstrates sufficient progress toward providing the opportunity for an adequate education.

(c) Require the school to provide an accounting of how education funds are being used to provide the opportunity for an adequate education under RSA 193–E:2–a.

(d) Require or provide, to the extent necessary, one or more of the following:

(1) Professional development that is aligned with school improvement goals.

(2) External support and resources based on their effectiveness and alignment with school improvement goals.

(3) Instructional models that incorporate research-based practices that have been proven to be effective in improving pupil achievement.

(4) Formal and informal opportunities to assess and monitor each pupil's progress.

(5) Evidence of decisions supported by data.

(6) Improvements to the school's curriculum, including curricular priorities and instructional materials.

(7) External support and resources based on their effectiveness and alignment with the school improvement plan.

(8) Extended learning opportunities for pupils.

(9) Structural reform strategies that may include changes in scheduling, organization, support mechanisms, and resources.

(10) Structural changes to school leadership to support school improvement.

(e) Meet quarterly with school officials in the affected school to assess the school's progress.

IV. The commissioner shall provide progress reports annually to the state board and the legislative oversight committee established in RSA 193–C:7 on the status and effectiveness of the corrective and technical assistance provided by the department in achieving the demonstration of adequacy by all schools.

Source. 2009, 198:1, eff. July 14, 2009.

Unique Pupil Identification

193–E:4 Definitions. In this subdivision:

I. "Commissioner" means the commissioner of the department of education.

II. "Data warehouse" means the electronic system operated by the department of education that maintains the information about pupils as set forth in RSA 193–E:3, I, VI, and VII. The data warehouse shall not contain the name, address, telephone number, e-mail address, social security number, or any other personally identifiable information about any pupil.

III. "District" means a New Hampshire public school district or a district outside of New Hampshire educating publicly funded New Hampshire pupils.

IV. "District of origin" means the district in which the pupil resides at the point at which the pupil first enters the New Hampshire educational system, whether in an early childhood program, district, or postsecondary education level.

V. "Early childhood program" means a preschool or childcare program receiving Head Start or child care scholarship funds, whether licensed or exempt from licensing, or a preschool program operated by a district. Early childhood programs not operated by a district shall report data only for pupils for which Head Start or child care scholarship funds are received.

VI. "Postsecondary institution" means the university system of New Hampshire or the community college system of New Hampshire.

VII. "Random number generator" means the electronic system that creates unique pupil identification numbers and assigns a unique pupil identification number to a pupil when an early childhood program, a district, or a postsecondary institution enters a pupil's name, date of birth, town of birth, and gender. The system shall maintain that information and the name of the district of origin, and no other informa-

tion. This system shall not retain the unique pupil identification number.

VIII. "Unique pupil identifier" means a randomly generated number assigned to an early childhood program pupil, a district pupil, or postsecondary institution pupil in order to gather pupil level data.

IX. "Unique pupil identification system" means an electronic system comprised of the data warehouse and the random number generator.

Source. 2004, 147:3, eff. Aug. 1, 2004. 2010, 356:2, eff. Sept. 18, 2010.

193–E:5 Unique Pupil Identification.

I. The department of education shall, using federal funds only, implement and maintain a unique pupil identification system on a statewide basis that complies with the following requirements:

(a) No personally identifiable information about a pupil including name and social security number, shall be collected or maintained by the state in such a manner as to allow such information to be connected with the unique pupil identifier. Under no circumstances shall the department of education obtain or use a social security number as an identifier for any pupil. The department shall not use unique pupil identifiers except in connection with the data warehouse and such use shall not be accessible to the public.

(b) The random number generator shall make available to each early childhood program, district, or postsecondary institution a unique pupil identifier for each pupil pursuing an education in a New Hampshire early childhood program, district, or postsecondary institution. The unique pupil identifier itself shall not permit pupil identification within a subcategory including, but not limited to, early childhood program, district, postsecondary institution, sex, age, grade, or county of residence.

(c) The unique pupil identifier shall be requested and maintained by the early childhood program, district, or postsecondary institution. The unique pupil identifier shall remain in the pupil's file throughout his or her academic career in New Hampshire.

(d)(1) Access to the random number generator shall be limited to an early childhood program director or designee, a district superintendent or designee, or a postsecondary institution registrar or designee, and only for pupils pursuing an education in that early childhood program, district, or postsecondary institution.

(2) A parent or legal guardian shall, upon request made in person to the early child program director, school district superintendent for the district which the child last attended, or postsecondary institution registrar, have access to their child's unique pupil identifier and their child's data maintained in the data warehouse. A person who is 18 years of age or older shall, upon request made in person to the early child program director, school district superintendent for the district which the person last attended, or postsecondary institution registrar, have access to their unique pupil identifier and their data maintained in the data warehouse.

(3) Any person who knowingly violates the provisions of this subparagraph is guilty of a class B felony and may be subject to involuntary termination of employment.

(e) The random number generator shall create and maintain a comprehensive audit trail for all users accessing the random number generator.

(f) The data warehouse shall create and maintain an audit trail for all users accessing secure information.

(g) No person, including an individual, business, government, or governmental entity, shall require an individual to provide a unique pupil identifier as a condition of doing business, providing a service, or receiving a benefit of any kind, except as provided in RSA 193–E:5, I(c). Any person or entity who knowingly violates the provisions of this subparagraph shall be liable for actual damages or $25,000, whichever is greater, for each violation. Each denial of services or benefits shall constitute a separate offense under this subparagraph.

(h) If a pupil's records become part of an administrative action outside of the pupil's early childhood program, district, or postsecondary institution, or a part of any judicial or quasi-judicial proceeding, the part of the record containing the pupil's unique pupil identifier shall be redacted by the early childhood program, district, or postsecondary institution prior to release.

(i) The information maintained in the data warehouse shall be available to the department of education and to the public using the data maintained by the department of education. No personally identifiable information shall be required as a condition of access or usage under this subparagraph, nor shall such access or usage be tracked. Under no circumstances shall the unique pupil identifier be made available to the public.

(j) Information maintained in the random number generator shall be exempt from the provisions of RSA 91–A.

(k) Authorized personnel at the department of education shall administer and maintain the unique pupil identification system.

(*l*) The department of education shall provide no personally identifiable information collected pursuant to this chapter, including but not limited to name, date of birth, or social security number to any person or entity, other than an early childhood program, district, or postsecondary institution authorized to access this data, absent a court order. Under no circumstances shall personally identifiable information or the unique pupil identifier be provided to any person or entity outside of New Hampshire. Any person who knowingly violates this provision is guilty of a class B felony and may be subject to involuntary termination of employment.

(m) Early childhood programs not receiving Head Start or child care scholarship funds, private schools comprised of kindergarten through grade 12, and all private postsecondary institutions may participate in the data warehouse and random number generator. Participating early childhood programs may volunteer to include data for pupils for which Head Start or child care scholarship funds are not received. Permission of a parent or legal guardian of a pupil enrolled in an early childhood program shall be obtained before a pupil may participate in the data warehouse and random number generator. For the purposes of this section, such voluntary participating early childhood programs shall be included in the definition set forth in RSA 193–E:4.

(n) Notwithstanding subparagraphs (a)–(m), to enable the department of education to ensure the accuracy of the data, the commissioner of the department of education may, in writing, grant individuals access to the data warehouse, including but not limited to, access to the unique pupil identifier for the purpose of connecting information in the warehouse with the random number generator.

(*o*) At the request of an early childhood program, school district, or postsecondary institution, the department of education shall provide pupil-level data from the unique pupil identification system to an early childhood program, school district, or postsecondary institution for pupils pursing an education in that entity. Except as otherwise specifically provided in statute, the department shall not provide for any purpose any student personally-identifiable data to any public or private individual or entity, including the local, state, or federal government, or department or agency thereof, regardless of whether such individual or entity is for profit or not-for-profit, and regardless of whether the public or private individual or entity is involved in any way with the pupil's education.

(p) New Hampshire home educated pupils pursing an education in a postsecondary institution who have not been assigned a unique pupil identifier may, without penalty, opt out of being included in the unique pupil identification system for postsecondary pupils.

(q) Nothing in this chapter shall prohibit institutions in the university system of New Hampshire and the community college system of New Hampshire from exchanging data between themselves without the consent or involvement of the department of education.

II. Notwithstanding RSA 193–E:3, II, the legislative oversight committee established in RSA 193–C:7 shall perform any revisions to this section through legislation filed for that purpose.

III. Any contracts or agreements necessary to implement the provisions of this section shall be approved by the governor with the consent of the executive council.

Source. 2004, 147:3, eff. Aug. 1, 2004. 2010, 356:3, eff. Sept. 18, 2010. 2012, 224:1, 2, eff. Aug. 14, 2012; 247:24, eff. Aug. 17, 2012. 2014, 68:3, eff. July 1, 2014.

CHAPTER 193–F

PUPIL SAFETY AND VIOLENCE PREVENTION

193–F:1 Title. This chapter shall be known, and may be cited as the "Pupil Safety and Violence Prevention Act of 2000."

Source. 2000, 190:1, eff. Jan. 1, 2001.

193–F:2 Purpose and Intent.

I. All pupils have the right to attend public schools, including chartered public schools, that are

safe, secure, and peaceful environments. One of the legislature's highest priorities is to protect our children from physical, emotional, and psychological violence by addressing the harm caused by bullying and cyberbullying in our public schools.

II. Bullying in schools has historically included actions shown to be motivated by a pupil's actual or perceived race, color, religion, national origin, ancestry or ethnicity, sexual orientation, socioeconomic status, age, physical, mental, emotional, or learning disability, gender, gender identity and expression, obesity, or other distinguishing personal characteristics, or based on association with any person identified in any of the above categories.

III. It is the intent of the legislature to protect our children from physical, emotional, and psychological violence by addressing bullying and cyberbullying of any kind in our public schools, for all of the historical reasons set forth in this section, and to prevent the creation of a hostile educational environment.

IV. The sole purpose of this chapter is to protect all children from bullying and cyberbullying, and no other legislative purpose is intended, nor should any other intent be construed from the enactment of this chapter.

Source. 2000, 190:1, eff. Jan. 1, 2001. 2010, 155:1, eff. July 1, 2010.

193–F:3 Definitions. In this chapter:

I. (a) "Bullying" means a single significant incident or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:

(1) Physically harms a pupil or damages the pupil's property;

(2) Causes emotional distress to a pupil;

(3) Interferes with a pupil's educational opportunities;

(4) Creates a hostile educational environment; or

(5) Substantially disrupts the orderly operation of the school.

(b) "Bullying" shall include actions motivated by an imbalance of power based on a pupil's actual or perceived personal characteristics, behaviors, or beliefs, or motivated by the pupil's association with another person and based on the other person's characteristics, behaviors, or beliefs.

II. "Cyberbullying" means conduct defined in paragraph I of this section undertaken through the use of electronic devices.

III. "Electronic devices" include, but are not limited to, telephones, cellular phones, computers, pagers, electronic mail, instant messaging, text messaging, and websites.

IV. "Perpetrator" means a pupil who engages in bullying or cyberbullying.

V. "School property" means all real property and all physical plant and equipment used for school purposes, including public or private school buses or vans.

VI. "Victim" means a pupil against whom bullying or cyberbullying has been perpetrated.

Source. 2000, 190:1. 2004, 205:1, eff. June 11, 2004. 2010, 155:2, eff. July 1, 2010.

193–F:4 Pupil Safety and Violence Prevention.

I. Bullying or cyberbullying shall occur when an action or communication as defined in RSA 193–F:3:

(a) Occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or

(b) Occurs off of school property or outside of a school-sponsored activity or event, if the conduct interferes with a pupil's educational opportunities or substantially disrupts the orderly operations of the school or school-sponsored activity or event.

II. The school board of each school district and the board of trustees of a chartered public school shall, no later than 6 months after the effective date of this section, adopt a written policy prohibiting bullying and cyberbullying. Such policy shall include the definitions set forth in RSA 193–F:3. The policy shall contain, at a minimum, the following components:

(a) A statement prohibiting bullying or cyberbullying of a pupil.

(b) A statement prohibiting retaliation or false accusations against a victim, witness, or anyone else who in good faith provides information about an act of bullying or cyberbullying and, at the time a report is made, a process for developing, as needed, a plan to protect pupils from retaliation.

(c) A requirement that all pupils are protected regardless of their status under the law.

(d) A statement that there shall be disciplinary consequences or interventions, or both, for a pupil who commits an act of bullying or cyberbullying, or

falsely accuses another of the same as a means of retaliation or reprisal.

(e) A statement indicating how the policy shall be made known to school employees, regular school volunteers, pupils, parents, legal guardians, or employees of a company under contract to a school, school district, or chartered public school. Recommended methods of communication include, but are not limited to, handbooks, websites, newsletters, and workshops.

(f) A procedure for reporting bullying or cyberbullying that identifies all persons to whom a pupil or another person may report bullying or cyberbullying.

(g) A procedure outlining the internal reporting requirements within the school or school district or chartered public school.

(h) A procedure for notification, within 48 hours of the incident report, to the parent or parents or guardian of a victim of bullying or cyberbullying and the parent or parents or guardian of the perpetrator of the bullying or cyberbullying. The content of the notification shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

(i) A provision that the superintendent or designee may, within the 48-hour period, grant the school principal or designee a waiver from the notification requirement if the superintendent or designee deems such waiver to be in the best interest of the victim or perpetrator. Any such waiver granted shall be in writing. Granting of a waiver shall not negate the school's responsibility to adhere to the remainder of its approved written policy.

(j) A written procedure for investigation of reports, to be initiated within 5 school days of the reported incident, identifying either the principal or the principal's designee as the person responsible for the investigation and the manner and time period in which the results of the investigation shall be documented. The superintendent or designee may grant in writing an extension of the time period for the investigation and documentation of reports for up to an additional 7 school days, if necessary. The superintendent or superintendent's designee shall notify in writing all parties involved of the granting of an extension.

(k) A requirement that the principal or designee develop a response to remediate any substantiated incident of bullying or cyberbullying, including imposing discipline if appropriate, to reduce the risk of future incidents and, where deemed appropriate, to offer assistance to the victim or perpetrator. When indicated, the principal or designee shall recommend a strategy for protecting all pupils from retaliation of any kind.

(*l*) A requirement that the principal or designee report all substantiated incidents of bullying or cyberbullying to the superintendent or designee.

(m) A written procedure for communication with the parent or parents or guardian of victims and perpetrators regarding the school's remedies and assistance, within the boundaries of applicable state and federal law. This communication shall occur within 10 school days of completion of the investigation.

(n) Identification, by job title, of school officials responsible for ensuring that the policy is implemented.

III. The department of education may develop a model policy in accordance with the requirements set forth in this chapter which may be used by schools, school districts, and chartered public schools as a basis for adopting a local policy.

IV. A school board or board of trustees of a chartered public school shall, to the greatest extent practicable, involve pupils, parents, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of developing the policy. The policy shall be adopted by all public schools within the school district and, to the extent possible, the policy should be integrated with the school's curriculum, discipline policies, behavior programs, and other violence prevention efforts.

Source. 2000, 190:1, eff. Jan. 1, 2001. 2010, 155:2, eff. July 1, 2010.

193–F:5 Training and Assessment.

I. Each school district and chartered public school shall provide:

(a) Training on policies adopted pursuant to this chapter, within 9 months of the effective date of this section and annually thereafter, for school employees, regular school volunteers, or employees of a company under contract to a school, school district, or chartered public school who have significant contact with pupils for the purpose of preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying; and

(b) Educational programs for pupils and parents in preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying. Any

such program for pupils shall be written and presented in age appropriate language.

II. The department of education shall provide evidence-based educational programs to support training as required under paragraph I.

III. Nothing in this chapter shall require the inclusion of any specific curriculum, textbook, or other material designed to prevent bullying or cyberbullying in any program or activity conducted by an educational institution. The omission of such subject matter from any curriculum, textbook, or other material in any program or activity conducted by an educational institution shall not constitute a violation of this chapter.

Source. 2002, 149:2, eff. July 14, 2002. 2010, 155:2, eff. July 1, 2010.

193–F:6 Reporting.

I. Each school district and chartered public school shall annually report substantiated incidents of bullying or cyberbullying to the department of education. Pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, such reports shall not contain any personally identifiable information pertaining to any pupil. The department shall develop a form to facilitate the reporting by school districts and chartered public schools. The department shall maintain records of such reports.

II. The department of education shall prepare an annual report of substantiated incidents of bullying or cyberbullying in the schools. The report shall include the number and types of such incidents in the schools and shall be submitted to the president of the senate, the speaker of the house of representatives, and the chairpersons of the house and senate education committees. The department of education shall assist school districts with recommendations for appropriate actions to address identified problems with pupil safety and violence prevention.

Source. 2010, 155:3, eff. July 1, 2010.

193–F:7 Immunity. A school administrative unit employee, school employee, chartered public school employee, regular school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the reporting, investigation, findings, recommended response, or implementation of a recommended response under this chapter. The department of education shall be immune from civil liability for its good faith conduct in making recommendations under this chapter.

Source. 2010, 155:3, eff. July 1, 2010.

193–F:8 School District Discrimination or Harassment Policies. A school district or chartered public school may establish separate discrimination or harassment policies that include categories of pupils, and nothing in this chapter shall prevent a school district or chartered public school from remediating any discrimination or harassment based on a person's membership in a legally protected category under local, state, or federal law.

Source. 2010, 155:3, eff. July 1, 2010.

193–F:9 Private Right of Action Not Permitted. Nothing in this chapter shall supersede or replace existing rights or remedies under any other general or special law, including criminal law, nor shall this chapter create a private right of action for enforcement of this chapter against any school district or chartered public school, or the state.

Source. 2010, 155:3, eff. July 1, 2010.

193–F:10 Public Academies. The provisions of this chapter shall apply to public academies as defined in RSA 194:23.

Source. 2010, 155:3, eff. July 1, 2010.

CHAPTER 193–G

PERSISTENTLY DANGEROUS SCHOOLS

193–G:1 Persistently Dangerous Schools.

I. A persistently dangerous school is a school in which 3 of the following acts have occurred as separate incidents during the period of one school year for 3 consecutive years:

(a) Homicide under RSA 630.

(b) First or second degree assault under RSA 631:1 and RSA 631:2.

(c) Aggravated felonious sexual assault under RSA 632–A:2.

(d) Arson under RSA 634:1.

(e) Robbery as a class A felony under RSA 636:1, III; or

(f) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.

II. Any act set forth in paragraph I must occur within the school or on school grounds, during regular school hours or during a school-sponsored event,

or during transportation of pupils to or from school, if such transportation is provided by the school district.

III. No later than July 1 of each year, the commissioner of the department of education shall report any persistently dangerous schools to the state board of education and to the school board of such schools.

Source. 2003, 186:1, eff. Aug. 25, 2003.

193–G:2 Citizen's Advisory Committee. If a school is classified as a persistently dangerous school, the local school board shall establish a citizen's advisory committee to examine the conditions which led to the designation and offer input to the school board and administrators on steps which might be taken to remedy the designation and prevent further incidents. The committee shall be appointed by the local school board chairman with the advice of the local school board members. It shall include but not be limited to the principal of the designated school, the superintendent of the designated school, one member of the school board, one teacher employed at the designated school, one law enforcement official from the police department having jurisdiction in the district in which the designated school is located, and representatives of parents whose children are assigned to the designated school. The committee shall serve until the designation of a persistently dangerous school is removed.

Source. 2003, 186:1, eff. Aug. 25, 2003.

193–G:3 Removal of Designation. Any school which is designated a persistently dangerous school, which for 2 consecutive years has operated as a safe school, shall be decertified as a persistently dangerous school. For the purposes of this section, a safe school is a school which has not had the number or frequency of qualifying events set forth in this section.

Source. 2003, 186:1, eff. Aug. 25, 2003.

193–G:4 School Choice.

I. Any school which is designated a persistently dangerous school shall, within 5 days of being notified of such designation, notify the parents or guardian of the pupil attending such school of the option to transfer the pupil from the school to a school within the same school district, consistent with local school board policy.

II. If a pupil is the victim of any offense set forth in RSA 193–G:1, I, the school district shall, within 5 days of being notified of the incident, notify the parents or guardian of the pupil of the option to transfer the pupil to another school within the same school district, consistent with local school board policy.

Source. 2003, 186:1, eff. Aug. 25, 2003.

193–G:5 Department of Education Authority. The commissioner of the department of education shall be the certifying authority under this chapter.

Source. 2003, 186:1, eff. Aug. 25, 2003.

193–G:6 School Safety. Schools shall be authorized to implement policies promoting school safety.

Source. 2003, 186:1, eff. Aug. 25, 2003.

CHAPTER 193–H

SCHOOL PERFORMANCE AND ACCOUNTABILITY

193–H:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of education.

I–a. "Competencies" means student learning targets that represent key content-specific concepts, skills, and knowledge applied within or across content domains.

II. "Department" means the department of education.

III. "Effective teacher" means a person who is certified by the local school board and holds a valid teaching credential, and who has demonstrated, through a process approved by the department of education, teaching skills in the core subjects of instruction.

IV. "Focus school" means a low performing school that accepts federal funds from Title I, Part A of the Elementary and Secondary Education Act, and that has the largest within-school gaps between the highest achieving subgroup or subgroups of students and the lowest-achieving subgroup or subgroups of students or, for a high school, has the largest within-school gaps in graduation rates.

V. "Priority school" means:

(a) A school that accepts federal funds from Title I, Part A of the Elementary and Secondary Education Act, and that is among the lowest performing 5 percent of schools in the state based on

the achievement of all students on the statewide assessment pursuant to RSA 193–C and which, when measuring the achievement of all students, has demonstrated a lack of progress on the statewide assessment over 3 years; or

(b) A high school with a graduation rate of less than 60 percent over 3 consecutive years.

VI. "Statewide assessment" means the New Hampshire education improvement and assessment program as established under RSA 193–C.

VII. "Work-study practices" means those behaviors that enhance learning achievement and promote a positive work ethic such as, but not limited to, listening and following directions, accepting responsibility, staying on task, completing work accurately, managing time wisely, showing initiative, and being cooperative.

Source. 2003, 314:6, eff. July 22, 2003. 2013, 263:2, eff. Sept. 22, 2013.

193–H:1–a Purpose.

I. The purpose of this chapter is to create an accountability model that will best support schools and educators as they work to enable all students to progress toward college and career readiness with clearly defined learning outcomes.

II. New Hampshire's student assessment system should promote and measure knowledge and skills that lead students to graduate from high schools ready for college and career.

III. Students best learn at their own pace as they master content and skills, allowing them to advance when they demonstrate the desired level of mastery rather than progressing based on a predetermined amount of seat time in a classroom will assure that students will reach college and career readiness.

IV. New Hampshire's system of educator support should promote the capacity of educators to deeply engage students in learning rigorous and meaningful knowledge, skills, and work-study practices for success in college, career, and citizenship.

V. Competency-based strategies provide flexibility in the way that credit can be earned and awarded and provide students with personalized learning, including those that are offered through on-line, blended, and community based opportunities.

Source. 2013, 263:1, eff. Sept. 22, 2013.

193–H:2 Statewide Performance Targets.

I. On or before the 2013–2014 school year, schools shall ensure that all pupils are performing at the basic level or above on the statewide assessment as established in RSA 193–C.

II. In addition to the requirements of paragraph I, schools shall meet statewide performance targets as approved by the legislative oversight committee established in RSA 193–C and thereafter, as established in rules adopted by the state board of education pursuant to RSA 541–A which shall include rules for:

(a) The statewide improvement and assessment program pursuant to RSA 193–C.

(b) Attendance rates.

(c) The percentage of pupils who graduate with a diploma from an approved high school.

III. Notwithstanding RSA 541–A, the state board of education shall receive approval from the legislative oversight committee established in RSA 193–C prior to the submission of any rules to the joint legislative committee on administrative rules relative to statewide performance targets required under this section.

Source. 2003, 314:6, eff. July 22, 2003. 2013, 263:3, eff. Sept. 22, 2013.

193–H:3 Identification and Public Disclosure of Priority Schools and Focus Schools.

I. The commissioner shall annually compile and disseminate to the governor and council, the president of the senate, the speaker of the house of representatives, local school boards, superintendents of schools, and the public, and shall make available on the department website, a list of priority schools and focus schools based on the statewide performance targets established in RSA 193–H:2.

II. A school or school district designated by the commissioner as a priority school or a focus school shall have 30 days from the date of the report to appeal such designation to the state board of education.

Source. 2003, 314:6, eff. July 22, 2003. 2013, 263:4, eff. Sept. 22, 2013.

193–H:4 Local Education Improvement Plan; Strategic Responses.

I. (a) A school or school district shall have one year from the date that a school or school district has been designated as a priority school or a focus school pursuant to RSA 193–H:3 to take action to remedy identified problems at the local level. The school or school district shall create a plan that identifies actions that it intends to correct the areas of concern. This plan shall be submitted to the state board within

90 days of the date that the school or school district was designated as a priority school or a focus school. If the plan does not sufficiently address the areas of concern, the state board shall disapprove the plan within 30 days. If the state board disapproves the plan, the state board's designee shall work with the school or school district to amend the plan so that it meets state board approval. One year following the designation, if the school or school district is not making satisfactory progress in implementing its plan, the commissioner of education shall issue a notice to the school or school district and shall initiate a process for providing assistance pursuant to paragraph II; or

(b) If a school or school district has been designated as a priority school or a focus school, then the school or school district may request assistance from the department of education. The department shall provide technical assistance to those schools that request assistance under this section.

(c) On or before the one year anniversary of being designated as a priority school or a focus school, the commissioner shall designate a progress review team to evaluate the implementation of the improvement plans and the progress toward state performance targets. The progress review team shall deliver a report to the state board. This report shall include evidence of satisfactory implementation and progress towards state performance targets or lack thereof and recommendations regarding future actions pursuant to subparagraph II(b).

II. The department of education and the state board of education shall work cooperatively with the school or school district to provide assistance as follows:

(a) Within 30 days of a school district's request for assistance pursuant to subparagraph I(b), the commissioner of education may appoint a peer review team to review the educational programming and effectiveness of the school or school district. In cooperation with local officials, the team shall prepare and present a report at a regularly scheduled public meeting of the local school board and to the state board. This report shall be issued within 30 days of the team's appointment. Based on this report, the school or school district and superintendent shall, within 90 days of the issuance of the report, prepare a corrective action plan and submit it to the state board for approval. If the plan is not approved, the school or school district may revise the plan and resubmit it to the state board. The school or school district may decide to implement the corrective action plan on its own, through the use of a technical assistance advisor, or through the use of a peer review team. Any such decision shall be included in the corrective action plan.

(b) If the state board does not approve a corrective action plan in accordance with subparagraphs I(a) or II(a), or upon the state board's adoption of a progress review team recommendations, the commissioner of education shall work with the school or school district to revise the corrective action plan. If the school or school district does not revise the corrective action plan within 60 days or the state board does not approve the revised corrective action plan, then the commissioner of education shall submit in a timely manner a corrective action plan, including methods for implementing it, to the state board for approval. The state board shall direct the school board to implement the plan pursuant to RSA 186:5.

III. At a minimum, the corrective action plan filed by the commissioner shall:

(a) Identify the area in which the school needs to meet the annual statewide performance targets established under RSA 193–H:2.

(b) Identify and describe the strategy the school intends to implement to improve its performance.

(c) Establish and explain a strategy designed to promote family and community involvement.

(d) Detail how the school district budget reflects the goals of the local education improvement plan.

IV. In addition to the provisions of paragraph III, each plan filed by the commissioner may include the following elements:

(a) The school's curriculum including curricular priorities and instructional materials.

(b) Instructional models that incorporate research-based practices that have been proven to be effective in improving student achievement.

(c) Formal and informal opportunities to assess and monitor each child's progress.

(d) Evidence of data-based decisions.

(e) Structural reform strategies that may include schedule, organization, support mechanisms, and resources.

(f) Shared leadership structure to support school improvement.

(g) Professional development that is aligned with school improvement goals.

(h) External support and resources based on their effectiveness and alignment with the school improvement plan.

(i) Extended learning activities for students.

Source. 2003, 314:6, eff. July 22, 2003. 2013, 263:5, 6, eff. Sept. 22, 2013.

193–H:5 Powers of the Department of Education. Nothing in this chapter shall be construed to permit either the department of education or the state board of education to take control of the daily operations of any local public school.

Source. 2003, 314:6, eff. July 22, 2003.

CHAPTER 194

SCHOOL DISTRICTS

General Powers and Duties

194:1 What Constitutes a District. Each town shall constitute a single district for school purposes; provided that districts organized under special acts of the legislature may retain their present organization, and the word "town," wherever used in the statutes in connection with the government, administration, support, or improvement of the public schools, shall mean district. The special state prison school district, as established by RSA 194:60, shall constitute a single district for school purposes, and shall be subject to the provisions of RSA 194:60. Notwithstanding any other provision of law to the contrary, in the

case of unincorporated towns or unorganized places in a county, the county shall constitute the district.

Source. RS 69:1. CS 73:1. GS 78:1. GL 86:1. 1885, 43:1. PS 89:1. 1909, 23:1. 1921, 85, IV:1. PL 119:1. RL 138:1. RSA 194:1. 1992, 124:1. 1998, 270:5. 2007, 99:1, eff. Aug. 10, 2007.

194:1–a Single District School Administrative Units. As provided in RSA 194–C:3, single district school administrative units shall be considered the same as a single school district.

Source. 1996, 298:2, eff. Aug. 9, 1996.

194:1–b Legal Residence Defined. For the purposes of title XV, "legal residence" means legal residence as defined in RSA 193:12.

Source. 1998, 206:6, eff. June 18, 1998.

194:2 Districts to be Corporations. All districts legally organized shall be corporations, with power to sue and be sued, to hold and dispose of real and personal property for the use of the schools therein, and to make necessary contracts in relation thereto.

Source. RS 70:1. CS 73:4. GS 78:14. GL 86:14. PS 89:2. 1909, 23:2. 1921, 85, IV:2. PL 119:2. RL 138:2.

194:3 Powers of Districts. School districts may raise money, as required by law, or, in addition thereto:

I. To procure land for lots for schoolhouses and school administrative unit facilities, and for the enlargement of existing lots;

II. To build, purchase, rent, repair, or remove schoolhouses and outbuildings, buildings to be used for occupancy by teachers in the employ of such school district, and buildings to be used for educational administration including office facilities for school administrative units;

III. To procure insurance against such risks of loss, cost or damage to itself, its employees or its pupils as its school board may determine;

IV. To provide group plan life, accident, medical, surgical and hospitalization insurance benefits, or any combinations of such benefits, for all regular employees of the district and their dependents, the cost thereof to be borne in whole or in part by the district;

V. To plant and care for shade and ornamental trees upon schoolhouse lots;

VI. To provide suitable furniture, books, maps, charts, apparatus and conveniences for schools;

VII. To purchase vehicles for the transportation of children;

VIII. To provide for health and sanitation;

IX. To provide for adult high school diploma and continuing education programs; and

X. To pay debts.

Source. RS 71:1. 1845, 224. CS 75:1. 1853, 1435. 1862, 2619:1, 2. GS 78:18; 80:1. GL 86:18; 88:1. 1889, 82:1. PS 89:3. 1911, 46:1. 1913, 51:1. 1921, 85, IV:3. PL 119:3. RL 138:3. 1951, 211:1. RSA 194:3. 1959, 164:1. 1967, 267:1; 449:1. 1975, 363:2. 1979, 459:4, eff. Aug. 24, 1979.

194:3–a Certain Districts may Assess Tuition. A local school district may if federal funds are not appropriated sufficient to cover the cost of educating school age pupils who live on federally owned or leased property, assess tuition up to the state average costs against parents or guardians of said pupils which cover the current per pupil cost of the district, if there are more than 100 school age pupils within the federal enclave.

Source. 1973, 552:1, eff. July 5, 1973.

194:3–b Deficit Reduction. School districts may vote, at any annual meeting, to raise such sums of money as the voters judge necessary for the purpose of reducing an accumulated general fund deficit.

Source. 1994, 147:6, eff. July 22, 1994.

194:3–c Revolving Funds for Self-Supporting Programs.

I. A school district may establish a revolving fund for the purpose of providing moneys for school programs which are self-supporting, in whole or in part. The purposes for which such fund is established shall be specified by the district.

II. (a) A school district may raise revenues from and appropriate funds for such self-supporting school programs.

(b) Revenue may include, but is not limited to, moneys derived from the sale of goods or services associated with such programs or tuition charged for such programs. Such revenue shall be appropriated to fund only the program from which it was derived.

(c) A school district may establish a line item in its budget to supplement revenue derived from such programs. No supplemental appropriation may be made except by such budget line item.

(d) A school district shall establish regular intervals for disbursing funds to such programs for program costs approved by the local school board.

III. The revolving fund shall be subject to annual audit, and all records regarding the programs and revenue derived from such programs shall be public.

IV. Moneys in the revolving funds may be nonlapsing, if so specified by the district.

V. Upon termination of a school program funded under this section, moneys derived from such pro-

gram remaining in the revolving fund shall be returned to the pupil if derived from tuition, or used as local general funds to reduce the tax rate if derived from the sale of goods or services associated with the program.

Source. 1996, 179:1, eff. July 1, 1996.

194:3–d School District Computer Networks.

I. Every school district which has computer systems or networks shall adopt a policy which outlines the intended appropriate and acceptable use, as well as the inappropriate and illegal use, of the school district computer systems and networks including, but not limited to, the Internet.

II. All users of a school district's computer systems or networks who intentionally violate the district's policy and who intentionally damage the computer system or network shall assume legal and financial liability for such damage. For purposes of this section, "user" means any person authorized to access the school district's computer systems or networks including, but not limited to, the Internet.

Source. 1997, 285:1, eff. Jan. 1, 1998.

194:4 Notes of Districts. If the money is hired upon the note or notes of the district, said note or notes shall be signed by the district treasurer and by the school board.

Source. 1909, 138:1. 1921, 85, IV:4. PL 119:4. RL 138:4.

194:5 Taxation. In the assessment of school district taxes every person shall be taxed in the district in which he lives for his personal estate subject to taxation in town. Real estate shall be taxed in the district in which it is situated.

Source. RS 71:9. CS 75:9. GS 80:10. GL 88:16. PS 89:6. 1921, 85, IV:6. PL 119:5. RL 138:5.

194:6 Invoice of Property. The selectmen may make a new invoice of all the property in the district when necessary for the just assessment of such taxes.

Source. 1844, 148:1. CS 75:10. GS 80:11. GL 88:17. PS 89:7. 1921, 85, IV:7. PL 119:6. RL 138:6.

194:7 Assessment. The selectmen shall annually assess upon the ratable estate of the district a sum equal to the amounts determined by the district, and shall pay over the same to the district treasurer.

Source. 1909, 22:2. 1921, 85, IV:10. PL 119:7. RL 138:7.

194:8 Collection. If such taxes are assessed after July 1 in any year upon the property of nonresidents the collector shall send to the owners of said property, or to their agents, if known, a bill of their taxes within 2 months after the delivery of the list to him, and shall, at the expiration of 4 months after such delivery, advertise and sell the property on which the taxes have not been paid in the same manner as if such taxes had been assessed in April preceding.

Source. 1844, 148:2. CS 75:11. GS 80:12. 1874, 105:1. GL 88:18. PS 89:8. 1921, 85, IV:8. PL 119:8. RL 138:8.

194:9 Apportionment of School Moneys. Every district situate in 2 or more towns shall be entitled to its just proportion of school taxes, income from school funds, according to the value of property taxable therein.

Source. 1850, 974:1, 2. CS 73:18. GS 78:13. GL 86:13. PS 89:13. 1921, 85, IV:14. PL 119:9. RL 138:9.

194:10 Salaries of District Board and Officers. At its annual meeting each school district shall determine the salaries of its school board and other district officers, and the district clerk shall certify the same to the selectmen.

Source. 1909, 22:1. 1921, 85, IV:9. PL 119:10. 1927, 14:1. RL 138:10.

194:11 Payment. The district treasurer shall pay to the school board and other district officers their salaries granted by the district, and he shall likewise pay the truant officer upon the order of the school board, they certifying that he has performed the duties required of him by law.

Source. 1909, 22:3. 1921, 85, IV:11. PL 119:11. 1927, 14:2. RL 138:11.

194:12, 194:13 Repealed.

[Repealed 1963, 117:1, eff. Jan. 1, 1964.]

History

Former RSA 194:12, 194:13, which were derived from 1919, 106:1; 1921, 85, IV:12; 125:4; PL 119:12, 13; and RL 138:12, 13, related to payment by districts to state treasurer for supervision.

194:14 Nonresident Pupils. A district may determine upon what terms scholars from other districts may be admitted to its schools, and if a district neglects to make such determination the school board may do it.

Source. RS 73:7. CS 77:7. GS 78:19. GL 86:19. PS 89:12. 1921, 85, IV:13. PL 119:14. RL 138:14.

194:15 School Year. The fiscal and scholastic year for all school districts shall end June 30 in each year.

Source. 1917, 122:1. 1921, 85, IV:15. PL 119:15. RL 138:15.

194:15–a Lord's Prayer in Public Elementary Schools. As an affirmation of the freedom of religion in this country, a school district may authorize the recitation of the traditional Lord's prayer in public elementary schools. Pupil participation in the recitation of the prayer shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to

this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, which freedoms include the freedom of religion and are symbolized by the recitation of the Lord's prayer.

Source. 1975, 225:1. 2002, 277:1, eff. July 17, 2002.

194:15–b Instruction in New Hampshire's Cultural Heritage and Ethnic History Authorized. A school district may include one-semester courses at the elementary and secondary levels in the cultural heritage and ethnic history of New Hampshire's people, and may raise and appropriate money for this purpose.

Source. 1988, 122:1, eff. June 18, 1988.

194:15–c New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.

III. Pupils not participating in the recitation of the pledge of allegiance may silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

Source. 2002, 277:2, eff. July 17, 2002.

194:16 Military Drill, Etc. A school district may include military drill and physical exercises in its course of instructions, and may raise and appropriate money for that purpose.

Source. 1917, 100:2. 1921, 85, IV:16. PL 119:16. RL 138:16.

194:17 Instruction in Use of Firearms. A school district may include instruction in the safe and proper use of firearms including instruction in game laws and good hunting practices, and may raise and appropriate money for said purposes.

Source. 1953, 50:1, eff. March 26, 1953.

194:18 Evening Schools. Any school district may maintain an evening school as a part of its public school system, and every district in which reside or are employed 15 or more persons between the ages of 16 and 18 years who cannot read and speak the English language understandingly shall maintain an evening or special day school for the purpose of carrying into effect the provisions of this title for such time in each year, and under such conditions and with such exceptions, as the state board may prescribe.

Source. 1919, 106:15. 1921, 85, IV:17. PL 119:17. RL 138:17. RSA 194:18. 1973, 72:30, eff. June 3, 1973.

194:19 School for Adults. Every school district in which reside or are employed 20 or more persons above the age of 18 years who cannot read and speak the English language understandingly shall maintain schools for the instruction of such non-English-speaking persons for such time in each year, and under such conditions and with such exceptions, as the state board may prescribe.

Source. 1919, 106:16. 1921, 85, IV:18. PL 119:18. RL 138:18. RSA 194:19. 1973, 72:15, eff. June 3, 1973.

194:19–a Definition of Elementary School. For the purposes of this chapter, an elementary school is as set forth in RSA 189:25.

Source. 1967, 362:1. 1981, 318:7, eff. Aug. 16, 1981.

High Schools

194:20 Establishment. Any school district may by vote or bylaw establish and maintain a high school in which the higher English branches of education, Latin, Greek and modern languages may be taught.

Source. 1866, 4255. GS 82:2. 1874, 56:1. GL 90:2. 1881, 23:1. PS 89:9. 1901, 96:1. 1921, 85, IV:19. PL 119:19. RL 138:19.

194:21 Joint Maintenance Agreements.

I. Two or more adjoining districts in the same or different towns may make contracts with each other for establishing and maintaining jointly a high school or other public school for the benefit of their pupils, and may raise and appropriate money to carry the contracts into effect; and their school boards, acting jointly or otherwise, shall have such authority and perform such duties in relation to schools so maintained as may be provided for in the contracts.

II. (a) The school boards of the component school districts shall hold at least one public hearing in each district. Reasonable notice of each hearing shall be provided no less than 10 days prior to the date of the hearing. Upon adoption of the joint maintenance agreement by the component districts, a copy of the agreement executed by each component school board shall be submitted to the state board of education for approval. If the state board of education approves the agreement, it shall forward it to the clerks of the component school districts for submission to the voters as soon as may be reasonably possible at an

annual meeting or a special meeting called for the purpose. A majority of voters present and voting in each component district shall be required for approval of the joint maintenance agreement.

(b) If after review the state board of education determines that the joint maintenance agreement fails to comply with the provisions of this section, the state board shall forward written notice of its findings, including specific areas of deficiency, to the school boards of the component school districts. Such school boards shall correct any deficiencies and resubmit the agreement to the state board for review within 30 days of the state board's deficiency notice.

(c) The state board shall act on all joint maintenance agreement proposals within 30 days of receipt.

III. The school boards of the component school districts shall be authorized to incur indebtedness by the issuance and sale of bonds or notes, or otherwise, in the name of the joint maintenance agreement subject to approval by the legislative body of the component districts pursuant to RSA 33. The school boards of the component school districts shall be authorized to engage in collective bargaining pursuant to RSA 273–A and to hire staff in the name of the joint maintenance agreement, as may be necessary.

Source. 1845, 221:1, 2. CS 79:1. 1862, 2618:1. GS 82:3. 1869, 7:1. GL 90:3. PS 89:10. 1921, 85, IV:20. PL 119:20. RL 138:20. 2000, 215:1, eff. July 31, 2000.

194:21–a Long-Term Contracts. The school districts of the state may enter into a contract with each other for the establishing and maintaining jointly a high school for the benefit of their pupils and may raise and appropriate money to carry said contracts into effect. The school boards of said districts, acting jointly or otherwise, shall have the authority and perform such duties in relation to schools so maintained as may be provided for in the contracts. The term of any such contract may be for a term not to exceed 20 years from the date of the contract. In entering into such contract either of said school districts may bind itself to the payment of tuition for the entire term of the contract and may also bind itself to annual payments on account of capital investments.

Source. 1959, 218:1, eff. Aug. 11, 1959.

194:21–b Special Meetings. The adoption of a long-term contract as provided for by RSA 194:21–a may be taken by the school district at a regular annual meeting or a special meeting called for the purpose provided that an article is inserted in the warrant for said meeting relative to said contract.

Source. 1959, 218:2, eff. Aug. 11, 1959.

194:21–c Application of Statutes. The provisions of RSA 194:21 relative to joint maintenance of schools, and the provisions of RSA 194:27, as amended, relative to limitations on the payment of tuition, shall not apply to the school districts of the state if any long-term contract herein provided for is adopted by said districts.

Source. 1959, 218:3, eff. Aug. 11, 1959.

194:22 Contracts With Schools. Any school district may make a contract with an academy, high school or other literary institution located in this or, when distance or transportation facilities make it necessary, in another state, and raise and appropriate money to carry the contract into effect. If the contract is approved by the state board the school with which it is made shall be deemed a high school maintained by the district.

Source. 1874, 69:1. GL 90:15. 1885, 89:2. 1887, 111:1. PS 89:11. 1901, 96:6. 1903, 118:1. 1905, 90:1. 1909, 100:1. 1911, 137:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:21. PL 119:21. RL 138:21.

194:23 Definition of High School.

I. The term "high school" shall mean a public school or public academy comprising a span of grades beginning with the next grade following an approved elementary, middle or junior high school as defined by RSA 189:25 and ending with grade 12. Such a school shall:

(a) Offer those subjects prescribed by statute, including instruction in history, government, and constitutions of the United States and New Hampshire and of the organization and operation of New Hampshire municipal, county, and state government;

(b) Provide such other subjects as the school district maintaining such school shall determine by its school board or by vote of the district;

(c) Comply with standards prescribed by the state board of education which shall be uniform in their application to all schools; and

(d) Qualify a pupil to receive a diploma upon completion.

II. In this section, "public academy" means an independent school which contracts with one or more school districts to provide education services to such districts in compliance with RSA 194:23. All contracts between a public academy and a school district shall be subject to approval by the state board of education. In this section, "independent school" means a school which is governed by a board of trustees or other officials who are not publicly elect-

ed. An independent school shall not include a chartered public school established under RSA 194–B.

II–a. In this section, the term "high school" shall include the regional career and technical education center in the Manchester school district which complies with the provisions of RSA 188–E.

III. The enactment of paragraph II shall not affect a determination of the New Hampshire retirement system board of trustees under RSA 100–A regarding the eligibility of an employer or its employees to participate in the New Hampshire retirement system.

Source. 1901, 96:1. 1903, 31:1; 118:1. 1905, 19:1. 1921, 85, IV:22. PL 119:22. RL 138:22. RSA 194:23. 1959, 246:1. 1975, 183:3. 1985, 151:1. 2006, 191:1. 2007, 71:3, eff. Aug. 10, 2007. 2008, 354:1, eff. Sept. 5, 2008. 2012, 221:2, eff. June 13, 2012. 2015, 252:13, eff. July 1, 2015.

194:23–a Definition of Comprehensive High School.

[Repealed 1985, 151:6, eff. July 21, 1985.]

History

Former RSA 194:23–a, which was derived from 1959, 246:2 and 1975, 183:4, related to the definition of "comprehensive high school".

194:23–b Approval of High Schools.

I. In order to satisfy compulsory school attendance laws, a high school student less than 16 years old must attend a high school which has been approved by the state board of education as complying with the provisions of RSA 194:23, or its equivalent; and the state board of education shall annually publish a list of all high schools which it has approved as meeting the requirements of RSA 194:23.

II. The commissioner of the department of education may, through an agreement with another state when such state and New Hampshire are parties to an interstate agreement, allow New Hampshire pupils to attend schools that meet the standards established by one of the 2 states.

Source. 1959, 246:2. 1985, 151:2. 1999, 224:3. 2000, 98:1, eff. June 26, 2000.

194:23–c Standards and Uniformity. The state board of education shall have the power to approve for a reasonable period of time a high school that does not fully meet the requirements of RSA 194:23 if in its judgment the financial condition of the school district or other circumstances warrant delay in full compliance.

Source. 1959, 246:2. 1985, 151:3, eff. July 21, 1985.

194:23–d State Financial Aid.

[Repealed 2003, 314:9, eff. July 22, 2003.]

History

Former RSA 194:23–d, which was derived from 1959, 246:2; 1967, 362:2, 448:5; and 1985, 151:4, related to state financial aid.

194:23–e Receipt of Tuition Students. In order to be entitled to accept tuition students, a public high school must be approved by the state board of education as complying with the provisions of RSA 194:23.

Source. 1959, 246:2. 1985, 151:5, eff. July 21, 1985.

194:23–f High School Student as School Board Member. The provisions of this section shall apply only to high schools located in a school district in which the school board has voted to have a nonvoting student member pursuant to RSA 189:1–c.

I. In addition to the school board members authorized in RSA 671:4, a high school shall select, in accordance with the directives of paragraph II and the provisions of RSA 189:1–c, one or more students from among its members to be nonvoting members of the school board for the district in which the high school is located. A student member shall have all the rights of a regular school board member regarding school board business except the right to vote.

II. A student board member shall be chosen by a simple majority vote of the high school student body. The student government of the high school shall establish procedures for the nomination and election of candidates. The student government shall also establish a procedure for any public high school student in the school district to petition a student board member to present proposals and opinions to the school board.

III. A student board member shall serve for a term of one year. The school board shall decide the date at which the term shall begin. Any student who will graduate during the term's duration is not eligible to be a candidate and is not eligible to vote. The student government of the high school shall establish a procedure for filling any vacancy that may occur in this position. A student board member shall serve without pay.

IV. The duties of a student school board member shall include:

(a) Attending all school board meetings except as specified in paragraph V;

(b) Representing all public high school students within the district;

(c) Presenting to the school board specific proposals and opinions from students as directed in paragraph II; and, when appropriate, placing pro-

posals on the school board agenda in accordance with the board procedures;

(d) Serving as a liaison between students and the principal, other faculty, student government advisors, and appropriate outside agencies;

(e) Keeping public high school students informed of the business of the school board.

V. A student school board member shall be excluded from discussions and procedures of the school board involving subjects which are confidential under RSA 91–A.

Source. 1983, 111:3, eff. July 24, 1983. 2009, 5:2, eff. June 16, 2009.

194:24 Transfer of Scholar. Whenever it shall appear that the attendance of a pupil at the school with which the contract is made will work a manifest hardship, which may be avoided by permitting the child to attend another approved school, the pupil through his parents, guardian or some other responsible person may apply to the school board for an order transferring the pupil to the more accessible school.

Source. 1901, 96:6. 1903, 118:1. 1905, 90:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:23. PL 119:23. RL 138:23.

194:25 Hearing. The school board shall thereupon order a hearing within 10 days thereafter, and, if it shall appear to the board that the claim is well-founded, the board shall make the order prayed for, and the district in which the pupil resides shall be liable to the school to which the pupil is assigned for the pupil's tuition not to exceed in any one year a sum based upon the costs as set forth in RSA 194:27.

Source. 1901, 96:6. 1903, 118:1. 1905, 90:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:23. PL 119:24. RL 138:24. 1949, 139:1, eff. July 1, 1949.

194:26 Appeal. The person applying for the pupil's transfer, or the governing board of the school with which the district has made the contract, may appeal from the decision of the school board to the state board within 10 days from the date of the filing of the order, or if no order is filed within 10 days after the application. The state board may upon such appeal, or if application is made directly therefor, modify the provisions of RSA 194:22 when conditions of transportation or accessibility require such action for the best interests of the pupil, and the order of the board shall be final and binding upon any school board affected thereby.

Source. 1901, 96:6. 1903, 118:1. 1905, 90:1. 1915, 126:1. 1917, 219:1. 1921, 85, IV:23. PL 119:25. RL 138:25. 1943, 149:1, eff. May 4, 1943.

194:27 Tuition. Any district not maintaining a high school or school of corresponding grade shall pay for the tuition of any pupil who with parents or guardian resides in said district or who, as a resident of said district, is determined to be entitled to have his or her tuition paid by the district where the pupil resides, and who attends an approved public high school or public school of corresponding grade in another district, an approved public academy, or a nonsectarian private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII. Except under contract as provided in RSA 194:22, the liability of any school district hereunder for the tuition of any pupil shall be the current expenses of operation of the receiving district for its high school, as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils.

Source. 1901, 96:1. 1903, 118:1. 1917, 16:1. 1921, 85, IV:24. 1923, 89:1. 1925, 129:1. PL 119:26. 1927, 18:1. 1933, 126:1. RL 138:26. 1949, 139:2. RSA 194:27. 1955, 166:1. 1957, 51:1. 1973, 299:1. 1998, 271:2, eff. Aug. 25, 1998. 2017, 182:5, eff. Aug. 28, 2017.

194:27–a Tuition Liability for Nongraduating Pupils. A pupil who has attended a high school, or schools of corresponding grades, for such time as is usually required and who has not been graduated may be required to certify to the school board of the district liable for the pupil's tuition that he will make the effort required to profit from his attendance before he is entitled to any further tuition payments on his behalf. The school board of the district liable for tuition for any such pupil may refuse tuition for such pupil when it has been determined that such pupil is grossly neglecting his school work. A decision of the board to refuse tuition under such circumstances stands, subject only to review by the state board of education. The decision of the state board of education is binding and final on both the district and the pupil. Nothing in this section shall be construed to prevent a school board from making tuition payments beyond the time usually required for the completion of a high school program if in the board's judgment it is desirable to extend the educational opportunity for a pupil.

Source. 1969, 356:9, eff. July 1, 1969.

194:28 Recovery of. If any town in which a high school or school of corresponding grade is not maintained neglects or refuses to pay for tuition as provided in RSA 194:27, such town shall be liable therefor to the parent or guardian of the child furnished with such tuition, if the parent or guardian has paid the same; otherwise to the town or city furnishing the same in an action of assumpsit.

Source. 1901, 96:2. 1921, 85, IV:25. PL 119:27. RL 138:27.

194:29, 194:30 Repealed.

[Repealed 1969, 356:11, eff. July 1, 1969.]

History

Former RSA 194:29 and 194:30, which were derived from 1917, 24:1, 2; 1921, 85, IV:28, 29; PL 119:28, 29; and RL 138:28, 29, related to town's liability to a parent paying tuition, and to provision for instruction through junior high school. See now RSA 189:1–a.

194:31 Registers; Reports. All academies, private schools and public schools shall be furnished with copies of the school register, and shall make an annual report of membership to the department of education in accordance with RSA 189:28.

Source. 1901, 96:5. 1921, 85, IV:30. PL 119:30. RL 138:30. RSA 194:31. 1991, 169:3. 2005, 189:2, eff. Aug. 29, 2005.

194:31–a Student Records. All elementary and secondary educational institutions including academies, private schools and public schools shall, upon request of a private school or a school district as authorized by a parent, student, or former student, furnish a student record to any elementary or secondary educational institution. There shall be no charge for any record furnished pursuant to this section.

Source. 1993, 147:1, eff. July 16, 1993.

194:32 Catalogues. The principal of each college, academy, seminary or other institution of learning, incorporated by the laws of this state, shall annually, and before November 1 of each year, forward to the New Hampshire Genealogical Society, for its library, one copy of each printed catalogue of its officers and students and courses of studies published during the year next preceding said date.

Source. 1907, 40:1. 1921, 85, IV:31. PL 119:31. RL 138:31.

194:33 Union of Districts. Whenever any school district organized under a special act of the legislature shall vote to abolish such district and to unite with the town district, if said town district shall vote to receive said special district, and the special district has for the 5 years next preceding such vote maintained a high school, it shall be incumbent on the town district with which it unites to thereafter keep and maintain a high school within the limits of said special district for at least 34 weeks in each year, of equal grade to that which had been previously maintained therein by such special district, said high school to be open to all scholars in the town district, of suitable age and qualifications.

Source. 1891, 64:4. 1921, 85, IV:32. PL 119:32. RL 138:32.

194:34 Maintenance of High Schools. It shall be the duty of said town district to raise and appropriate each year thereafter sufficient money, in addition to the school money which the town in which it is situated may raise, to properly maintain such high school, or schools, as may be established under RSA 194:33.

Source. 1891, 64:2. 1921, 85, IV:33. PL 119:33. RL 138:33.

194:35 Discontinuance. No high school shall be discontinued, or the location thereof be changed, except by the superior court, on petition of 20 or more legal voters of the town or district in which such high school is located, in addition to a majority of the school board for said town or district, after such notice as the court may order and proof that the educational interests of the town or district require such discontinuance or change.

Source. 1905, 20:1. 1921, 85, IV:34. PL 119:34. RL 138:34. 1943, 41:1, eff. March 3, 1943.

194:36 Penalty. Any town district failing to comply with any of the provisions of this chapter shall be fined for such neglect.

Source. 1891, 64:4. 1921, 85, IV:35. PL 119:35. RL 138:35.

Dissolution of Districts

194:37 By Vote.

I. Any special district organized under a special act of the legislature may, by a majority vote of the qualified voters present and voting at a legal meeting, dissolve its corporate existence and unite with the town district.

II. Any special district or pre-existing special district may vote by warrant article presented at the annual meeting of the school district of which the special district is a part. Only legally registered voters within the boundaries of the special district may vote on the warrant article. Such warrant articles shall be placed on school district warrants in accordance with RSA 197:6.

Source. 1885, 89:1. PS 89:14. 1921, 85, IV:36. PL 119:36. RL 138:36. RSA 194:37. 1988, 7:1, eff. Feb. 24, 1988.

194:38 By Petition. When a town or city is divided into 2 or more districts, either district may petition the state board of education to unite the districts, and, if the board after notice and hearing finds that justice requires action, it may make an order consolidating the districts, and when and after that order is filed and recorded in the office of the secretary of state said town shall constitute a single school district.

Source. 1921, 123:1. PL 119:37. RL 138:37.

194:39 Taking Over Property. In any such case the town district so formed shall forthwith take possession of the schoolhouses, lands, apparatus and other property owned and used for school purposes

by the district so dissolved which the district might lawfully sell or convey.

Source. 1887, 110:1. PS 89:15. 1921, 85, IV:37. PL 119:38. RL 138:38.

194:40 Adjustments. The property so taken, and also like property of the district to which the special district is united, shall be appraised by the selectmen of the town, and at the next annual assessment a tax shall be levied upon the whole town district equal to the amount of the whole appraisal; and there shall be remitted to the taxpayers of each district the appraised value of its property.

Source. 1885, 43:2. 1887, 110:1. PS 89:16. 1921, 85, IV:38. PL 119:39. RL 138:39.

194:41 Continuance; Trust Funds. The corporate powers of a district shall continue for the purpose of settling up its affairs and of holding, managing and enjoying any property held by it in trust, notwithstanding its dissolution, but the school board of the district of which it forms a part shall be its agents to expend the income of any such trust property that is devoted to the support of schools.

Source. 1854, 1540:1. GS 78:24. 1870, 8:5. GL 86:28. 1887, 87:1. PS 89:24. 1921, 85, IV:46. PL 119:40. RL 138:40.

194:42 Application of Funds. The school board shall first give to such district or districts such term or character of schooling as would be just and reasonable if no such fund were in existence, and only use the income to lengthen the school or schools, or to carry out the purposes of the trust under which the funds are held.

Source. 1887, 87:2. PS 89:25. 1921, 85, IV:47. PL 119:41. RL 138:41.

194:43 Meetings. Any justice of the peace may, upon application of 3 or more voters, resident within the limits of the dissolved district, call a meeting thereof in the same manner as other school district meetings are called, at which a moderator, clerk and agents may be chosen and any other business transacted for the purposes mentioned in RSA 194:41.

Source. 1887, 75:1. PS 89:26. 1921, 85, IV:48. PL 119:42. RL 138:42.

194:44 Records. The records of dissolved school districts whose corporate existence is not continued for any purpose shall be returned by the clerks of such districts to the town clerk's office for preservation with the public records of the town.

Source. 1885, 43:3. PS 89:27. 1921, 85, IV:29. PL 119:43. RL 138:43.

Dissolution of Districts in 2 Towns

194:45 Adjustments. If a district so dissolved is formed of parts of 2 or more towns an equitable apportionment of its assets and liabilities between such parts shall be made by the selectmen of the towns in which they are situate, acting as a joint board, within 60 days after the dissolution.

Source. 1885, 43:2. 1887, 110:1. PS 89:17. 1921, 85, IV:39. PL 119:44. RL 138:44.

194:46 Petition for Referee. If such joint board fails to make an apportionment within the time limited therefor any taxpayer within the district may apply by petition to a justice of the superior court for the appointment of a referee to make the apportionment.

Source. 1885, 43:2. 1887, 110:1. PS 89:18. 1921, 85, IV:40. PL 119:45. RL 138:45.

194:47 Hearing. The justice shall appoint a time and place of hearing upon the petition, and order notice thereof to be given to all parties interested, and after hearing he shall appoint a referee.

Source. PS 89:19. 1921, 85, IV:41. PL 119:46. RL 138:46.

194:48 Notice. The notice shall be served by posting copies of the petition and order thereon in at least 2 public places in each of said parts, and by giving to the clerk of the dissolved district, and the clerk of each town district in which any part thereof is located, like copies 10 days at least before the day of hearing.

Source. PS 89:20. 1921, 85, IV:42. PL 119:47. RL 138:47.

194:49 Referee's Procedure. The referee shall cause notice of his hearing to be given to all parties interested, in the same manner as is provided in RSA 194:48. He shall hear the parties, make his report in writing, and file a copy thereof with the clerk of the dissolved district and the clerk of each town interested; and the report, so made and filed, shall be final.

Source. 1885, 43:2. 1887, 110:1. PS 89:21. 1921, 85, IV:43. PL 119:48. RL 138:48.

194:50 Assessment. Upon receiving a copy of the apportionment, the selectmen shall assess upon that part of the district within their town the amount for which it is charged, and cause the same to be collected and paid to the town district in which the creditor part of the dissolved district is situated.

Source. 1885, 43:2. 1887, 110:1. PS 89:22. 1921, 85, IV:44. PL 119:49. RL 138:49.

194:51 Equalization. The town district shall take the property and assets of that part of the dissolved district which is situate in such town district, and the selectmen of the town shall assess and remit taxes with reference to the property so taken, and like property of the town district, the same as in other cases.

Source. 1885, 43:2. 1887, 110:1. PS 89:23. 1921, 85, IV:45. PL 119:50. RL 138:50.

Changing District Boundaries

194:52 Petition to Selectmen. Any person interested in severing part of any town therefrom and annexing it to another town, or school district therein, for school purposes may apply therefor by petition to the selectmen of the town from which it is proposed to sever such territory, and to the selectmen of the town to which it is proposed to annex the same.

Source. 1893, 72:1. 1921, 85, IV:50. PL 119:51. RL 138:51.

194:53 Hearing. It shall be the duty of said selectmen, upon notice to such petitioners and to the school boards of the respective towns and school districts interested in the proposed transfer, to hear the parties, and determine whether the reasonable accommodation of such petitioners or others requires such transfer, and to make return of their findings to the clerks of their respective towns in writing within 30 days.

Source. 1893, 72:2. 1921, 85, IV:51. PL 119:52. RL 138:52.

194:54 Certificate. If a majority of each of said boards of selectmen report in favor of such transfer they shall sign a certificate of that fact, describing such territory, and stating that it is annexed to such adjoining town, or district therein, for school purposes, which certificate shall be recorded by the town clerk of each town.

Source. 1893, 72:4. 1921, 85, IV:52. PL 119:53. RL 138:53.

194:55 Restoration. Any territory annexed for school purposes to an adjoining town, or school district therein, may, upon proceedings such as have been prescribed in this subdivision, be restored to the town or district from which it was severed. Such proceedings may be initiated by any person in either the school district to which the territory has been annexed, or the school district of which it was originally a part. The vote to restore annexed territory shall take effect on July 1 of the calendar year one year subsequent to the date on which the restoration vote is passed. For 3 years after such vote becomes effective, the restored territory shall be allowed to send their school children to the schools in the district to which the territory was previously annexed. The district in which the schools are located shall receive tuition for these school children.

Source. 1893, 72:4. 1921, 85, IV:53. PL 119:54. RL 138:54. RSA 194:55. 1988, 112:1, eff. Jan. 1, 1989.

194:56 Validity. The annexation of territory under this subdivision shall have the same force and validity as if made by a special act of the legislature.

Source. 1893, 72:5. 1921, 85, IV:54. PL 119:55. RL 138:55.

194:57 Effect. The selectmen and collector of any town to which part of any other town is annexed for school purposes shall have the same powers and duties in respect to such annexed territory, of furnishing blank inventories and of assessing and collecting taxes for school purposes, and the inhabitants and owners thereof shall for such purposes be subject to the same liabilities, as if such territory were in the town to which it is annexed.

Source. 1893, 72:6. 1897, 26:1. 1921, 85, IV:55. PL 119:56. RL 138:56.

194:58 Applicability of Provision. The foregoing provisions of this subdivision shall not apply to special districts, but only to town districts.

Source. 1897, 26:1. 1921, 85, IV:56. PL 119:57. RL 138:57.

194:59 Special Districts. The selectmen of any town, and the school board of any high school or other special district in the same town, may, upon petition of persons interested, after notice to the school board of the town school district of such town, and after hearing the parties, unite parts of either district to the other, a majority of the board of selectmen and majority of the school board of such special district and a majority of the school board of the town school district concurring therein, and their decision in writing being recorded on the town records.

Source. 1893, 72:7. 1895, 75:1. 1921, 85, IV:57. PL 119:58. RL 138:58.

Department of Corrections Special School District

194:60 Special School District; Department of Corrections.

I. A special school district is established within the department of corrections, under RSA 21–H, solely for the purpose of providing approved education programs pursuant to subparagraph IV(b) of this section to eligible adult offenders under the age of 21 who wish to participate.

II. The special school district shall be exempt from state board of education rules, except that the standards for the education of students with disabilities and all education programs shall be set by an interagency agreement between the department of education and the department of corrections.

III. The special school district shall be exempt from the organizational and budgetary requirements regarding other school districts or chartered public schools. The special state prison school district shall not be required to file financial reports with the

department of education or the department of revenue administration.

IV. The special school district shall have authority to perform all duties necessary to operate a school including, but not limited to, the following:

(a) Timely submission of all required education program approval documents and reports to appropriate agencies.

(b) Maintenance of approved education programs which comply with the requirements as provided for in the interagency agreements between the department of corrections and the department of education. The interagency agreements shall set forth the standards for approval of a school program for department of corrections facilities, the graduation requirements necessary for the special school district to issue a high school diploma, and the standards for special education program approval.

(c) Issuance of transcripts.

(d) Performing assessments and developing individual education programs.

(e) Providing fiscal management for the state and federally-funded approved education programs.

(f) Operation of approved education programs in a manner consistent with the legitimate security and safety concerns of a penal institution.

V. The special state prison school district shall not be assigned to a school administrative unit, nor shall it be subject to the provisions of RSA 194–C.

VI. The special state prison school district shall not be eligible to receive any form of state aid to education pursuant to RSA 198, including but not limited to, state building aid, state aid, dual enrollment grants, foundation aid, or alternative foundation aid.

VII. The special state prison school district shall not have a school board.

VIII. The special school district shall not be required to provide special education programs or services to children with disabilities aged 18 through 21 who, in the educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a child with a disability under RSA 186–C:2, or who did not have an individualized education program prior to their incarceration in an adult correctional facility.

Source. 1998, 270:6, eff. July 1, 1999. 2008, 354:1, eff. Sept. 5, 2008.

CHAPTER 194–A

EDUCATION VOUCHER PROGRAMS

[Repealed 1986, 41:29, VI, eff. April 3, 1988.]

History

Former RSA ch. 194–A, comprising RSA 194–A:1 to 194–A:8, which was derived from 1975, 182:1, related to a test of education voucher programs by the state board of education.

CHAPTER 194–B

CHARTERED PUBLIC SCHOOLS

194–B:1 Definitions. In this chapter:

I. "Average cost per pupil" means the total of education expenditures in a particular district and at the elementary, middle/junior, and high school levels, less tuition, transportation, capital outlays, and net debt service, as compiled by the department of education. Kindergarten cost shall be calculated at ½ the cost of elementary school.

II. "Average daily membership in attendance" or "ADMA" relative to chartered public schools means the average daily membership in attendance, as de-

fined in RSA 189:1–d, III, of pupils in kindergarten through grade 12, in the determination year, provided that no kindergarten pupil shall count as more than ½ day attendance per school year. ADMA shall only include pupils who are legal residents of New Hampshire pursuant to RSA 193:12 and educated at the charter school's expense. In this paragraph, "determination year" shall have the same meaning as in RSA 198:38, IV.

III. "Board of trustees" means the governing body of a chartered public school authorized by the state board of education to supervise and control the chartered public school.

IV. "Chartered public school" means an open enrollment public school, operated independent of any school board and managed by a board of trustees. A chartered public school shall operate as a nonprofit secular organization under a charter granted by the state board and in conformance with this chapter.

V. "Charter conversion school" means a public school which has been authorized to become a chartered public school. That school continues to be managed by the school board until and unless fully authorized to become a chartered public school in accordance with the provisions of RSA 194–B:3.

VI. "Full-time enrolled pupil" means a pupil pursuant to RSA 194–B:1, XI and officially accepted full-time student by the Virtual Learning Academy Charter School admissions team.

VII. "Full-time equivalent pupil" means a pupil or group of pupils pursuant to RSA 194–B:1, XI that have completed 12 half-credit courses.

VIII. "Host school district" means the school district in which the chartered public school is physically located.

IX. "Open enrollment public school" or "open enrollment school" means any public school which, in addition to providing educational services to pupils residing within its attendance area or district, chooses to accept pupils from other attendance areas within its district and from outside its district.

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

XI. "Pupil" means any child who is eligible for attendance in public schools in New Hampshire.

XII. "Receiving district" means the school district to which a pupil is sent to attend a chartered public school.

XIII. "Resident district" means the school district in which the pupil resides.

XIV. "School board" means the district school board.

XV. "Sending district" means the school district in which the pupil resides.

XVI. "State board" means the state board of education.

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

Source. 1995, 260:6, eff. July 1, 1995. 2008, 274:22, 23, eff. July 1, 2008; 354:1, eff. Sept. 5, 2008. 2009, 241:2, eff. Sept. 14, 2009. 2017, 156:93, eff. July 1, 2017.

194–B:1–a Statement of Purpose. It is the purpose of this chapter to:

I. Promote and encourage the establishment and operation of chartered public schools in New Hampshire.

II. Encourage school districts to allow chartered public schools.

III. Encourage the establishment of public charter schools with specific or focused curriculum, instruction, methods, or target pupil groups.

IV. Improve pupil learning and increase opportunities for learning.

V. Exempt charter schools from state statutes and rules, other than where specified, to provide innovative learning and teaching in a unique environment.

VI. Enhance professional opportunities for teachers.

VII. Establish results-driven accountability for public charter schools and require the measurement of learning.

VIII. Make school improvement a focus at the school level.

IX. Encourage the establishment of public charter schools that meet the needs and interests of pupils, parents, communities, regions, and the state as a whole.

Source. 1997, 334:1. 2004, 222:1, eff. June 11, 2004. 2009, 241:3, eff. Sept. 14, 2009.

194–B:2 Chartered Public Schools; Establishment; Parental Choice; Admission.

I. Any school district legislative body may vote to designate one or more of its schools as a chartered public school.

II. Every chartered public school shall make available information about its curriculum and policies to all persons, and parents and pupils considering enrollment in that school.

III. There shall be no application fee for pupil admission to any chartered public school.

IV. All chartered public schools shall accept qualified pupils from any school district. A pupil who meets the admission requirements of a chartered public school, and who is a resident of the district where the school is located, shall be given absolute admission preference over a nonresident pupil. Once admitted and unless expelled, chartered public school pupils need not reapply for admission for subsequent years.

V. Attendance at a chartered public school for the purposes of transportation shall not constitute assignment under the provisions of RSA 189:6 and RSA 189:8. Pupils who reside in the school district in which the chartered public school is located shall be provided transportation to that school by the district on the same terms and conditions as provided for non-chartered public schools in the district and utilizing the same regular bus schedules and routes that are provided to pupils attending non-chartered public schools within that district.

VI. Upon approval by each of the district's legislative bodies and after a public hearing, 2 or more school districts may consolidate otherwise eligible resident pupils into one applicant pool for the purposes of an admissions lottery for designated chartered public schools.

VII. A chartered public school may be physically located outside the district establishing it, but shall be deemed within the school district for purposes of RSA 194–B.

Source. 1995, 260:6, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:4, eff. Sept. 14, 2009. 2016, 236:1, eff. July 1, 2016.

194–B:3 Chartered Public Schools; Establishment; Application; Amendment; Procedure.

I. (a) Except as otherwise provided in law, chartered public schools shall be fully exempt from state laws and rules which otherwise apply to public or nonpublic schools, or local school boards or districts. Notwithstanding the foregoing, chartered public schools shall have all the rights and privileges of other public schools.

(b) A chartered public school's board of trustees shall have full authority to determine the chartered public school's organization, methods, and goals.

II. Except as expressly provided in this chapter, the duty and role of the local school board relative to the establishment of a chartered public school shall be to approve or disapprove the proposed chartered public school application based upon whether or not the proposed application contains in specific detail the following required elements:

(a) Educational mission.

(b) Governance and organizational structure and plan.

(c) Methods by which trustees and their terms are determined.

(d) General description and proposed or potential location of facilities to be used, if such information is available.

(e) Maximum number, grade or age levels, and, as applicable, other information about pupils to be served.

(f) Curriculum that meets or exceeds state standards in the subject areas offered.

(g) Academic and other learning goals and objectives.

(h) Achievement tests to be used to measure pupil academic and other goal achievement including, but not limited to, objective and age-appropriate measures of literacy and numeracy skills, including spelling, reading, expository writing, history, geography, science, and mathematics.

(i) For schools offering high school grade levels, graduation requirements sufficient to ensure that the school has provided an adequate education for its pupils.

(j) Staffing overview, including qualifications sought for professionals and paraprofessionals.

(k) Personnel compensation plan, including provisions for leaves and other benefits, if any.

(*l*) Pupil transportation plan, including reasonable provision from the chartered public school's own resources for transportation of pupils residing outside the district in which the chartered public school is physically located.

(m) Statement of assurances related to nondiscrimination according to relevant state and federal laws.

(n) Method of coordinating with a pupil's local education agency (LEA) responsible for matters

pertaining to any required special education programs or services including method of compliance with all federal and state laws pertaining to children with disabilities.

(*o*) Admission procedures.

(p) Philosophy of pupil governance and discipline, and age-appropriate due process procedures to be used for disciplinary matters including suspension and expulsion.

(q) Method of administering fiscal accounts and reporting, including a provision requiring fiscal audits and reports to be performed by an independent certified public accountant.

(r) Annual budget, including all sources of funding, and a projected budget for the next 2 years.

(s) School calendar arrangement and the number and duration of days pupils are to be served pursuant to RSA 194–B:8, III.

(t) Provision for providing continuing evidence of adequate insurance coverage.

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

(v) Philosophy of parent involvement and related plans and procedures.

(w) A plan to develop and disseminate information to assist parents and pupils with decision-making about their choice of school.

(x) A global hold-harmless clause which states:

> The chartered public school, its successors and assigns, covenants and agrees at all times to indemnify and hold harmless the (school district), any other school district which sends its students to the chartered public school, and their school boards, officers, directors, agents, employees, all funding districts and sources, and their successors and assigns, (the "indemnified parties") from any and all claims, demands, actions and causes of action, whether in law or in equity, and all damages, costs, losses, and expenses, including but not limited to reasonable attorneys' fees and legal costs, for any action or inaction of the chartered public school, its board, officers, employees, agents, representatives, contractors, guests and invitees, or pupils.

(y) Severability provisions and statement of assurance that any provision of the chartered public school contract found by competent authority to be contrary to applicable law, rule, or regulation shall not be enforceable.

(z) Provision for dissolution of the chartered public school including disposition of its assets or amendment of its program plan.

(aa) In the case of the conversion of a public school to a charter conversion school, provision for alternative arrangements for pupils who choose not to attend and teachers who choose not to teach at the chartered public school.

(bb) A plan for the education of the school's pupils after the chartered public school may cease operation.

(cc) In addition to an application, each chartered public school applicant, in consultation with the local school board, shall prepare a proposed contract. The contract shall include, but shall not be limited to, the following elements:

(1) Purpose.

(2) Written policies.

(3) Authority of trustees.

(4) Reporting, fiscal accounting and fiscal audits to be performed by a certified public accountant.

(5) Contract agreements.

(6) Indemnification.

(7) Secular orientation.

(8) Non-discrimination.

(9) Health and safety.

(10) Enrollment.

(11) Attendance.

(12) Availability of services.

(13) Assessment of pupils.

(14) Tuition and funding.

(15) Property ownership.

(16) Records.

(17) Severability in accordance with subparagraph (y) above.

(18) Assignment of contract.

(19) Insurance.

(20) Revocation.

(21) Amendment.

(22) Renewal.

(23) Entire agreement.

(24) Location, which shall be identified prior to submission to the legislative body.

(dd) An outline of the proposed accountability plan which clarifies expectations for evaluating the school's program and which contains an acknowledgement that a full accountability plan shall be developed and ready to implement prior to the date of opening.

III. (a) [Repealed.]

(b) Proposed applications and contracts to establish a chartered public school shall be presented by July 1 of the year preceding intended operation of the chartered public school by its prospective board of trustees to the school board of the district in which the chartered public school intends to be located. The school board shall hold at least one public hearing on the application prior to September 15.

(c) By September 15 of the given year, the school board shall have completed its review of the proposed application and shall have granted or denied its approval. In its review the school board shall grant or deny the proposed application, using as its criteria whether or not the proposed application and contract contain and address the elements required under RSA 194–B:3, II. The school board reserves the right to suggest amendments or additions to the proposed application as it deems necessary to assure its completeness and compliance with this chapter. The school board shall forward the proposed application and contract, along with its approval or denial and a written statement specifying any areas deemed deficient, to the state board and to the applicant's prospective board of trustees.

(d) By December 31 of the given year, the state board shall have reviewed the proposed application and shall grant or deny the proposed application, using as its criteria whether or not the proposed application contains and addresses the elements required under RSA 194–B:3, II. The state board reserves the right to suggest amendments or additions to the proposed application as it deems necessary to assure its completeness and compliance with this chapter. Application disapprovals shall include a written statement specifying areas deemed deficient. The state board shall promptly notify the prospective board of trustees and the school board of its decision in writing. For any applicant chartered public school whose proposed application is deemed complete and is approved by the state board, the state board shall issue a charter enabling the formation and operation of the chartered public school.

(e) The state board shall submit 2 copies of the approved contract to the clerk of the school district who shall make the contract available for inspection by the voters of the school district. The school board shall submit a warrant article to the school district legislative body for ratification or denial without amendment. The ratification question shall be placed on the warrant of the next special or annual school district meeting and shall take the following form:

"Shall the district raise and appropriate the necessary funds and ratify the proposed contract between the _____ chartered public school and the _____ school district, for a period of 5 years for initial adoption or for a period of 7 years for renewal, with a first year annual appropriation of $___ per student not to exceed $___ which shall be approved by the voters in the district operating budget? The first year total financial impact of a 'yes' vote on this question is estimated by the school board at $___.

_____ Yes _____ No"

In districts without annual meetings, the legislative body shall have final authority to ratify or deny the state board approved contract. A ratified contract grants final authority for the chartered public school to operate for the life of its contract and to receive school district funds.

(f) The school's contract shall become effective July 1 immediately following ratification by the legislative body. Upon approval by the legislative body, contracts shall be for a 5-year term beginning on July 1 immediately following ratification by the legislative body.

IV. (a) The chartered public school's prospective board of trustees may appeal a denial by a school board under RSA 194–B:3, III(c) to the state board by September 30 of the given year.

(b) The state board shall conduct a review of the proposed chartered public school application, using review standards as specified under RSA 194–B:3, II. The state board shall be authorized to suggest amendments or additions to the proposed application to both parties including, but not limited to, deficiencies identified by the local school board and the trustees, as the state board deems necessary to assure its completeness and compliance with this chapter. Application disapprovals by the state board shall include a written statement specifying areas deemed deficient or in the case of approval on appeal, the reasons for such action to both parties. The state board shall promptly notify the prospective board of trustees and the school board of its decision in writing.

(c) For any applicant chartered public school whose entire proposal is complete and is approved by the state board on appeal from denial by a school board, the state board shall issue a charter enabling the formation and operation of the chartered public school.

(d) To complete the process by which an applicant chartered public school may be approved on appeal from a school board denial, RSA 194–B:3, III(e), (f) and (g) must also be followed.

V. Persons or entities eligible to submit an application to establish a chartered public school shall include:

(a) A nonprofit organization including, but not limited to, a college, university, museum, service club, or similar entity.

(b) A group of 2 or more New Hampshire certified teachers.

(c) A group of 10 or more parents.

VI. (a) Any existing public school may by a vote of the school board become a charter conversion school, provided that, in addition to all other requirements of this chapter for establishment of a chartered public school:

(1) A majority of its prospective teachers vote by ballot to approve such conversion in a district with more than one school, or ⅔ of the teachers so vote in a single school district.

(2) The school superintendent and principal both provide their approval in writing.

(b) All pupils attending a school which successfully converts to charter status shall be eligible for admission to such chartered public school.

VII. Neither a school board nor the state board shall accept an application to form a chartered public school from state approved nonpublic schools, including those which may reorganize in any form.

VIII. Home education programs established pursuant to RSA 193–A shall not be eligible to be a chartered public school.

IX. A chartered public school which has not initiated operation within 2 years of the issuance of its charter shall submit a progress report to the state board and school board. The state board may withdraw its approved charter if substantial progress has not been made toward opening the chartered public school.

X. A school's charter may be renewed in the same manner that a new chartered public school is formed, except that a school's renewal term shall be for a period of 5 years.

XI. (a) A charter grantee may apply to the school board for amendment to its application and contract, which shall be granted or denied within 30 days at the school board's discretion. The school board shall notify the school in writing of the decision to grant or deny the proposed amendment, providing reasons for the decision. An approved amended contract shall be promptly signed by the school board within one month of approval.

(b) A charter grantee may appeal the denial of a proposed application and contract amendment to the state board. The state board shall review the proposed amendment and within 30 days shall notify the school and the school board in writing of the decision to grant or deny the amendment, providing reasons for the decision.

(c) Within one month of receipt of a notice of approval from the state board on appeal from a school board denial, the school board shall promptly execute the proposed amended contract.

(d) When executed by the school board, an appealed amended application and contract shall be submitted promptly to the school district legislative body for subsequent ratification or denial without amendment, which decision shall be final. The ratification question shall be placed on the warrant of the next special or annual school district meeting. In districts without annual meetings, the legislative body shall have final authority to ratify or deny the proposed amended application and contract.

XII. For specific periods of time and for good cause shown, a school board and the state board may waive any deadlines applying in this section to their respective actions. A school board and the state board may provide technical assistance to improve a chartered public school's application or to speed the approval process. An applicant whose proposed application is not approved by a school board or by the state board shall be granted the opportunity to present a revised application for reconsideration.

XIII. The board of trustees of a chartered public school may acquire real property by lease, purchase, lease with purchase option, gift, or otherwise at any time prior to receiving a charter.

Source. 1995, 260:6. 1997, 334:2–9. 1998, 268:1. 1999, 101:1–5. 2004, 222:2, 3, 6. 2005, 257:15. 2007, 270:3, eff. June 29, 2007. 2008, 274:24, 31, eff. July 1, 2008; 354:1, eff. Sept. 5, 2008. 2009, 241:15, 16, II, III, eff. Sept. 14, 2009. 2010, 265:2, eff. Jan. 1, 2011. 2012, 199:5, eff. Aug. 12, 2012.

194–B:3–a Chartered Public School Approval by State Board of Education.

I. The state board of education may grant charter status to applicants that meet the requirements of this chapter.

II. The proposed chartered public school application shall be presented for approval directly to the state board of education by the applicant for the

prospective chartered public school. The content of such application shall conform to the requirements set forth in RSA 194–B:3, II(a)–(bb) and (dd). The department of education shall notify an applicant of any missing information within 10 days of the initial filing. The applicant shall file any missing information before the department reviews the application.

III. The department of education may forward the proposed application to the applicant, along with a written statement detailing any suggested amendments or modifications.

IV. The state board of education shall either approve or deny an application using reasonable discretion in the assessment of the elements set forth in RSA 194–B:3, II, (a)–(bb) and (dd). Lack of state funding alone shall not constitute grounds for the denial of an application. Approval of an application constitutes the granting of charter status and the right to operate as a chartered public school. The state board of education shall notify all applicants of its decision in writing, and shall include in any notice of denial a written statement specifying any areas deemed deficient, the reasons for the denial, and explaining that the applicant may reapply under RSA 194–B:3 or under this section in a subsequent year.

V. (a) The following provisions of law shall not apply to chartered public school applications proposed under this section, or to chartered public schools granted approval for operation under this section:

(1) RSA 194–B:3, II(cc).

(2) RSA 194–B:3, III–IV.

(3) RSA 194–B:3, XI.

(4) RSA 194–B:15, II.

(b) Except as provided in this paragraph, the provisions of RSA 194–B shall apply to chartered public schools approved for operation by the state board of education under this section.

(c) [Repealed.]

Source. 2003, 273:1. 2004, 222:4, 5, eff. June 11, 2004. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:5, eff. Sept. 14, 2009. 2011, 228:1, eff. June 29, 2011. 2013, 144:62, eff. July 1, 2013. 2014, 61:1, eff. July 26, 2014.

194–B:4 Chartered Public Schools and Open Enrollment Schools; Procedure for Adoption and Rescission; Limitations.

[Repealed 2009, 241:16, I, eff. Sept. 14, 2009.]

History

Former RSA 194–B:4, which was derived from 1995, 260:6; 1997, 334:10, 11; 1998, 268:5; and 2008, 354:1, related to the procedure in a town for adopting charter schools.

194–B:5 Chartered Public Schools; Authority and Duties of Board of Trustees.

I. Unless otherwise provided in this chapter, the board of trustees of a chartered public school, upon issuance of its charter, shall have general supervisory control and authority over the operations of the chartered public school.

II. No greater than 25 percent of the membership of a school board, or one member, whichever number is greater, may simultaneously serve as members of the board of trustees of a charter or charter conversion school. No greater than 25 percent of the membership of the board of trustees of a charter or charter conversion school, or one member, whichever is greater, may simultaneously serve as members of any school board. A chartered public school board of trustees shall include no fewer than 25 percent or 2 parents of pupils attending the chartered public school, whichever is greater. Teachers of a chartered public school may serve on its board of trustees.

III. Notwithstanding RSA 194–B:1, IV, an established chartered public school shall be a corporation, which shall be registered with the secretary of state after receiving approval under this chapter but before its first day of actual operation, with authority necessary or desirable to carry out its charter program including, but not limited to, the following:

(a) To adopt a name and corporate seal, provided that any name selected shall include the words "chartered public school."

(b) To sue and be sued, but only to the same extent and upon the same conditions that a town can be sued.

(c) To acquire real property from public or private sources by lease, by lease with an option to purchase, or by gift for use as a school facility, provided that such acquisition is consistent with established school purposes.

(d) To receive and disburse funds for school purposes.

(e) To make contracts and leases for the procurement of services, equipment, and supplies, provided that:

(1) If the board of trustees intends to procure substantially all educational services under contract with another person or entity, the terms of such a contract shall be provided in an addendum in the school's contract.

(2) The state board and the school board shall not approve any such contract terms, the pur-

pose or effect of which is to avoid the prohibition in this chapter against chartered public school status for nonpublic schools.

(f) To incur temporary debt in anticipation of receipt of funds.

(g) To solicit, accept, manage, and use any grants or gifts, provided that such activities are consistent with established school purposes.

(h) For chartered public schools that have been in operation for 5 or more years, to incur long-term debt for the purpose of purchasing buildings or land, or for new construction or renovations to existing buildings. The state shall not be liable for any debt or other financial obligation incurred under this subparagraph.

(i) To have such other powers that are available to a business corporation formed under RSA 293–A and that are not inconsistent with this chapter.

IV. The board of trustees shall report to the school board at least quarterly for public information purposes only, regarding the progress of the chartered public school's achievement of its stated goals. The chartered public school shall solicit advice from the school board. The school board and the chartered public school shall adopt mutually acceptable content requirements for the quarterly report which shall include, but not be limited to, a financial statement. During the pilot program in RSA 194–B:20, the school board shall forward the trustees' reports with its evaluation to the state board and the legislative oversight committee.

IV–a. [Repealed.]

V. A chartered public school and the host school district are encouraged to enter into mutually advantageous contractual relationships resulting in the sharing of transportation, instructional, athletic, maintenance, and other services and facilities.

VI. The meetings and proceedings of the board of trustees shall be held in public session pursuant to RSA 91–A:2, except for those meetings or proceedings designated as nonpublic sessions as defined in RSA 91–A:3, II.

VII. Any member of a chartered public school board of trustees who also serves as an employee, agent, or board member of any for-profit entity with whom the chartered public school contracts for goods or services shall make public disclosure of such fact and shall recuse oneself from any business the chartered public school may have with the for-profit entity. Any contract executed in violation of this paragraph shall be voidable at the discretion of the commissioner of the department of education. A member of a chartered public school board of trustees who executes a contract in violation of this paragraph may be held personally liable to the chartered public school for any damages caused by such contract.

Source. 1995, 260:6. 1998, 268:2. 2003, 273:4, 6, 7, III. 2004, 222:7. 2006, 301:3, eff. June 19, 2006. 2008, 354:1, eff. Sept. 5, 2008. 2012, 119:1, eff. Aug. 4, 2012. 2017, 156:94, eff. July 1, 2017.

194–B:6 Chartered Public Schools; Liability. No host, sending, or receiving district shall be held liable for damages in an action to recover for: (a) bodily injury, personal injury, or property damage as defined in RSA 507–B:1, or (b) for failure to educate pupils, where such actions arise out of the establishment or operation of a chartered public school.

Source. 1995, 260:6. 1998, 268:3, eff. July 1, 1998. 2008, 354:1, eff. Sept. 5, 2008.

194–B:7 Chartered Public Schools; Secular or Nonsecular Determination. For purposes of determining whether a proposed chartered public school is a prohibited religious school, the following 3-part test set forth by the United States Supreme Court shall be used.

I. The school shall have a secular purpose.

II. The school's "primary effect" shall neither advance nor prohibit religion.

III. The school shall not foster "excessive entanglement" between the school and religion.

Source. 1995, 260:6, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008.

194–B:8 Chartered Public Schools; Requirements; Options.

I. A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A chartered public school shall not discriminate against any child with a disability as defined in RSA 186–C. A chartered public school shall provide due process in accordance with state and federal laws and rules.

II. A chartered public school shall comply with all applicable state and federal health and safety laws, rules, and regulations.

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

IV. A chartered public school providing the only available public education services at a specific grade level in a school district shall offer those educational services to all resident pupils of that grade level.

V. At least annually and near the end of each school year, a chartered public school shall evaluate the educational progress of each pupil, as specified in RSA 194–B:3, II(h). Such evaluation shall include, but not be limited to, the New Hampshire statewide education improvement and assessment program, as provided in RSA 193–C. The cost of the state assessment program shall be borne by the state.

VI. A chartered public school may be located in part of an existing public school building, in space provided on a private work site, in a public building, or any other suitable location. A chartered public school may own, lease, or rent its own space, or utilize space based on other innovative arrangements.

VII. (a) A chartered public school may contract for services with any private or public entity including, but not limited to, private and public schools or districts, except for teaching services which may not be obtained from a nonpublic school.

(b) All contracted services shall be defined by purchase order or written contract in advance of such service being provided.

(c) Any contractor shall provide proof of adequate professional liability insurance.

(d) Subcontracts for teaching services with nonpublic schools are prohibited.

Source. 1995, 260:6, eff. July 1, 1995. 2008, 274:25, 26, eff. July 1, 2008; 274:34, 35, eff. Sept. 5, 2008; 354:1, eff. Sept. 5, 2008. 2012, 185:2, eff. Aug. 10, 2012.

194–B:9 Chartered Public Schools; Pupil Selection; Enrollment; Separation.

I. Except as provided for under RSA 194–B:8, IV:

(a) Chartered public schools may set maximum enrollment as they deem appropriate.

(b) Chartered public schools may limit enrollment to specific grade or age levels, pupil needs, or areas of academic focus including, but not limited to, at-risk pupils, vocational education pupils, mathematics, science, the arts, history, or languages.

(c)(1) Chartered public schools may select pupils on the basis of aptitude, academic achievement, or need, provided that such selection is directly related to the academic goals of the school.

(2) If the number of otherwise eligible applicants to a particular chartered public school exceeds that school's maximum published enrollment, that school shall use lottery selection as a basis for admission.

(3) If the number of otherwise eligible applicants to chartered public schools located inside and outside the school district exceeds that district's published maximum percentage of pupils authorized to attend such schools, the district shall use lottery selection as a basis for pupil eligibility, and in accordance with RSA 194–B:2, IV.

II. A pupil may withdraw from a chartered public school at any time and enroll in a public school where the pupil resides, except that no pupil shall change schools more than once each school year. That pupil's local school board may waive this limitation after a hearing.

III. A pupil may be suspended or expelled from a chartered public school based on criteria determined by the board of trustees consistent with the advice of the principal and teachers and in conformance with RSA 193:13. No public school shall be obligated to enroll an expelled pupil.

IV. For the purpose of this chapter, any resident pupil enrolled in a chartered public school is to be considered reassigned to the chartered public school for purposes of school attendance.

Source. 1995, 260:6. 1997, 334:12, 13, eff. June 23, 1997. 2008, 354:1, 3, eff. Sept. 5, 2008. 2009, 241:6, eff. Sept. 14, 2009.

194–B:10 Chartered Public Schools; Reporting Requirements.

I. Each chartered public school shall provide one copy of its annual report to the state board and to its local school board. This report shall also be available to any person who expressly requests it.

II. A chartered public school shall provide at its own expense an annual financial audit and report to the state board and the school board complying with any current format and content requirements imposed upon a public school. The report shall include the number of pupils served by the school and their respective tuition rates and a discussion of progress made towards the achievement of the school's academic and other goals set forth in its charter.

III. To ensure compliance with its application and contract and applicable law, a chartered public school shall be subject to a first year program audit by the department of education or its agent, and shall be subject to a program audit by the department of education at least once every 3 years thereafter.

IV. A summary version of any annual and periodic reports required in this chapter shall be provided to the parent or guardian of each pupil enrolled at a chartered public school and shall be made available to the legislative body.

V. A representative of a chartered public school shall attend and be prepared to report at and answer questions during relevant portions of the annual school district budget process.

Source. 1995, 260:6. 1997, 334:14, eff. June 23, 1997. 2008, 354:1, eff. Sept. 5, 2008. 2013, 144:64, eff. July 1, 2013.

194–B:11 Chartered Public Schools; Funding. Chartered public schools shall be funded as follows:

I. (a) There shall be no tuition charge for any pupil attending a charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion schools located in a pupil's resident district. For a chartered public school authorized by the school district, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. For pupils resident in this state who attend full-time a chartered public school authorized by a school district other than the pupil's resident school district, the state shall pay tuition pursuant to RSA 198:40–a directly to the chartered public school for such pupil. Nothing in this subparagraph shall alter or modify the funding of the Virtual Learning Academy Charter School.

(b)(1)(A) Except as provided in subparagraph (2), for a chartered public school authorized by the state board of education pursuant to RSA 194–B:3–a, the state shall pay tuition pursuant to RSA 198:40–a, II(a)–(c) and (e) plus an additional grant of $3,286 to all chartered public schools for the fiscal year ending June 30, 2018, and $3,411 to all chartered public schools for the fiscal year ending June 30, 2019 and each fiscal year thereafter, except for the Virtual Learning Academy Charter School, directly to the chartered public school for each pupil who is a resident of this state in attendance at such chartered public school. Beginning July 1, 2017 and every biennium thereafter, the department of education shall adjust the per pupil amount of the additional grant based on the average change in the Consumer Price Index for All Urban Consumers, Northeast Region, using the "services less medical care services" special aggregate index, as published by the Bureau of Labor Statistics, United States Department of Labor. The state shall pay amounts required pursuant to RSA 198:40–a, II(d) directly to the resident district.

(B) For the Virtual Learning Academy Charter School authorized pursuant to RSA 194–B:3–a, the state shall pay tuition pursuant to RSA 198:40–a, II(a)–(c) and (e), plus an additional grant of $2,036 directly to the Virtual Learning Academy Charter School for each eligible full-time enrolled pupil in the chartered public school's ADMA. The state shall pay amounts required pursuant to RSA 198:40–a, II(d) directly to the resident district. The state shall also pay tuition pursuant to RSA 198:40–a, II(a) plus an additional grant of $2,036 directly to the Virtual Learning Academy Charter School for each full-time equivalent pupil. Beginning July 1, 2017 and every July 1 thereafter, the department of education shall adjust the per pupil amount of the additional grant based on the average change in the Consumer Price Index for All Urban Consumers, Northeast Region, using the "services less medical care services" special aggregate index, as published by the Bureau of Labor Statistics, United States Department of Labor. The average change shall be calculated using the 3 calendar years ending 18 months before the beginning of the fiscal year for which the calculation is to be performed.

(2) For an online chartered public school which receives its initial authorization to operate from the state board of education pursuant to RSA 194–B:3–a on or after July 1, 2013, the state shall pay tuition pursuant to RSA 198:40–a directly to the online chartered public school for each pupil who is a resident of this state in attendance at such chartered public school. In this subparagraph, "online chartered public school" means a chartered public school which provides the majority of its classes and instruction on the Internet.

(c) The commissioner of the department of education shall calculate and distribute chartered public school tuition payments as set forth herein. The first payment shall be 30 percent of the per pupil amount multiplied by the number of eligible pupils present on the first day of the current school year. Such payment shall be made no later than 15 days after the department of education receives the attendance report. The December 1 payment shall be 30 percent of the per pupil amount multiplied by the membership on November 1, and the

March 1 payment shall be 30 percent of the per pupil amount multiplied by the membership on February 1. To calculate the final payment, the commissioner of the department of education shall multiply the per pupil amount by the average daily membership in attendance for the full school year, and subtract the total amount of the first 3 payments made. The remaining balance shall be the final payment. Eligible chartered public schools shall report membership in accordance with RSA 189:1–d. In this subparagraph, "membership" shall be as defined in RSA 189:1–d, II. Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year.

(d) The source of funds for payments under this section shall be moneys from the education trust fund established in RSA 198:39. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the state comptroller shall transfer sufficient funds from the general fund to eliminate such deficit. The commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of payments. The department of education may request additional funds from the fiscal committee of the general court, with the approval of governor and council, for a new chartered public school approved for initial operation by the state board of education pursuant to RSA 194–B:3–a.

(e) The commissioner of the department of education shall submit a report to the fiscal committee of the general court for each payment made in a fiscal year by the state to a chartered public school pursuant to subparagraph (c). For each chartered public school, the report shall contain the name and address of the school, the amount of the payment, and the number of students currently enrolled at the school. Each report shall be submitted no later than 30 days after the payment date specified in subparagraph (c).

II. A school district lacking a meaningful basis to determine average expenditure per pupil may use statewide average figures as determined by the department of education for the purposes of this chapter.

III. (a) In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.

(b) When a child is enrolled by a parent in a charted public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

(1) The resident district may send staff to the chartered public school; or

(2) The resident district may contract with a service provider to provide the services at the chartered public school; or

(3) The resident district may provide the services at the resident district school; or

(4) The resident district may provide the services at the service provider's location; or

(5) The resident district may contract with a chartered public school to provide the services; and

(6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

(c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate

with the child's resident district in the provision of the child's special education and related services.

IV. Federal or other funding available in any year to a sending district shall, to the extent and in a manner acceptable to the funding source, be directed to a chartered public school in a receiving district on an eligible per pupil basis. This funding shall include, but not be limited to, funding under federal Chapters I and II of Title II, and Drug-Free Schools, in whatever form the funding is available in any year. This paragraph shall not apply to funding available to school districts under the federal Individuals with Disabilities Education Act.

IV–a. The commissioner of the department of education shall apply for all federal funding available to chartered public schools under the No Child Left Behind Act, Title I of the Elementary and Secondary Education Act, or other federal source of funds. The commissioner shall expend any such funds received in a manner acceptable to the funding source.

V. (a) A sending district may provide funds, services, equipment, materials or personnel to a chartered public school, in addition to the amounts specified in this section in accordance with the policies of the sending school district.

(b) A chartered public school may accept pupils at tuition rates at less than the amounts established by this chapter.

(c) A chartered public school, other than a charter conversion school, shall accept an otherwise eligible out-of-district pupil regardless of that pupil's sending district's tuition amount.

VI. A chartered public school may receive financial aid, private gifts, grants, or revenue as if it were a school district. A chartered public school shall not be compelled to accept funding from any source.

VII. No school building aid under RSA 198:15–a through 15–h shall be awarded to a chartered public school for the purpose of acquiring land or buildings, or for constructing, reconstructing, or improving the chartered public school, unless the building is owned by the school district, under lease to the chartered public school, and such lease does not include an option to purchase the building. A charter conversion school shall be eligible for school building aid.

VIII. [Repealed.]

IX. [Repealed.]

X. There shall be an appropriation in the fiscal year beginning on July 1, 2003 for the establishment of chartered public schools under this section. Chartered public schools which are eligible for grants under this program shall match funds provided by the state through private contributions in order to receive funding that exceeds the state's average per pupil cost for the grade level weight of the pupil. State funds shall be provided in addition to any other sums provided by the state. Grants under this section shall be administered and determined by the state board of education which shall have the authority to develop a grant application, written procedures and criteria used to determine eligibility for grants, and procedures for the administration of grants by recipients, including reporting requirements. The total grants provided under this program shall not exceed the amount of money appropriated in the budget, or transferred, or provided by gift or grant to the state for this purpose.

XI. Any money appropriated in the budget for matching chartered public school grants that remains unused after the department of education issues matching grants to eligible recipients under paragraph X shall be used to provide a one-year transitional grant to public school districts that have lost pupils as a result of the establishment of a chartered public school, and have paid tuition to the chartered public school in cash pursuant to subparagraph IX(a). For the first year in which a public school pupil leaves the public school and enrolls in a chartered public school, the school district that loses the pupil shall be eligible for a chartered public school transitional grant beginning July 1, 2004 and every fiscal year thereafter, in an amount per pupil equal to the amount determined in RSA 198:41. Such transitional grants shall be administered by the state board of education which shall have the authority to determine eligibility and the amount of money to be awarded to school districts under this section, subject to the amount appropriated in the budget.

Source. 1995, 260:6. 1997, 334:15. 1998, 268:4. 1999, 17:58, VI. 2003, 273:2, 3. 2005, 257:15, 17, 18. 2006, 301:1, 4, 7, eff. June 19, 2006. 2008, 173:12, eff. July 1, 2009; 274:27, eff. July 1, 2008; 274:36, eff. Sept. 5, 2008; 354:1, 4, eff. Sept. 5, 2008. 2009, 241:7, eff. Sept. 14, 2009. 2011, 224:154, eff. July 1, 2011; 228:2, eff. June 29, 2011; 258:1, eff. July 1, 2011. 2012, 185:1, eff. Aug. 10, 2012. 2013, 144:63, eff. July 1, 2013. 2015, 276:193, 259, eff. July 1, 2015; 276:194, eff. July 1, 2016. 2016, 22:1, 2, eff. June 24, 2016; 262:2, eff. June 24, 2016 at 12:01 a.m.; 262:4, eff. July 1, 2016 at 12:01 a.m. 2017, 156:95, 154, eff. July 1, 2017.

194–B:12 Chartered Public Schools; Budgets. That portion of a school district's estimated expenditures on chartered public school tuition shall be shown as a separate line item in a school district's budget.

Source. 1995, 260:6, eff. July 1, 1995. 2009, 241:8, eff. Sept. 14, 2009.

194–B:13 Chartered Public Schools; Operations; Curriculum.

I. A chartered public school shall operate in accordance with its charter.

II. The internal form of governance of a chartered public school shall be determined by the school's charter.

III. The board of trustees, in consultation with teachers and the principal, shall determine the chartered public school's curriculum and develop the school's annual budget.

IV. The board of trustees shall be considered the public employer for the purpose of collective bargaining.

Source. 1995, 260:6, eff. July 1, 1995. 2008, 354:1, eff. Sept. 5, 2008.

194–B:14 Chartered Public Schools; Employees.

I. Employees of chartered public schools shall be considered public employees for the purpose of collective bargaining.

II. (a) Any teacher may choose to be an employee of a chartered public school, in which case such teacher shall have the rights of a teacher in public education to join or organize collective bargaining units.

(b) Bargaining units at a chartered public school shall be separate from other bargaining units.

(c) No chartered public school teacher shall be a member of more than one bargaining unit.

(d) A teacher who serves as a member of the board of trustees of a chartered public school in which that teacher is an employee may not participate in or vote as a member of the board on collective bargaining matters.

(e) A teacher in a chartered public school shall have withdrawn from any bargaining unit with which that teacher may have been previously affiliated.

III. A public chartered public school may choose to participate in the state teacher retirement system, and service in a public chartered public school shall be deemed creditable service under RSA 100–A:4.

IV. The teaching staff of a chartered public school shall consist of a minimum of 50 percent of teachers either New Hampshire certified or having at least 3 years of teaching experience.

Source. 1995, 260:6. 2003, 273:8, eff. July 1, 2003. 2008, 354:1, eff. Sept. 5, 2008.

194–B:15 Chartered Public Schools; Grievance Procedure.

I. Individuals or groups may complain to a chartered public school's board of trustees concerning any claimed violation of the provisions of the school's application and contract.

II. If, after presenting their complaint to the trustees, the individuals or groups believe their complaint has not been adequately addressed, they may submit their complaint to the school board, which shall investigate such complaint and make a determination. School board decisions with respect to grievances may be appealed to the state board.

III. [Repealed.]

Source. 1995, 260:6. 1997, 334:16. 2003, 273:5, eff. July 1, 2003; 273:7, II, eff. July 1, 2013. 2008, 354:1, eff. Sept. 5, 2008.

194–B:16 Charter Revocation; Probation.

I. Written petition to the state board to revoke a school's charter may be requested by the parent of any pupil currently attending that chartered public school, or by the school board of a host or receiving school district.

II. After reasonable notice has been provided to all affected parties, the state board may revoke a school's charter prior to the expiration of its term under the following circumstances:

(a) The school commits a material violation of any of the conditions, standards, or procedures set forth in its charter application and contract.

(b) The school fails to meet generally accepted standards for fiscal management.

(c) The school significantly violates the law.

(d) The school makes a material misrepresentation in its application or contract application.

(e) The school becomes insolvent or financially unstable.

III. Before revoking a school's charter, the state board shall consult with the school board and the board of trustees on the development and implementation of a remedial plan.

IV. The state board may place a chartered public school on probationary status for up to one year to allow the implementation of a remedial plan, after which, if the plan is unsuccessful, the charter shall be revoked.

V. Nothing contained in this section shall prevent the state board from immediately revoking a school's charter in circumstances posing extraordinary risk of harm to pupils.

VI. By the end of its final contract year, the chartered public school shall meet or exceed the objective academic test results or standards and goals as set forth in its application. If the school does not meet these results or standards and goals, it shall not be eligible for renewal of its charter.

VII. If a school's charter expires or is revoked, the school shall be dissolved under the provisions of its charter application and contract. If the contract provisions are silent or ambiguous as to disposition of any asset of the school, such asset shall revert to the school district in which the chartered public school is located at no cost to that district, subject to the school district's acceptance of the asset. Under no circumstances shall the school district be liable for any obligations of the dissolved chartered public school.

VIII. If a school's charter expires or is revoked, the parent of a pupil attending that school may apply to any other chartered public school eligible to receive tuition under the provisions of this chapter adopted by the school district. The pupil's sending district shall not be relieved of its obligation to educate that pupil in accordance with the district's policies.

Source. 1995, 260:6. 1997, 334:17-19, eff. June 23, 1997. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:9, eff. Sept. 14, 2009.

194–B:17 State Board; Duties.

I. The state board of education shall establish guidelines and criteria consistent with this chapter to be used by applicants in drafting a chartered public school contract and by school boards to determine whether or not an applicant's chartered public school contract proposal conforms with the intent of this chapter.

II. The state board shall publish sample chartered public school contract agreements. There shall be no requirement that any of the terms and conditions of such sample agreements be adopted by any chartered public school, other than as specified in this chapter.

III. The state board shall disseminate information to the public on ways to form, convert, and operate a chartered public school.

IV. The state board shall adopt uniform statewide annual deadlines and procedures for pupil enrollment applications and school and parental enrollment decisions for chartered public schools.

V. The state board shall develop procedures and guidelines for revocation and renewal of a school's charter.

VI. The state board shall convene one or more working committees to study and make recommendations regarding the implementation and effectiveness of chartered public schools. The recommendations shall be provided to the legislative oversight committee in RSA 194–B:21.

VII. The state board shall ensure, through its process of granting new chartered public school charters, that, on a statewide basis, the operation of chartered public schools does not result in illegal discrimination against any category of pupils.

VIII. The state board shall annually report to the joint legislative oversight committee established in RSA 194–B:21 regarding chartered public school approvals and denials for the preceding 12 months and the reasons for such approvals or denials.

Source. 1995, 260:6. 2004, 222:8, eff. June 11, 2004. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:10, 11, eff. Sept. 14, 2009.

194–B:18 State Board Rulemaking Authority. The state board shall be authorized to adopt rules, under RSA 541–A, to permit administration of the provisions of this chapter.

Source. 1995, 260:6, eff. July 1, 1995.

194–B:19 Provisions Controlling; Voting.

I. The provisions of this chapter shall be controlling over any other contradictory or inconsistent provisions of law.

II. All votes and decisions in this chapter shall be determined by majority, unless otherwise specified.

Source. 1995, 260:6, eff. July 1, 1995.

194–B:20 Pilot Program.

[Repealed 1995, 260:9, eff. July 1, 2000.]

History

Former RSA 194–B:20, which was derived from 1995, 260:6; 1997, 334:20; and 1999, 192:1, related to a charter school pilot program.

194–B:21 Oversight Committee; Report.

I. There is hereby established a joint legislative oversight committee. The committee shall jointly meet at least once a year and shall monitor the effect of this chapter, make recommendations for any legislative changes with respect thereto, and make recommendations to the legislature to reduce the scope of, ease the administration of, simplify the compliance with, and, where appropriate, recommend to the legislature elimination of regulations and reduction of the amount of paperwork required. The committee shall include 3 senators appointed by the president of the senate, 3 members of the house appointed by the speaker of the house, and one member of the state

board appointed by the chairperson of the state board who shall serve as a nonvoting member in an advisory capacity.

II. The committee shall submit a written report of its findings and recommendations to the president of the senate, the speaker of the house, and the chairpersons of the house and senate education committees on November 1 of each year, except for the year 2000, when the report shall be submitted on July 1.

Source. 1995, 260:6, eff. July 1, 1995. 2008, 274:28, eff. July 1, 2008.

194–B:22 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the chapter which can be given effect without the invalid provisions or applications and to this end the provisions of this chapter are severable.

Source. 1995, 260:6, eff. July 1, 1995.

CHAPTER 194–C

SCHOOL ADMINISTRATIVE UNITS

194–C:1 Status.

I. All school administrative units existing on the effective date of this chapter shall continue in their present form unless modified in accordance with the provisions of this chapter.

II. School administrative units legally organized shall be corporations, with power to sue and be sued, to hold and dispose of real and personal property for the establishment of facilities for administration and any instructional purposes, and to make necessary contracts in relation to any function of the corporation; provided, however, that such school administrative units shall not have the power to procure land, to construct or purchase buildings, to borrow money in order to purchase real estate, or to mortgage said real estate.

Source. 1996, 298:3, eff. Aug. 9, 1996.

194–C:2 Organization, Reorganization, or Withdrawal.

I. General Provisions.

(a) Any school district pursuant to an article in the warrant for any annual or special meeting may vote to create a planning committee in the following manner:

(1) The question shall be placed on the warrant of a special or annual school district meeting, which body shall have final authority to adopt the provision to create a planning committee.

(2)(A) In districts without annual meetings, the legislative body of the school district shall consider and act upon the question in accordance with their current procedures. To the extent and if permitted by local ordinance, upon submission to the legislative body within 60 days of the legislative body's vote of a petition signed by 100 or by 2 percent, whichever is less, of the registered voters, the legislative body shall place the question on the official ballot for any regular election otherwise in accordance with their current procedures for passage of referenda.

(B) The school district legislative body shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in media of general availability and usage at least 7 days before the hearing.

(C) In the event that the referendum is nonbinding, the question shall be returned for reconsideration to the legislative body which shall have final authority to adopt the provision to create a planning committee.

(D) In the event that the referendum is binding, the public vote shall be the final and binding authority to adopt the provision to create a planning committee.

(3) The planning committee shall consist of the following members:

(A) Two local school board members, appointed by the local school board.

(B) One member of the financial committee having the statutory authority to make recommendations concerning school budgets, ap-

pointed by the financial committee. In communities with no such financial committee, the number of public members under subparagraph (a)(3)(C) shall be increased to 5.

(C) Four public members representing the community at large, appointed by the school district moderator or, for districts without an annual meeting, the legislative body of the school district.

(D) The superintendent, who shall be a nonvoting member of the committee.

(4)(A) The first-named school board member shall call the first meeting which shall be no later than 30 days from the date of his or her appointment. All planning committee meetings shall comply with RSA 91–A.

(B) At the first meeting, a chairperson shall be elected by the members.

(C) A notice of all meetings of the planning committee shall be posted in all school districts in the existing school administrative unit and in any new school administrative unit which may be created as a result of organization, reorganization, or withdrawal.

(D) All meetings shall allow time for public comment.

(5) The members of the committee shall serve without pay for a term ending:

(A) At the annual meeting of the district next following the creation of the committee, if the committee is created at an annual meeting; or

(B) One year from the date of appointment, if the committee is created at a special meeting.

(C) One year from the date of appointment, if appointed in districts without annual meetings.

(6) Vacancies on the committee shall be filled by the appropriate appointing authority for the balance of the unexpired term.

(7) The district may appropriate money to meet the expenses of the committee at the meeting at which it is created or at any subsequent district meeting notwithstanding the provisions of RSA 32 or RSA 197:3, and such expenses may include the cost of publication and distribution of reports.

(8) A planning committee shall act by a majority vote of its total membership.

(b) If the planning committee chooses to recommend organization of, reorganization of, or withdrawal from a school administrative unit, it shall prepare a plan which complies with the requirements of this section.

(1) Before final approval of a plan by the planning committee, it shall hold at least one public hearing on the plan within the proposed school administrative unit and shall give such public notice of the hearing at least 2 weeks before the hearing and in all affected school districts.

(2) The plan for organization of, reorganization of, or withdrawal from a school administrative unit shall be submitted to the state board of education.

(3) The plan shall be submitted to the voters in accordance with the procedures outlined in this section.

(4) If the voters fail to vote in the affirmative by the $\frac{3}{5}$ vote required, the school district may submit the plan to the voters at the next annual school district meeting. If the plan fails to receive the necessary $\frac{3}{5}$ vote a second time, the school district shall not offer another warrant article seeking to create a planning committee for a period of 2 years after the date of the second vote by the district.

(c) If the planning committee chooses not to recommend organization, reorganization, or withdrawal from a school administrative unit, that recommendation shall be submitted to the voters of the school district at the next annual school district meeting.

(1) If a majority of voters present and voting vote in the affirmative, the recommendation shall be accepted.

(2) If a majority of voters present and voting reject the recommendation, the vote shall represent a vote to create a new planning committee in accordance with RSA 194–C:2, II and that planning committee shall prepare a plan for organization, reorganization, or withdrawal from a school administrative unit which meets the requirements of this section.

II. ORGANIZATION.

(a) The planning committee shall:

(1) Study the advisability of establishing a school administrative unit in accordance with this chapter, its organization, operation, and control, and the advisability of constructing, maintaining, and operating a school or schools to serve the needs of such school administrative unit.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact on the school districts within the existing school administrative unit and on any new school administrative unit which may be created, and prepare a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the organization of a school administrative unit, it shall prepare a plan to provide superintendent services which meet the requirements set forth in RSA 194–C:4 for the proposed school administrative unit, and a transition plan and timeline which includes consideration of transition budgets and staffing and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee shall submit a copy of the proposed plan to the several school districts within the existing school administrative unit and the school districts in any new school administrative unit which may be created as a result of organization, and shall hold at least one public hearing no less than 14 days prior to submission to the state board.

(d) The state board of education shall review the proposed plan within 60 days of receipt to determine whether the plan complies with the requirements of this section and RSA 194–C:4. If, in the opinion of the state board, all requirements have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(e) If the state board of education determines that all requirements of this section and RSA 194–C:4 have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194–C:4. This recommendation shall be reported to the legislative body of the district. The state board shall not have veto power over any plan once it is resubmitted to the state board by the planning committee.

(f) The state board shall submit the organization plan to the school boards of the districts for acceptance by the districts as provided in subparagraph (c). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the proposed school administrative unit.

(g) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school districts under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194–C providing for the organization of a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(h) If ⅗ of the votes cast on the question in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that ⅗ majority of the votes cast in each district meeting have voted in favor of the establishment of the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the school administrative unit as of the date of its issuance.

III. Reorganization.

(a) The planning committee shall:

(1) Study the advisability of reorganizing school administrative units in accordance with this chapter, their organization, operation, and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of reorganized school administrative units.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the reorganization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact of the reorganized school administrative unit on any remaining districts in the school administrative unit and on the school districts in any new school administrative unit which may be created as a result of reorganization, and a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the reorganization of a school administrative unit, it shall prepare a plan to provide superintendent services which meet the requirements set forth in RSA 194–C:4 for the proposed reorganized school administrative unit, and a transition plan and timeline which includes consideration of transition budgets and staffing and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee may submit to the board of an existing school administrative unit, a plan for joining the existing school administrative unit. If approved, the plan shall be submitted to the state board of education and the school district voters in accordance with this section.

(d) The planning committee shall submit a copy of the proposed plan to the several school districts and shall hold at least one public hearing no less than 14 days prior to submission to the state board. Within 60 days, the state board of education shall review the proposed plan for administrative structure and to determine whether or not the proposed plan complies with the requirements of this section and RSA 194–C:4

(e) If in the opinion of the state board, all requirements of this section and RSA 194–C:4 have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(f) If the state board of education determines that all requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194–C:4. This recommendation shall be reported to the legislative body of the district. The state board shall not have veto power over any plan once it is resubmitted by the planning committee.

(g) The state board shall submit the reorganization plan to the school boards of the districts for acceptance by the districts as provided in subparagraph (d). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the proposed school administrative unit.

(h) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school districts under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194–C providing for the reorganization of a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(i) If 3/5 of the votes cast on the question in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that 3/5 majority of the votes cast in each district meeting have voted in favor of the reorganization of the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the school administrative unit as of the date of its issuance.

IV. WITHDRAWAL.

(a) The planning committee shall:

(1) Study the advisability of the withdrawal of a specific school district from a school administrative unit in accordance with this chapter, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such school district.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact of the withdrawing district on any school districts remaining in the school administrative unit and a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the withdrawal from a school administrative unit, it shall prepare a plan for organization or reorganization. The plan shall include providing superintendent services, which meet the requirements set forth in RSA 194–C:4, and a transition plan and timeline, which includes consideration of transition budgets and staffing for the withdrawing district, and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee may submit to the board of an existing school administrative unit, a plan for joining the existing school administrative unit. If approved, the plan shall be submitted to the state board of education and the school district voters in accordance with this section.

(d) The planning committee shall submit a copy of the proposed plan to the several school districts and shall hold at least one public hearing no less than 14 days prior to submission to the state board. Within 60 days, the state board of education shall review the proposed plan for administrative structure and to determine whether or not the proposed plan complies with the requirements of this section and RSA 194–C:4.

(e) If in the opinion of the state board, all requirements have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(f) If the state board of education determines that all requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194–C:4. This recommendation shall be reported to the legislative body of the school district. The state board shall not have veto power over any plan once it is resubmitted by the planning committee.

(g) The state board shall submit the plan for district withdrawal from a school administrative unit to the school board of the withdrawing district for acceptance by the district as provided in subparagraph (h). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the district which proposes to withdraw from a school administrative unit.

(h) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school district under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194–C providing for the withdrawal from a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(i) If 3/5 of the votes cast on the question in the withdrawing district shall vote in the affirmative, the clerk of that district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that 3/5 of the votes cast in that district meeting have voted in favor of withdrawing from the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the new, single district school administrative unit as of the date of its issuance.

Source. 1996, 298:3. 1997, 245:1–3. 1999, 287:1, 3, eff. Sept. 14, 1999. 2010, 5:1, eff. June 18, 2010.

194–C:3 Single District School Administrative Units; Exemption. Single district school administrative units shall be considered the same as a single school district and shall be exempt from meeting the requirements of this chapter, except that they shall provide superintendent services pursuant to RSA 194–C:4.

Source. 1996, 298:3, eff. Aug. 9, 1996.

194–C:4 Superintendent Services. Each school administrative unit or single school district shall provide the following superintendent services:

I. An educational mission which indicates how the interests of pupils will be served under the administrative structure.

II. Governance, organizational structure, and implementation of administrative services including, but not limited to:

(a) Payroll, cash flow, bills, records and files, accounts, reporting requirements, funds management, audits, and coordination with the treasurer, and advisory boards on policies necessary for compliance with all state and federal laws regarding purchasing.

(b) Recruitment, supervision, and evaluation of staff; labor contract negotiation support and the processing of grievances; arrangement for mediation, fact finding, or arbitration; and management of all employee benefits and procedural requirements.

(c) Development, review, and evaluation of curriculum, coordination of the implementation of various curricula, provisions of staff training and professional development, and development and recommendation of policies and practices necessary for compliance relating to curriculum and instruction.

(d) Compliance with laws, regulations, and rules regarding special education, Title IX, the Americans with Disabilities Act, home education, minimum standards, student records, sexual harassment, and other matters as may from time to time occur.

(e) Pupil achievement assessment through grading and state and national assessment procedures and the methods of assessment to be used.

(f) The on-going assessment of district needs relating to student population, program facilities and regulations.

(g) Writing, receiving, disbursement, and the meeting of all federal, state, and local compliance requirements.

(h) Oversight of the provision of insurance, appropriate hearings, litigation, and court issues.

(i) School board operations and the relationship between the board and the district administration.

(j) The daily administration and provision of educational services to students at the school facility including, but not limited to, fiscal affairs; staff, student, and parent safety and building issues; and dealing with citizens at large.

(k) Assignment, usage, and maintenance of administrative and school facilities.

(*l*) Designation of number, grade or age levels and, as applicable, other information about students to be served.

(m) Pupil governance and discipline, including age-appropriate due process procedures.

(n) Administrative staffing.

(*o*) Pupil transportation.

(p) Annual budget, inclusive of all sources of funding.

(q) School calendar arrangements and the number and duration of days pupils are to be served pursuant to RSA 189:1.

(r) Identification of consultants to be used for various services.

Source. 1996, 298:3, eff. Aug. 9, 1996. 2010, 5:2, eff. June 18, 2010.

194–C:5 Organization and Duties.

I. The school board of each school administrative unit shall meet between April 1 and June 1 in each year, at a time and place fixed by the chairpersons of the several boards, and shall organize by choosing a chairperson, a secretary, and a treasurer.

II. (a) Each school administrative unit shall provide superintendent services to be performed as required by RSA 194–C:4. School districts shall not be required to have a superintendent and may assign these services to one or more administrative personnel working full or part-time; or such services may be independently contracted.

(b) The state board may establish certification requirements for superintendents in smaller and larger districts, and may designate services in addition to those established in RSA 194–C:4.

(c) Other administrative positions may be established, but only after 50 percent or more of the school districts in the school administrative unit representing 60 percent of the total pupils in the school administrative unit has voted favorably upon the establishment of the position.

III. The school board of each school administrative unit shall fix the salaries of all school administrative unit personnel, shall apportion the expense of the salaries and benefits among the several districts, and shall certify the apportionment to their respective treasurers and to the state board of education. The school administrative unit board shall have the authority to remove superintendents and other administrators.

Source. 1996, 298:3, eff. Aug. 9, 1996.

194–C:6 Federal Assistance. School administrative unit boards are hereby authorized to cooperate with the federal government or any agency thereof to request, receive and expend federal funds for educational purposes. The receipt and expenditure of federal funds by a school administrative unit shall be accounted for in the same manner as established for federal funds processed through local school districts. Each school administrative unit is hereby directed to establish separate from its operating budget a federal grant account.

Source. 1996, 298:3, eff. Aug. 9, 1996.

194–C:7 Representation. Every school district maintaining one or more public schools shall be entitled to 3 votes on the joint board of school administrative units, plus additional votes as provided in RSA 194–C:8. Districts not maintaining schools shall have one representative on the joint board, who shall be entitled to one vote. Each school district board member present shall be entitled to have a proportionate share of the school district's votes provided that the total votes per district shall be equally divided among the district's board members present and cast as each member present decides on any issue.

Source. 1996, 298:3. 1999, 287:2, eff. Sept. 14, 1999.

194–C:8 Weighted Voting. In all votes regarding school administrative unit affairs, including the organization of such unit's school board and selection of officers, each district shall be entitled to one vote for each 16 pupils residing in that district and enrolled in schools under the administrative unit. A balance of 8 or more students shall entitle that district to an additional vote. A balance of fewer than 8 students shall have no net effect on a district's vote. Enrollments shall be based on the average daily membership in residence of each district for the school year which ended in the preceding June. Weighted votes shall only be used upon the demand of a majority of the members of any board present and voting in the school administrative unit. The school board members present at a school administrative unit school board meeting shall be entitled to cast the entire number of votes assigned to their school districts, provided that each representative present shall be entitled to a proportionate share of the total to be cast as provided in RSA 194–C:7.

Source. 1996, 298:3, eff. Aug. 9, 1996.

194–C:9 Budget.

I. At a meeting held before January 1, the school administrative unit board shall adopt a budget required for the expenses of the school administrative unit for the next fiscal year, which budget may include the salary and expenses of supervisors of health, physical education, music, art, and guidance, and any other employees, and shall include the expenses necessary for the operation of the school administrative unit. Superintendents, assistant superintendents, business administrators, teacher consultants, and the regularly employed office personnel of the school administrative unit office shall be deemed employees of the school administrative unit for the purposes of payment of salaries and contributions to the employee's retirement system of the state of New Hampshire and workers' compensation. The school administrative unit board shall apportion the total amount of the budget among the constituent school districts in the following manner: the apportionment shall be based ½ on the average membership in attendance for the previous school year and ½ on the most recently available equalized valuation of each district as of June 30 of the preceding school year. Prior to January 15 in each year, the board shall certify to the chairperson of the school board of each constituent school district the amount so apportioned. Each district within a school administrative unit shall raise at the next annual district meeting the sum of money apportioned to it by the school administrative unit board for the expenses of services which each district received in connection with the school administrative unit office. The school administrative unit board in adopting the budget shall not add any new service to the school administrative unit budget unless a majority of the school districts in the school administrative unit representing not less than 60 percent of the total pupils in the school administrative unit have voted favorably upon the establishment of the service. A vote to accept a new service shall not be construed as a vote to raise and appropriate money within the meaning of RSA 197:3.

II. The provisions of paragraph I shall not apply to school administrative units comprising only one district. The budget for these units shall be a part of the school district budget and subject to the vote of the annual school district meeting or, for those districts without an annual meeting, by the legislative body.

III. Paragraph I of this section shall not apply to school districts which have adopted the provisions of RSA 194–C:9–a.

Source. 1996, 298:3. 2003, 279:1, eff. Sept. 16, 2003.

194–C:9–a Alternative Budget Procedure; Method of Adoption.

I. (a) Each school district, within a school administrative unit that is composed of 2 or more school

districts, may vote to adopt the provisions of RSA 194–C:9–b to determine the means for adopting the school administrative unit budget by placing a question on the warrant of their next annual school district meeting. The question shall be voted on in accordance with the ballot and voting procedures in effect in that school district.

(b) The wording of the question shall be: "Shall the voters of the _____ school district within school administrative unit number _____ adopt the provisions of RSA 194–C:9–b to allow for insertion of the school administrative unit budget as a separate warrant article at annual school district meetings?"

(c) If a majority of the voters voting in the school districts within the school administrative unit approve the question, then RSA 194–C:9–b shall apply starting with the next annual school district meeting of the school districts within that school administrative unit, and shall continue until rescinded. Each school district moderator shall cause a vote by secret ballot to be taken, record the number of yeas and nays, and announce the result of the vote at the annual meeting. The ballots shall be delivered to the moderator of the school district with the latest chronological annual meeting. The moderator of the latest chronological annual meeting shall record the total number of yeas and nays, announce the results of the final vote on the method of adopting the school administrative unit budget, and deliver the ballots to the secretary of the school administrative unit. The secretary of the school administrative unit board shall certify the results to the department of revenue administration.

II. If, in any year, the question presented to the voters in subparagraph I(b) is not adopted, the question may be resubmitted as part of the warrant of the next annual school district meeting, provided each school district within the school administrative unit complies with the petition procedure set forth in RSA 197:6.

III. In order to rescind the adoption of RSA 194–C:9–b, each school district within the school administrative unit shall comply with the petition procedure set forth in RSA 197:6 and upon such compliance, a question shall be placed on the warrant of the next annual school district meeting. The wording of the question shall be: "Shall the voters of the _____ school district within school administrative unit number ___ rescind the adoption of RSA 194–C:9–b, relative to the alternative school administrative unit budget adoption procedure, and adopt the provisions of RSA 194–C:9 as the method for governing the adoption of the school administrative unit budget?" If a majority of the voters voting in the school districts within the school administrative unit approve the question, then the provisions of RSA 194–C:9 shall govern the procedure for adopting the school administrative unit budget in such school administrative unit. Each school district moderator shall cause a secret ballot vote to be taken, record the number of yeas and nays, and announce the result of the vote at the annual meeting. The ballots shall be delivered to the moderator of the school district with the latest chronological annual meeting. The moderator of the latest chronological annual meeting shall record the total number of yeas and nays, announce the results of the final vote on the question of adopting the school administrative unit budget adoption method, and deliver the ballots to the secretary of the school administrative unit. The secretary of the school administrative unit board shall certify the results to the department of revenue administration.

IV. After a vote to adopt or rescind the alternative school administrative unit budget procedure, the secretary of the school administrative unit shall place the ballots and all envelopes or wrapping which had previously contained them in a suitable container showing the contents and the date of the vote. The ballots shall be retained for 60 days from the date of the vote or any recount, unless further preservation is necessary or unless disposal is enjoined by the superior court.

V. Any registered voter who resides in a school district within the school administrative unit may, in writing, petition the secretary of the school administrative unit for a recount of the vote no later than the Friday following the latest chronological annual meeting of school districts in the school administrative unit. The secretary shall schedule a recount, to be conducted by the school administrative unit, not earlier than 5 days nor later than 10 days after the date the secretary receives the petition.

VI. For any town which has adopted a charter under RSA 49–D:3, the method of adoption shall be the manner of amending the charter as provided under RSA 49–B.

Source. 2003, 279:2. 2004, 75:1–3, eff. May 7, 2004. 2012, 7:1, 2, eff. Mar. 22, 2012.

194–C:9–b Alternative Budget Procedure.

I. In a school administrative unit composed of 2 or more school districts which has adopted the provisions of RSA 194–C:9–a, the school administrative unit budget adopted according to RSA 194–C:9, I

shall be placed before the voters of each school district of that school administrative unit in a separate warrant article at the annual school district meeting. Notwithstanding RSA 32 and RSA 40:13, the budget adopted by the school administrative unit board shall not be amended or changed in any way prior to the vote. Each school district moderator shall cause a vote by paper ballot to be taken, record the number of yeas and nays, and announce the result of the vote at the annual meeting. The ballots shall be delivered to the moderator of the school district with the latest chronological annual meeting. The moderator of the latest chronological annual meeting shall record the total number of yeas and nays, announce the results of the final vote on the question of adopting the school administrative unit budget, and deliver the ballots to the secretary of the school administrative unit. The secretary of the school administrative unit board shall certify the results to the department of revenue administration. A majority of voters voting in favor shall result in adoption of the budget proposed by the school administrative unit board. If the article receives less than a majority vote, the budget amount accepted shall be that of the previous year adjusted for continuing contracts. Wording of the warrant article shall be as follows:

"Shall the voters of _____ (name of school district) _____ adopt a school administrative unit budget of $_____ for the forthcoming fiscal year in which $_____ is assigned to the school budget of this school district?

This year's adjusted budget of $_____, with $_____ assigned to the school budget of this school district, will be adopted if the article does not receive a majority vote of all the school district voters voting in this school administrative unit."

II. After a vote on the school administrative unit budget, the secretary of the school administrative unit shall place the ballots and all envelopes or wrapping which had previously contained them in a suitable container showing the contents and the date of the vote. The ballots shall be retained for 60 days from the date of the vote or any recount, unless further preservation is necessary or unless disposal is enjoined by the superior court.

III. Any registered voter who resides in a school district within the school administrative unit may, in writing, petition the secretary of the school administrative unit for a recount of the vote no later than the Friday following the latest chronological annual meeting of school districts in the school administrative unit. The secretary shall schedule a recount, to be conducted by the school administrative unit, not earlier than 5 days nor later than 10 days after the date the secretary receives the petition.

IV. This section shall not apply to a school administrative unit that includes a city.

Source. 2003, 279:2. 2004, 75:4, eff. May 7, 2004. 2012, 7:3, eff. Mar. 22, 2012.

194–C:10 Public Hearing. Before final adoption of the school administrative unit budget as provided in RSA 194–C:9, at least one public hearing shall be held within the school administrative unit, at a time and place specified by the school administrative unit board chairperson, upon a preliminary budget prepared by the school administrative unit board. Notice of such public hearing and a summary of the preliminary budget shall be submitted by the secretary of the board for publication in a newspaper of general circulation in the school administrative unit at least 7 days prior to the date of the hearing. The budget, subsequent to its final approval by the school administrative unit board, shall be posted in a public place in each constituent school district and given such other publication as the school administrative unit board may determine.

Source. 1996, 298:3, eff. Aug. 9, 1996.

194–C:11 Legislative Oversight Committee.

[Repealed 2014, 321:2, I, eff. Sept. 30, 2014.]

History

Former RSA 194–C:11, which was derived from 2004, 244:2, related to the establishment of a legislative oversight committee.

194–C:12 Duties of the Legislative Oversight Committee.

[Repealed 2014, 321:2, II, eff. Sept. 30, 2014.]

History

Former RSA 194–C:12, which was derived from 2004, 244:2, related to the duties of the legislative oversight committee.

CHAPTER 194–D

OPEN ENROLLMENT SCHOOLS

194–D:1 Definitions. In this chapter:

I. "Open enrollment public school" or "open enrollment school" means any public school which, in

addition to providing educational services to pupils residing within its attendance area or district, chooses to accept pupils from other attendance areas within its district and from outside its district.

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

III. "Pupil" means any child who is eligible for attendance in public schools in New Hampshire, and who lives with a parent.

IV. "Receiving district" means the school district to which a pupil is sent to attend an open enrollment school.

V. "Resident district" means the school district in which the pupil resides.

VI. "School board" means the school district school board.

VII. "Sending district" means the school district in which the pupil resides.

VIII. "State board" means the state board of education.

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

Source. 2009, 241:14, eff. Sept. 14, 2009.

194–D:2 Establishment; Parental Choice; Admission.

I. Any school district legislative body may vote to designate one or more of its schools as an open enrollment school.

II. Open enrollment schools shall operate under the same laws, rules, and policies as any other public school, except as provided in this chapter.

III. No public school, except a chartered public school, shall be required to be an open enrollment school.

IV. A school district may predetermine the number of pupils residing outside an open enrollment school's district or attendance area it deems appropriate to accept.

V. Applications may be made on behalf of eligible pupils to more than one open enrollment school within the state.

VI. Every open enrollment school shall make available information about its curriculum and policies to all persons, and parents and pupils considering enrollment in that school.

VII. There shall be no application fee for pupil admission to any open enrollment school.

VIII. A pupil who meets the admission requirements of an open enrollment school, and who is a resident of the district where the school is located, shall be given absolute admission preference over a nonresident pupil. Once admitted and unless expelled, open enrollment school pupils need not reapply for admission for subsequent years.

IX. Attendance at an open enrollment school for the purposes of transportation shall not constitute assignment under the provisions of RSA 189:6 and RSA 189:8. Pupils who reside in the school district in which the open enrollment school is located shall be provided transportation to that school by the district on the same terms and conditions as provided for in RSA 189:6 and RSA 189:8 and that transportation is provided to pupils attending other public schools within that district. However, any added costs for such transportation services shall be borne by the open enrollment school. For the purposes of open enrollment, neither the sending nor the receiving school district shall be obligated to provide transportation services for pupils attending an open enrollment school outside the pupil's resident district.

X. Upon approval by each of the district's legislative bodies and after a public hearing, 2 or more school districts may consolidate otherwise eligible resident pupils into one applicant pool for the purposes of an admissions lottery for designated open enrollment schools.

Source. 2009, 241:14, eff. Sept. 14, 2009.

194–D:3 Procedure for Adoption and Rescission; Limitations.

I. Any school district may adopt the provisions of RSA 194–D, to adopt an open enrollment school program, in the following manner:

(a) A question shall be placed on the warrant of a special or annual school district meeting which body shall have final authority to adopt the provisions of this chapter.

(b)(1) In districts without annual meetings, the legislative body of the school district shall consider and act upon the question in accordance with their current procedures. To the extent and if permitted by local ordinance, upon submission to the legislative body within 60 days of the legislative

body's vote of a petition signed by 100 or by 2 percent, whichever is less, of the registered voters, the legislative body shall place the question on the official ballot for any regular election otherwise in accordance with their current procedures for passage of referenda.

(2) The school district legislative body shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(3) In the event that the referendum is nonbinding, the question shall be returned for reconsideration to the legislative body which shall have final authority to adopt the provisions of this chapter.

(4) In the event that the referendum is binding, the public vote shall be the final and binding authority to adopt the provisions of this chapter.

(c)(1) In adopting the provisions of RSA 194–D, a school district shall impose limitations on the number of its resident pupils who may attend open enrollment schools located inside and outside the school district. These limitations shall be represented as any percentage between zero and 100 percent of the school district's current pupil enrollment.

(2) In school districts with annual meetings, where no limitation question receives a majority vote, the limitations applying to the district shall be zero. Where 2 or more conflicting adoption and/or limitation questions receive a majority vote, that combination of adoption and limitation provisions receiving a majority vote granting greatest latitude of parental choice shall apply.

(d) For all limitation questions, the school board shall propose a percentage limitation number. The number may also be proposed by petition. To change limitation percentages, a district need only act upon the relevant limitation questions. Where no limitations are to be changed, no limitation questions shall be presented to the voters.

(e) Adoption and limitation actions shall become effective on July 1 immediately following the action to adopt or limit.

II. (a) A school district which has adopted any provisions of RSA 194–D may rescind its action or modify the limitations imposed in the manner described in paragraph I.

(b) If a majority of those voting vote to rescind the provisions of RSA 194–D or to reduce the percentages of pupils eligible to attend open enrollment schools, then as of July 1 next:

(1) If the percentage of pupils eligible for tuition to attend open enrollment schools in other districts is reduced, a resident pupil enrolled at a school outside the district shall continue to be eligible for tuition for the period necessary to complete the highest grade level offered by the school.

(2) If the percentage of pupils eligible for tuition to attend open enrollment schools in the resident district is reduced, the resident district shall make alternate arrangements in accordance with RSA 189:1–a for the education of any affected pupil.

(c) If a host district rescinds its vote enabling the operation of an open enrollment school located in that district, the open enrollment school may retain its physical location and may continue to receive students and tuition from other districts if any sending district agrees to assume the responsibilities of the host district within 18 months of the effective date of the rescission. The parent of a pupil attending that school may apply to any other open enrollment school eligible to receive pupils under the provisions of this chapter. The pupil's sending district shall not be relieved of its obligation to educate that pupil in accordance with the district's policies.

III. This section shall apply to the establishment of each individual open enrollment school.

IV. Upon approval by each of the district's legislative bodies and after a public hearing, 2 or more school districts may consolidate otherwise eligible resident pupils into one applicant pool for the purposes of an admissions lottery for designated open enrollment schools.

Source. 2009, 241:14, eff. Sept. 14, 2009.

194–D:4 Pupil Selection and Enrollment.

I. (a) Open enrollment schools may set maximum enrollment as they deem appropriate.

(b) Open enrollment schools may limit enrollment to specific grade or age levels, pupil needs, or areas of academic focus including, but not limited to, at-risk pupils, vocational education pupils, mathematics, science, the arts, history, or languages.

(c)(1) Open enrollment schools may select pupils on the basis of aptitude, academic achievement, or

need, provided that such selection is directly related to the academic goals of the school.

(2) If the number of otherwise eligible applicants to a particular open enrollment school exceeds that school's maximum published enrollment, that school shall use lottery selection as a basis for admission.

(3) If the number of otherwise eligible applicants to open enrollment schools located inside and outside the school district exceeds that district's published maximum percentage of pupils authorized to attend such schools, the district shall use lottery selection as a basis for pupil eligibility, and in accordance with RSA 194–D:2, VIII.

II. A pupil may withdraw from an open enrollment school at any time and enroll in a public school where the pupil resides, except that no pupil shall change schools more than once each school year. The school board of the pupil's resident district may waive this limitation after a hearing.

III. A pupil may be suspended or expelled from an open enrollment school based on criteria determined by the principal and teachers in the open enrollment school and in conformance with RSA 193:13. No open enrollment school shall be obligated to enroll an expelled pupil.

IV. For the purpose of this chapter, a pupil enrolled in an open enrollment school shall be considered reassigned to the school district in which the open enrollment school is located for purposes of school attendance.

V. The school board in the district in which the open enrollment school is located may establish policies to implement open enrollment schools as provided in this chapter.

Source. 2009, 241:14, eff. Sept. 14, 2009.

194–D:5 Funding.

I. There shall be no tuition charge for any pupil attending an open enrollment school located in that pupil's resident district. For an open enrollment school authorized by the school district, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department.

II. In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public or open enrollment school shall be the responsibility of the school district and shall retain all current options available to the parent and to the school district.

III. Any federal or other funding available in any year to a sending district shall, to the extent and in a manner acceptable to the funding source, be directed to an open enrollment school in a receiving district on an eligible per pupil basis.

IV. The commissioner of the department of education shall apply for all federal funding available to open enrollment schools under the No Child Left Behind Act, Title I of the Elementary and Secondary Education Act, or other federal source of funds. The commissioner shall expend any such funds received in a manner acceptable to the funding source.

V. A sending district may provide funds, services, equipment, materials, or personnel to an open enrollment school, in addition to the amounts specified in this section in accordance with the policies of the sending school district.

VI. An open enrollment school may accept pupils at tuition rates at less than the amounts established by this chapter.

VII. An open enrollment school may receive financial aid, private gifts, grants, or revenue as if it were a school district.

Source. 2009, 241:14, eff. Sept. 14, 2009.

194–D:6 Budgets.

That portion of a school district's estimated expenditures on open enrollment school tuition shall be shown as a separate line item in a school district's budget.

Source. 2009, 241:14, eff. Sept. 14, 2009.

194–D:7 State Board; Duties.

I. The state board shall adopt rules, pursuant to RSA 541–A, consistent with the provisions of this chapter relative to the administration of open enrollment schools.

II. The state board shall convene one or more working committees to study and make recommendations regarding the implementation and effectiveness of open enrollment schools. The recommendations shall be provided to the legislative oversight committee in RSA 194–B:21.

Source. 2009, 241:14, eff. Sept. 14, 2009.

CHAPTER 195

COOPERATIVE SCHOOL DISTRICTS

195:1 Definitions. The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. "Cooperative school district" means a district composed of 2 or more school districts of the state associated together under the provisions of this chapter and may include either the elementary schools, the secondary schools, or both.

II. "Elementary school" shall mean all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.

III. "Secondary school" shall mean all grades from grade 7 through grade 12, or grade 9 through grade 12.

IV. "Cooperative school board" shall mean a school board serving a cooperative school district.

V. "Pre-existing district" shall mean a district or portion of a district which is included within the boundaries of a proposed or established cooperative school district.

VI. [Repealed.]

VII. "Commissioner" shall mean commissioner of education.

VIII. "Date of operating responsibility" shall mean the date or dates set in the resolution adopted at the organization meeting or in the articles of agreement adopted by the several school districts on which the cooperative school district shall take over operating control of those schools within such district which it was organized to operate. Wherever the words "establishment" or "date of establishment" appear in this chapter, they shall be given a meaning synonymous with "date of operating control".

IX. "Valuation" shall mean the valuation as determined by the commissioner of revenue administration for debt limits, under the provisions of RSA 33.

Source. 1947, 199:1. 1951, 213:1, par. 1. 1953, 225:1. RSA 195:1. 1955, 334:6. 1963, 258:3. 1973, 544:8. 1986, 41:29, VII, eff. April 3, 1988.

195:2 Standards.

I. (a) It is the purpose of this chapter to increase educational opportunities within the state by encouraging the formation of cooperative school districts which will each:

(1) Be a natural social and economic region.

(2) Have an adequate minimum taxable valuation.

(3) Have a number of pupils sufficient to permit the efficient use of school facilities within the district and to provide improved instruction.

(b) The state board of education shall approve articles of agreement for a proposed cooperative school district, or agreements for the enlargement

of a cooperative school district, only after determining that the formation or enlargement of the district will be in accord with such standards and the purposes set forth herein.

II. [Repealed.]

III. ADVISORY POWERS OF BOARD. The board may prepare recommended forms of articles of agreement and existing arrangements for cooperative school districts and may furnish its advisory services to cooperative school district planning boards or school boards who have such matters under consideration.

Source. 1951, 213:1, par. 2. RSA 195:2. 1963, 258:4. 1979, 459:4. 1996, 158:1, 2, eff. July 1, 1996.

195:3 Procedure.

[Repealed 1963, 258:14, eff. July 1, 1963.]

HISTORY

Former RSA 195:3, which was derived from 1947, 199:2; 1951, 213:1, par. 3; 1953, 225:2; 1955, 334:7; and 1961, 206:1, related to procedure in petitioning for organizational meeting. See now RSA 195:18.

195:4 Powers.

I. During the period from the date of the vote of the organization of any cooperative school district organized prior to July 1, 1963, to the date of operating responsibility such cooperative school district shall have all the authority and privileges of a regular school district for bonding purposes, for the construction of school facilities and for all other necessary functions to obtain proper facilities for the provision of a complete program of education. When necessary the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district for the purpose of adopting the budget and to determine the financial appropriations. Such meeting shall have the same authority as an annual meeting for these purposes.

II. ELECTION OF OFFICERS. Every such school district may, as provided in RSA 195:19, adopt a bylaw to specify the number, composition, method of selection, and terms of office of its cooperative school board; provided that its cooperative school board shall consist of an odd number of members, not more than 15 for terms not exceeding 3 years.

III. CHECKLISTS. At the meetings held in the preexisting districts for the purpose of accepting the articles of agreement, or any existing arrangements, and at the organization meeting of the cooperative school district the checklist for each preexisting district shall be used. The school board of any preexisting district which does not have a checklist shall make, post, and correct a list of the voters in the district for use at such meetings as supervisors are required to do in regard to the list of voters in their towns. Thereafter the cooperative school board shall make, post, and correct a list of the voters of the cooperative school district acting as supervisors are required to do, except that such list shall indicate with respect to each voter the preexisting district in which the voter is domiciled. Any 2 members of the cooperative school board shall constitute a quorum at sessions for the correction of the checklist. Notwithstanding the foregoing provisions whenever each of the preexisting school districts is coextensive with the town in which it is located the cooperative school district may, at an annual cooperative school district meeting, under an article in the warrant for such meeting, vote that the supervisors of each town, acting as the supervisors of the cooperative school district, shall make, post and correct in each preexisting district a checklist of the voters in each preexisting district and shall certify the making, posting, and correction of the checklist acting as supervisors of the cooperative school district. At each annual meeting for the election of officers of the cooperative district the checklists prepared by the supervisors in each preexisting district in accordance with the provisions of this paragraph shall be used and the town supervisors from each preexisting district shall attend such annual meeting. The voters of the cooperative district shall be those whose names appear on the checklists as provided by this paragraph. The supervisors shall be paid such compensation as the district may provide.

IV. For purposes of state-wide supervision a cooperative school district shall be a school district.

V. The members of the cooperative school board shall serve with or without remuneration as the district shall determine, but they shall be paid their necessary expenses while upon official business.

Source. 1951, 213:1, par. 4. 1953, 225:3. RSA 195:4. 1961, 44:1; 206:2, 3. 1963, 258:2. 1971, 252:2. 1979, 321:3. 1996, 158:3; 222:14. 2003, 289:18, eff. Sept. 1, 2003.

195:4–a Acceptance by State Board of Education.

[Repealed 1996, 158:19, II, eff. July 1, 1996.]

HISTORY

Former RSA 195:4–a, which was derived from 1955, 334:4, related to acceptance by the state board of the establishment of new cooperative districts.

195:5 School Board; Powers and Duties. The cooperative school board elected at the organization meeting shall organize and take office at the close of such meeting and proceed to assume its responsibili-

ties and duties with respect to the administration and planning of the new cooperative school district; provided, however, that the cooperative board shall have no administrative authority as to the schools in the pre-existing districts until the date of operating responsibility. Thereafter all cooperative school district officers shall assume office at the close of the annual meeting. The cooperative school board shall have the same powers and duties as school boards in school districts as prescribed by RSA 189. Except as provided in this chapter, all the provisions of this chapter or of any other general law relating to or affecting school districts in the state shall apply to cooperative school districts organized as herein provided.

I. CLERK. The cooperative school board shall appoint annually and fix the salary of the district clerk who shall not be a member of the cooperative school board. The district clerk shall serve also as the clerk of the cooperative school board.

II. TREASURER. The treasurer of a cooperative school district shall be appointed by the cooperative school board for one or more terms not to exceed 5 years each, shall not be a member of the cooperative school board, and shall receive for services such sum as the cooperative school board may determine. The treasurer shall, before entering upon the duties of such office, give a bond to the cooperative school district with a surety company authorized to do business within the state in a form approved by the commissioner of revenue administration, and the premium shall be paid by the cooperative school district. The provisions of RSA 21–J:17, applicable to uniform accounting by school districts, shall apply to cooperative school districts.

Source. 1947, 199:4, 5. 1951, 213:1, par. 5. 1953, 225:4. RSA 195:5. 1963, 258:5. 1973, 544:8. 1996, 222:4, eff. Aug. 9, 1996.

195:6 Powers and Duties of Cooperative School Districts.

I. Each cooperative school district shall be a body corporate and politic with power to sue and be sued, to acquire, hold and dispose of real and personal property for the use of schools therein, and to make necessary contracts in relation thereto, and have and possess all the powers and be subject to all the liabilities conferred and imposed upon school districts under the provisions of RSA 194. Whenever a cooperative school district assumes all the functions of a pre-existing district, it shall also assume the outstanding indebtedness and obligations thereof as of the date of operating responsibility; and on such date of operating responsibility the pre-existing districts shall be deemed dissolved, and any and all assets, property and records thereof not previously disposed of shall vest in the cooperative school district, unless otherwise provided in the articles of agreement or existing arrangements.

II. Each cooperative school district shall have the power to borrow money and issue its notes or bonds in conformity with the provisions of RSA 33, provided, however, indebtedness of a cooperative district organized to provide both elementary and secondary schools may be incurred to an amount not to exceed 10 percent of its assessed valuation as last equalized by the commissioner of revenue administration.

III. Whenever only a part of the educational facilities of a local school district are incorporated into a cooperative school district, such local district shall continue in existence and function as previously. The cooperative school district shall assume only those outstanding debts and obligations of the local school district which pertain to the property acquired by the cooperative school district for use by the cooperative school district. In such case no cooperative school district shall for elementary school purposes incur debt to an amount exceeding 5 percent, and for secondary school purposes, if organized for grades 9 through 12, to an amount exceeding 5 percent, and for secondary school purposes if organized for grades 7 through 12, to an amount not exceeding 6 percent of the total assessed valuation of such district as last equalized by the commissioner of revenue administration. No cooperative school district described in this paragraph shall incur indebtedness if it subjects the taxable property of any school district forming a part thereof to debt, when added to the debt of such school district, of more than 10 percent of the total assessed value of such taxable property as last equalized by the commissioner of revenue administration.

Source. 1947, 199:3. 1951, 213:1, par. 6. 1953, 225:5, 6. RSA 195:6. 1955, 334:5, 8. 1957, 126:1, 2. 1959, 209:1, 2. 1963, 258:6. 1973, 544:8. 1996, 158:4, eff. July 1, 1996.

195:7 Costs of Capital Outlay and Operation.

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and operational costs in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

(a) All such costs shall be apportioned on the basis of the ratio that the equalized valuation of each preexisting district bears to that of the cooperative district; or

(b) One-half of all such costs shall be apportioned on the basis of the ratio that the equalized valuation of each preexisting district bears to that of the cooperative district and ½ shall be apportioned on the average daily membership for the preceding year.

(c) Some other formula offered by the cooperative school board with the board's recommendation, adopted by the cooperative school district and approved by the state board of education.

II. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193–A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

Source. 1951, 213:1, par. 7. RSA 195:7. 1955, 334:9. 1959, 195:1. 1961, 206:4. 1996, 158:5; 222:15. 1999, 17:37, eff. April 29, 1999; 281:5, eff. July 16, 1999.

195:8 Reconsideration Procedure. If a cooperative school district was organized prior to July 1, 1963, the basis for the apportionment of all such costs may be subject to review, pursuant to an article for that purpose duly inserted in the warrant for a district meeting to be held at any time after the expiration of the 5-year period measured from the date of the first annual meeting. If the apportionment formula for a cooperative school district has been duly changed, the basis for the apportionment of all such costs may be subject to review, pursuant to an article for that purpose duly inserted in the warrant for a district meeting to be held at any time after the expiration of the 5-year period measured from the date of the meeting at which the last change was made to the cost apportionment formula. In either case, the cooperative school district may then by majority vote elect to apportion all such costs by the adoption of one of the formulas set forth in RSA 195:7, I(a), (b), or (c). Such apportionment may be reviewed in the same manner at any time in order to permit the enlargement of the territory of a school district or an increase in the number of grades for which the district shall be responsible.

Source. 1947, 199:8. 1951, 213:1, par. 8. 1953, 226:8. RSA 195:8. 1955, 334:10. 1959, 195:2. 1961, 206:5. 1963, 258:7. 1996, 158:5; 222:16. 2000, 59:1, eff. June 16, 2000.

195:9 Taking Over Property.

I. Whenever a cooperative school district planning board is formed and it is proposed that a cooperative school district is to be established, the properties belonging to the districts that are to be used by the cooperative district shall be separately appraised by a committee to consist of 3 persons. The commissioner of education shall designate one person on the committee, and the commissioner of revenue administration shall designate 2 persons, one of whom shall be a member of or a qualified appraiser employed by the department of revenue administration. A member who is not in the employ of the state shall be paid $25 per day plus actual expenses in the performance of such member's duties. A member who is in the employ of the state shall not be paid extra compensation other than the state salary, but shall be reimbursed for actual expenses in the performance of such member's duties.

II. All expenses incurred in conducting an appraisal by the persons designated by the commissioner of revenue administration including the salaries and expenses of state employees, shall be paid in the first instance from the appropriation for the department of revenue administration. Likewise, the salary and expenses incurred by the person designated by the commissioner of education, including the salaries and expenses of state employees, shall be paid in the first instance from the appropriation for the department of education. The commissioner of revenue administration and the commissioner of education shall report the amount of money paid by them for the appraisal to the cooperative school district planning board. The planning board shall reimburse the department of revenue administration and the department of education for these expenses. If the planning board does not have sufficient funds to make reimbursement, it shall apportion the expenses among the several districts requesting the appraisal. The reimbursements shall be credited to the appropriations for the department of revenue administration and the department of education.

III. The decision of the committee with respect to the appraisal shall be final. Unless otherwise provided in the articles of agreement, at the next annual assessment a tax equivalent to the total appraised value of the property to be used by the cooperative district shall be levied upon the several districts comprising the cooperative school district in the proportion that the equalized valuation of each bears to the equalized valuation of the whole and there shall be remitted to the taxpayers of each pre-existing district the appraised value of its property. Whenever the cooperative school board decides the foregoing adjustment will work a hardship on any one or all of the pre-existing districts, it may, of its own motion, or upon petition of any of the residents of a pre-existing district provide that such adjustment be made over a period of not exceeding 20 years.

Source. 1951, 213:1, par. 9. RSA 195:9. 1955, 334:11. 1963, 258:8. 1967, 340:1. 1973, 544:11, XXV. 1996, 222:7, eff. Aug. 9, 1996.

195:9–a Property Not Taken Over by District. Whenever a cooperative district is formed and assumes all of the functions of a preexisting school district but does not take over all of the property in a preexisting district, the school board of such preexisting district shall call a special school district meeting prior to the time of establishment of the cooperative district to see what action shall be taken relative to the remaining property. Where such special meeting neglects to dispose of remaining real property, the successor in interest to a preexisting school district that is coextensive with a city or town is the city or town.

Source. 1955, 334:1. 2001, 35:3, eff. June 8, 2001.

195:10 Disposal of Property. Whenever any property of a cooperative school district is disposed of, the proceeds thereof shall be credited to each preexisting district in the same proportion as the costs of making capital improvements are credited.

Source. 1951, 213:1, par. 10, eff. Aug. 13, 1951.

195:11 Continuance of Trust Funds. All trust funds held or enjoyed by any pre-existing district shall be held and applied as the terms of the trust indicate. If such trust allows, the funds may be applied for the same uses and purposes of the cooperative district.

Source. 1951, 213:1, par. 11. RSA 195:11. 1955, 334:12, eff. Aug. 5, 1955.

195:11–a Capital Reserves and Cash Balances. When all of the functions of a school district are to be assumed by a cooperative district the balance of any capital reserve fund established by a school district and any cash balance in the hands of the treasurer or money due the district at the time of establishment of the cooperative district less any outstanding bills or debts other than long term indebtedness which is to become the obligation of the cooperative district, shall be used as a credit against the cooperative district assessment to be raised by the pre-existing district for the first year of operation or may be spread over a period of not more than 5 years as the voters of the pre-existing school district shall determine at either any annual meeting or a special school district meeting called for that purpose prior to the establishment of the cooperative district.

Source. 1955, 334:2, eff. Aug. 5, 1955.

195:12 Budget. At least 30 days prior to the annual meeting, the cooperative school board shall prepare a budget for the ensuing year, after holding at least one public hearing upon a preliminary budget at some convenient place in the district, of which at least 7 days' notice shall have been given, and said budget, subsequent to its final approval by such board, shall be posted in a public place in each preexisting district and given such other publication as the cooperative school board may determine. The provisions of RSA 32 shall apply to a cooperative school district.

Source. 1947, 199:9. 1951, 213:1, par. 12. 1953, 225:7. RSA 195:12. 1963, 258:9. 1996, 158:6, eff. July 1, 1996.

195:12–a Budget Committee.

I. A cooperative school district at an annual meeting, under a proper article in the warrant, may vote to establish a budget committee pursuant to RSA 32:14 and may rescind such action in a like manner. The budget committee shall have the same number of members as the cooperative district school board plus one additional member from the school board as provided in this paragraph. The terms of office and manner of election of members shall be determined in the same manner as for the cooperative school board. Whenever it is voted to establish a budget committee, the moderator in the first instance shall appoint the members of the budget committee, except for the additional member appointed from the school board, within 15 days of the vote establishing the committee. The members appointed by the moderator shall serve until the next annual meeting when the meeting shall elect their successors. No member of the cooperative school board shall be appointed or elected to the budget committee except that the chairperson of the cooperative school board shall appoint a member of the board to serve on the budget committee with all the powers and duties of any other member of the committee. After appointment or election the budget committee shall promptly organize and choose a chairperson, vice-chairperson, and secretary. The secretary shall keep records of the proceedings of the budget committee, which shall be public records open to public inspection.

II. Such cooperative school budget committee shall have the powers and duties of the municipal budget committee under the provisions of RSA 32 insofar as the budget for the cooperative school district is concerned and insofar as RSA 32 is applicable to the cooperative school budget.

III. Such committee shall seasonably provide the cooperative school board with a sufficient number of copies of the budget prepared by it, and the same shall be posted with each copy of the warrant in the manner provided by RSA 195:13.

Source. 1961, 206:6. 1963, 258:10, 10–a. 1967, 136:1, 2. 1971, 252:3. 1979, 321:4. 1996, 158:6, eff. July 1, 1996; 222:17, eff. July 1, 1996.

195:13 Meetings, Annual, Special. A meeting of every cooperative school district shall be held annually between the dates set forth in RSA 197:1 for the choice of district officers, raising and appropriating money for the support of its schools for the fiscal year beginning the next July, and for the transaction of other district business. Special meetings may be called by majority vote of the school board. A special meeting shall be held within 30 days following the receipt by the school board of a petition calling for such a meeting and setting forth the subject matter upon which action is desired signed by at least 5 percent of the voters who are duly registered on the checklists of the district on the date the petition is submitted. The provisions of RSA 197, excepting the provisions of RSA 197:2, shall apply to cooperative school district meetings, except that a copy of the warrant shall be posted in a public place in each preexisting district as well as at the place of meeting.

Source. 1942, 199:10. 1951, 213:1, par. 13. RSA 195:13. 1969, 211:1. 1971, 562:5. 1973, 427:1. 1981, 250:2, eff. Sept. 1, 1981.

195:13–a Additional Polling Places.

[Repealed 1979, 321:2, I, eff. Aug. 21, 1979.]

History

Former RSA 195:13–a, which was derived from 1969, 319:1, related to establishment of additional polling places. See now RSA 671:29.

195:14 Certification of District Taxes.

I. Voted Appropriations.

(a) The cooperative school board shall annually within 20 days of the close of the meeting certify to the commissioner of revenue administration and the state department of education, upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, a certificate of the several appropriations voted by the district and estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require.

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21–J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest.

(c) The commissioner of revenue administration shall certify to the state department of education the amount to be apportioned among the preexisting school districts. This amount shall be the balance before the adequate education grant revenues are applied.

(d) Unless the provisions of RSA 195:14–a are adopted, the state department of education shall determine each municipality's proportional share of the net appropriation after application of the grants as follows:

(1) First, the department shall determine each pre-existing district's proportional share of the amount to be apportioned based on the cooperative school district formula.

(2) Second, the department shall then deduct each pre-existing school district's adequate education grant.

(3) If the resulting amount is less than zero, the department shall reduce the adequate education grant under RSA 198:41 by the difference.

(4) The department shall notify the commissioner of the department of revenue administration of its determination.

(e) Upon certification by the commissioner of revenue administration, the selectmen of each town shall seasonably assess the taxes as provided by law.

(f) The selectmen shall pay over to the treasurer of the cooperative district such portions of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

II. Non-voted Appropriations.

(a) Whenever a cooperative school district assumes any obligations of a preexisting district the cooperative school board shall also certify to the commissioner of revenue administration and the state department of education the amount to be raised by taxation to pay such obligations as they become due, and the state department of education shall determine the proportional part thereof to be borne by each preexisting district and notify the commissioner of revenue administration.

(b) The commissioner of revenue administration shall then add the amount determined under subparagraph (a) to the other sums to be raised by said pre-existing districts and include the same in computing the rate percent of taxation for each

pre-existing district, unless the articles of agreement or existing arrangement provides otherwise.

(c) Whenever a cooperative school district has assumed the obligations of a preexisting district, the amount of each payment of principal and interest on all obligations which have been thus assumed shall be annually assessed and collected without any vote or other act of approval whatsoever.

III. (a) The adequate education grant used in subparagraph I(d) shall be based on the revised estimated revenues contained in the report required in RSA 198:4–d, II.

(b) If the commissioner finds that the actual adequacy grant used in the prior year was inaccurate or inappropriate, the commissioner shall perform a town-specific reconciliation adjustment for each town's estimates in question against the apportionment. The difference between the recomputed apportionment and the apportionment determined under subparagraph (a), and the difference between the actual adequate education grant provided under RSA 198:42 for the prior year and the grant amount estimated in the prior year under subparagraph (a), shall be the basis for the town-specific reconciliation adjustment.

Source. 1947, 199:11. 1951, 213:1, par. 14. RSA 195:14. 1955, 334:3. 1963, 258:11. 1973, 544:8. 1995, 137:5. 1996, 158:7. 1999, 17:38; 281:6–8. 2004, 200:10. 2005, 257:16. 2006, 6:5. 2007, 270:3, eff. June 29, 2007. 2012, 198:8, eff. July 1, 2012.

195:14–a Alternative Method of Apportioning Operating Costs.

I. As an alternative to the apportionment of operating costs set forth in RSA 195:14, the cooperative school board may fix a specific percentage of the state adequate education grant amount received in a given year to be applied to the operating costs of the cooperative school district, before the apportionment of remaining cooperative school district operating costs. Such percentage shall not be less than zero percent and not more than 100 percent and shall be the same in each city or town in the cooperative school district.

II. The question on the adoption of an alternative method of apportioning operating costs shall be proposed as an article in the warrant of the next cooperative school district annual or special meeting pursuant to RSA 195:13. A majority of voters present and voting on the question in each city or town in the cooperative school district shall be required to approve the alternative method of apportioning operating costs. Upon approval, the clerk of the cooperative school district shall send to the state board of education a certified copy of the warrant.

III. The procedure for modification or rescission of an alternative method of apportioning operating costs shall be as set forth in the alternative method of apportioning operating costs and shall not be subject to the provisions of RSA 195:18, III(i). A majority of voters present and voting on the question in each city or town in the cooperative school district shall be required to approve the modification or rescission.

Source. 2004, 244:1. 2006, 6:6. 2007, 270:3, eff. June 29, 2007.

195:15 State Aid. The state aid to which a cooperative elementary and/or secondary district shall be entitled shall be the total of those shares of the aid to which the pupils attending the cooperative district would have entitled the pre-existing districts, had they remained in the pre-existing districts. For the purposes of crediting the cooperative district's adequate education cost to the pre-existing districts, each such pre-existing district shall have its adequate education cost under RSA 198:38, VII credited against its share of the cooperative school district budget. However, cooperative school districts formed by 2 or more pre-existing districts whose boundaries approximate those of a single township in which they are located shall be treated as a single school district for the purposes of this section.

Source. 1947, 199:12. 1951, 213:1, par. 15. RSA 195:15. 1955, 334:13. 1996, 158:8. 1999, 281:9. 2004, 200:11, eff. June 9, 2004.

195:15–a Building Aid. Except as hereinafter provided, for the purpose of receiving state building aid, or other similar aid toward school buildings, which may hereafter be provided, the amount of such aid for cooperative school districts shall apply only to those cooperative or union school districts which were formed from 2 or more districts from 2 or more towns. A cooperative school district formed as a result of a conversion from an authorized regional enrollment area plan shall not be eligible for school building aid for the purchase of property in a pre-existing district which had received building aid for the construction of said building or buildings, provided, however, that any aid for which the pre-existing district is currently eligible shall be continued and shall be paid to the cooperative school district. A cooperative school district formed from 2 or more school districts within one town shall be deemed to be a school district and not a cooperative school district insofar as receipt of state building or other similar aid toward school buildings is concerned. The limitations of this section relative to cooperative school districts formed from districts within one town shall apply only to those which are so organized after July

1, 1955. Such cooperative school district organized prior to July 1, 1955, shall be deemed a cooperative school district for the purpose of receiving such building aid.

Source. 1955, 334:14. 1997, 320:1, eff. July 1, 1998.

195:16 Enlargement of Territory. A cooperative school district organized prior to July 1, 1963 may be enlarged in the following manner:

I. The school board of any school district situated in proximity to an existing cooperative school district may petition the cooperative school board to meet with it to study jointly the advisability and the terms of enlarging the cooperative school district to include such district. It shall thereupon be the duty of the cooperative school board to meet with the other school board as requested and engage in such joint study. After such joint study the 2 school boards may recommend that the cooperative school district be so enlarged, and if they so recommend, they shall submit proposed articles of agreement in writing signed by a majority of each board setting forth in detail:

(a) The date of operating responsibility, when the cooperative district shall assume control of operation of schools within the joining school district, upon which date the joining school district shall cease to exist;

(b) The number, composition, method of selection and terms of office of its cooperative school board, all in accordance with the provisions of RSA 195:19 through 23 inclusive, provided that its cooperative school board shall consist of an odd number of members not more than 15 for terms not exceeding 3 years;

(c) The specific school properties and other assets in the district to be acquired by the cooperative school district and the disposition of those not acquired including the records;

(d) The initial location of the school or schools which will serve the joining school district;

(e) The indebtedness of the joining school district which the cooperative school district is to assume;

(f) The method of apportioning the capital outlay costs and operational costs under RSA 195:7 or under the articles of agreement of the cooperative school district, which method may be different from the formula previously adopted by the cooperative school district notwithstanding the provisions of RSA 195:8 or its articles of agreement;

(g) The manner in which state aid referred to in RSA 195:15 or any other available state aid shall be allocated, unless otherwise expressly provided by law;

(h) Provisions similar to those outlined in RSA 195:18, IV, if desirable; and

(i) Any other matters, not incompatible with law, which the 2 school boards may consider appropriate to include in the agreement.

II. An executed copy of such proposed articles of agreement shall be submitted to the board; and if it finds that the proposed enlargement would be in accord with the standards set forth in RSA 195:2 and approves the agreement, it shall cause the agreement to be submitted to the cooperative school district and to the joining school district for acceptance by each.

III. The cooperative school board and the school board of the joining school district, upon receipt of written notice of such approval by the board, shall cause the agreement to be filed with their respective district clerks and submitted to the voters of their respective districts as soon as may reasonably be possible at duly called meetings, the voting to be by ballot with the use of the checklist, after reasonable opportunity for debate in open meeting. The article in the warrant and the question on the ballot shall be in substantially the following form:

> "Shall the proposed agreement on file with the district clerk, joining _____ school district to _____ cooperative school district be approved?"

Yes _____ No _____

If a majority of the voters present and voting at such meetings in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of meeting. If the board finds that a majority of the voters present and voting in each district meeting have voted in favor of the enlargement, it shall issue its certificate to that effect, and such certificate shall be conclusive evidence of the lawful enlargement of the cooperative school district. Articles of agreement so adopted shall be deemed to amend the inconsistent provisions in any pre-existing articles of agreement of the cooperative school district.

III–a. Within 60 days after the board has issued its certificate of the lawful enlargement of the cooperative school district, the board shall fix a time and place for a special meeting of the qualified voters within the districts, and shall prepare the warrant for the meeting after consultation with school boards of the pre-existing school district and cooperative school

district. The warrant shall include articles for the selection of such school board members as may be necessary as a result of the enlargement and other items of business that require action under the terms of the articles of agreement. The warrant shall be under the hand of the commissioner, in the name of the board, and the commissioner shall cause attested copies of same to be posted at least 14 days before the meeting in 3 public places in each district and a copy of the same to be published at least one week before the date of the meeting in some newspaper generally circulated within the cooperative school district. The expense of posting and publishing the warrant shall be paid by the state. The agent or agents of the commissioner who post and cause publication of the warrant shall make a return thereof, which, with the warrant, shall be made a part of the district records. The meeting shall be called to order by the moderator of the cooperative school district. This meeting shall have the same power and authority as an annual meeting with reference to the raising or appropriating of money. At this meeting and at all future special and annual meetings, qualified voters of the joining district are eligible for participation in all matters of the cooperative school district.

IV. Except for operating responsibility with respect to the schools in the joining district, which authority shall commence on the date specified in the articles of agreement, the cooperative school district and its school board shall have full powers and duties in the enlarged district from the date of the certificate of enlargement.

V. The failure of the voters to approve the acquisition of a school district shall not prevent the commencement of enlargement proceedings under this section with respect to such district thereafter.

Source. 1951, 213:1, par. 16. RSA 195:16. 1963, 258:12. 1969, 70:1. 1971, 252:4, 5. 1996, 158:9, eff. July 1, 1996.

195:16–a Increase or Decrease in Grades. Any cooperative school district may amend its existing arrangement or articles of agreement to increase or decrease the grades for which the cooperative school district provides education. If the cooperative district was organized pursuant to RSA 195:18, it shall proceed by amendment of its articles of agreement. The cooperative school board shall cease responsibility for the excluded school grades as of the date specified in the amended articles of agreement or the existing arrangement.

Source. 1963, 258:13. 1996, 158:9. 1997, 320:3, eff. Aug. 22, 1997.

195:16–b Power of Eminent Domain. Whenever a cooperative school district cannot acquire by purchase a good title to any real estate or interest therein needed by it for its purposes either because of the unwillingness of the owner to sell at a reasonable price, the owner's inability to convey a good title, or for other reason, the cooperative school district may apply by petition to the superior court for the county in which such real estate or interest therein is located to acquire such real estate or interest therein in the name of such district and to have assessed the damages occasioned by the taking. Thereafter the procedure shall follow that prescribed in RSA 498–A.

Source. 1963, 258:13. 1996, 222:9, eff. Aug. 9, 1996.

195:16–c Powers of Superior Court as to Pre-existing Districts. If there shall arise any occasion which shall require the doing of any act or thing by or in behalf of a pre-existing district which has ceased to exist by reason of its inclusion in a cooperative school district, the superior court shall have the power, upon application of 3 registered voters domiciled in the territory of the pre-existing school district, to appoint an agent who, subject to the approval of the superior court, shall have the power on behalf of and in the name of the pre-existing school district to do any act or thing that may be just under the circumstances.

Source. 1963, 258:13. 2003, 289:19, eff. Sept. 1, 2003.

195:17 Effect on Other Statutes.

[Repealed 1996, 158:19, eff. July 1, 1996.]

History

Former RSA 195:17, which was derived from 1951, 213:2, related to other statutes inconsistent with statutory provisions regarding cooperative districts.

Cooperative School Districts Hereafter Formed

195:18 Procedure for Formation of Cooperative School District. Cooperative school districts shall be organized solely in accordance with the following procedure:

I. (a) Any school district pursuant to an article in the warrant for any annual or special meeting may vote to create a cooperative school district planning committee consisting of 3 qualified voters of whom at least one shall be a member of the school board. The members of the committee shall be elected at the meeting at which the committee is created, unless the district determines that they shall be appointed by the moderator. The members of the committee shall serve without pay for a term ending (1) at the third annual meeting of the district following the creation of the committee, if the committee is created at an annual meeting, or (2) at the first annual meeting of the district next following the expiration of 3 years from the date of the creation of the committee, if the

committee is created at a special meeting, or (3) upon the final adjournment of the organization meeting of any cooperative school district of which the district becomes a part. If the term of the committee ends at an annual meeting of the district, the district may create a successor cooperative school district planning committee pursuant to the foregoing provisions. Vacancies on the committee shall be filled by the moderator for the balance of the unexpired term. The district may appropriate money to meet the expenses of the committee at the meeting at which it is created or at any subsequent district meeting notwithstanding the provisions of RSA 32 or RSA 197:3, and such expenses may include the cost of publication and distribution of reports. Cooperative school district planning committees from any 2 or more school districts may join together to form a cooperative school district planning board which shall organize by the election of a chairperson and a clerk-treasurer. The planning board may thereafter admit to membership planning committees from other school districts, but the members of a planning committee shall not be members of more than one planning board at any one time. A cooperative school district planning board shall act by a majority vote of its total membership.

(b) Any school district which votes at any annual or special district meeting to create a cooperative school district planning committee under RSA 195:18 shall elect the members of such committee as provided in RSA 195:18.

II. It shall be the duty of the cooperative school district planning board to study the advisability of establishing a cooperative school district in accordance with the standards set forth in RSA 195:2, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such district; to estimate the construction and operating costs thereof; to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a cooperative school district; and to submit a report or reports of its findings and recommendations to the several school districts.

III. A cooperative school district planning board may recommend that a cooperative school district composed of all the school districts represented by its membership or any specified combination of such school districts be established. The planning board shall prepare proposed articles of agreement for the proposed cooperative school district, which shall be signed by at least a majority of the membership of the planning board, which set forth the following:

(a) The school districts which shall be combined to form the proposed cooperative school district and the name of such cooperative school district.

(b) The number, composition, method of selection and terms of office of its cooperative school board, all in accordance with the provisions of RSA 195:19 through 23 inclusive, provided that the cooperative school board shall consist of an odd number of members not more than 15 for terms not exceeding 3 years.

(c) The grades for which the cooperative school district shall be responsible.

(d) The specific properties of pre-existing districts to be acquired by the cooperative school district and the general location of any proposed new schools to be initially established or constructed by the cooperative school district.

(e) The method of apportioning the operating expenses of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193–A:6, II shall not be included in the average daily membership relative to apportionment formulas.

(f) The indebtedness of any preexisting district which the cooperative school district is to assume.

(g) The method of apportioning the capital expenses of the cooperative school district among the several preexisting districts, which need not be the same as the method for apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the costs of acquiring land and buildings for school purposes, including property owned by a preexisting district; the construction, furnishing and equipping of school buildings and facilities; and the payment of the principal and interest of any indebtedness which is incurred to pay for the same or which is assumed by the cooperative school district. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193–A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

(h) The manner in which the state aid referred to in RSA 195:15, or any other available state aid, shall be allocated, unless it is otherwise expressly provided by the law making such aid available.

(i) The method by which the articles of agreement may be amended with the approval of the board; except that no amendment may permit secession of territory. The provisions adopted under either subparagraph (e) or (g) above may be subject to review pursuant to an article for that purpose duly inserted in the warrant for a district meeting which may be held at any time after the expiration of the 5–year period measured from the date of the first annual meeting. If the apportionment formula for a cooperative school district has been duly changed, the basis for the apportionment of all such costs may be subject to review pursuant to an article for that purpose duly inserted in the warrant for a district meeting which may be held at any time after the expiration of the 5–year period measured from the date of the meeting at which the last change was made to the cost apportionment. However, such provisions may be amended at any time in order to permit the enlargement of a cooperative school district or an increase in the number of grades for which the cooperative school district shall be responsible.

(j) The date of operating responsibility of the proposed cooperative school district, and a proposed program for the assumption of operating responsibility for education by the proposed cooperative school district and any school construction; which the cooperative school district shall have the power to vary by vote as circumstances may require.

(k) Any other matters, not incompatible with law, which the cooperative school district planning board may consider appropriate to include in the articles of agreement.

IV. Notwithstanding the provisions of RSA 195:9, the articles of agreement, or any amendment thereto, may provide for the donation, the sale or the transfer under a lease-purchase agreement of any school property owned by a pre-existing district to the cooperative school district, except that no lease-purchase agreement shall extend for a period of more than 20 years. The adoption of the articles of agreement or any such amendment shall be sufficient authorization for the appropriate school boards to carry out the transaction. Obligations incurred by the cooperative school district in connection with any lease-purchase agreement hereunder shall not be deemed indebtedness of the cooperative school district for the purposes of ascertaining its borrowing capacity.

V. Before final approval of a proposed articles of agreement by the planning board, it shall hold at least one public hearing thereon within the proposed cooperative school district and shall give such notice thereof as it may determine to be reasonable. An executed copy of the proposed articles of agreement shall be submitted by the planning board to the board, and, when the board finds that the same are in accord with the standards set forth in RSA 195:2, it shall approve the same and cause them to be submitted to the school boards of the several pre-existing districts for acceptance by the districts as provided in paragraph VI. Upon such submission, the board shall cause the approved articles of agreement to be published once in some newspaper generally circulated within the proposed cooperative school district at the expense of the state. The planning board may amend a proposed articles of agreement to conform to recommendations of the board after holding a further public hearing thereon with notice as above provided.

VI. Upon the receipt of written notice of the board's approval of the articles of agreement, the school board of each preexisting district which is to be included in the cooperative school district shall cause the articles of agreement to be filed with the clerk of such preexisting district and submitted to the voters of the district as soon as may reasonably be possible at an annual meeting or at a special meeting called for the purpose, the voting to be by ballot with the use of the checklist, after reasonable opportunity for debate in open meeting. The duty to call such meeting for such purpose may be enforced by the superior court in an equity proceeding commenced by any voter or taxpayer of such school district. The article in the warrant for each district meeting and the question on the ballot to be used at the meeting shall be in substantially the following form:

> "Shall the school district accept the provisions of RSA 195 (as amended) providing for the establishment of a cooperative school district, together with the school districts of _____ and _____ etc., in accordance with the provisions of the proposed articles of agreement filed with the school district clerk?"

Yes _____ No _____

If a majority of the voters present and voting in each district shall vote in the affirmative, the clerk of each preexisting district shall forthwith send to the board a certified copy of the warrant, certificate of posting, evidence of publication if required, and minutes of the meeting in such district. If the board finds that a majority of the voters present and voting in each preexisting district meeting have voted in favor of the

establishment of the cooperative school district, it shall issue its certificate to that effect. Such certificate shall be conclusive evidence of the lawful organization and formation of the cooperative school district as of the date of its issuance.

VII. If any pre-existing district fails to vote in the affirmative on the proposed articles of agreement within 90 days after its school board receives notice of approval thereof by the board, such district shall be deemed to have rejected the same. If the proposed articles of agreement fail of adoption as herein required, they may be resubmitted to all or a different combination of the several pre-existing districts either in their original form or as amended by the cooperative school district planning board, with the approval of the board, such articles if amended to be published once by the board as provided in the case of initial articles of agreement in paragraph V, and shall in such case be again acted upon by each district, as provided herein; but, prior to the approval thereof by the board for resubmission, the planning board shall hold one further hearing thereon as provided in paragraph V in the case of initial articles of agreement.

VIII. The board shall fix a time and place for a special meeting of the qualified voters within the cooperative school district for the purpose of organization and shall prepare the warrant for the meeting after consultation with the cooperative school district planning board. The warrant shall include articles for the selection of a school board and other necessary officers, the appropriation of money for the operation of the district, and any other items of business that require action at the organization meeting. The warrant shall be under the hand of the commissioner, in the name of the board, and the commissioner shall cause attested copies of same to be posted at least 14 days before the meeting in 3 public places in each pre-existing district and a copy of the same to be published at least one week before the date of the meeting in some newspaper generally circulated within the cooperative school district. The expense of posting and publishing the warrant shall be paid by the state. The agent or agents of the commissioner who post and cause publication of the warrant shall make a return thereof, which, with the warrant, shall be made a part of the district records. The organization meeting shall have the same power and authority as an annual meeting with reference to the raising or appropriating of money.

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in

percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

X. The provisions of RSA 195:7 and 8 shall not apply to cooperative school districts organized under this section, but all other sections of this chapter shall apply to such districts, except as otherwise expressly provided in this section or in any articles of agreement adopted pursuant hereto.

XI. Notwithstanding the provisions of paragraphs I-X or any other law to the contrary, no single school district that includes a city shall be prohibited from participating in a school district planning committee.

Source. 1963, 258:1. 1971, 252:6, 7. 1973, 544:8. 1991, 148:1. 1996, 158:10–12; 222:11–13, 18. 1999, 17:39, 40; 281:10, 11. 2000, 59:2, eff. June 16, 2000.

Apportionment of Cooperative School Boards

195:19 Statement of Policy. It is the purpose of this subdivision to provide a means for cooperative school districts now existing or hereafter formed to meet the constitutional mandate of one-man one-vote as annunciated by the United States supreme court. It is the intention of the legislature to provide flexibility to the cooperative school district in meeting the requirements of the one-man one-vote doctrine within the limitations of this chapter.

Source. 1971, 252:1, eff. Aug. 22, 1971.

195:19–a Composition of Cooperative School Boards. The number, composition, method of selection, and terms of members of cooperative school boards shall be as provided in the bylaws or articles of agreement of the cooperative school district, as the case may be; provided, however, that such bylaws and articles of agreement shall be limited to the alternatives contained herein where applicable; and provided further that no cooperative school district in existence on August 22, 1971 shall be required to conform hereto unless it is so voted pursuant to RSA 671:9.

I. All members of the cooperative school board shall be elected at large; or

II. The cooperative school district shall be divided into single board member districts according to population with as nearly equal population in each district as possible; or

III. The cooperative school district shall be divided into multiboard member districts or a combination of single member or multimember districts so that proportional representation will be most nearly achieved; or

IV. The members of the cooperative school board shall each be domiciled in and represent a pre-existing district with each pre-existing district having at least one such resident representative but all members of the cooperative school board shall be elected at large; or

V. Such other method of selection of cooperative school board members compatible with proportional representation, one-man one-vote principle as may be approved by the state board of education.

VI. The terms of the members of the cooperative school board shall be as provided in the bylaws or articles of agreement provided that in no case shall such terms exceed 3 years.

VII. Whenever the bylaws or articles of agreement provide for the election of cooperative school board members pursuant to this chapter, said election shall be with the use of the non-partisan ballot system under RSA 669.

Source. 1996, 158:13, eff. July 1, 1996.

195:19–b Reapportionment. Any cooperative school district organized under any of the provisions of RSA 195 or pursuant to any special act may at any regular or special meeting vote to change the number, composition, method of selection, and terms of office of members on the board of the district, provided that in no event shall the board exceed 15 members nor terms exceed 3 years; and may change the apportionment of the board in relation to the pre-existing school districts.

Source. 1996, 158:13, eff. July 1, 1996.

195:19–c Special Provisions for Cooperative School Districts.

I. At the organizational meeting of the cooperative school district, the checklists for each pre-existing district shall be used. The school board of any pre-existing district which does not have a checklist shall make a list of the legal voters in the district for use at such meeting as supervisors are required to do in towns as provided in RSA 654:25-654:31. Thereafter, the cooperative school board shall make, correct and post a list of the legal voters of the cooperative school district acting as supervisors are required to do; except that such list shall indicate with respect to each voter the pre-existing district in which he is domiciled. Notwithstanding the foregoing provisions, whenever each of the pre-existing school districts is coextensive with the town in which it is located, the cooperative school district may, at an annual cooperative school district meeting, under an article in the warrant for such meeting, vote that the supervisors

of each town, acting as the supervisors of the cooperative school district, shall make, correct and post in each pre-existing district a checklist of the voters in each pre-existing district and shall certify to the same acting as supervisors of the cooperative school district and shall attend the cooperative school district meeting. At each cooperative school district election, the checklists prepared by the supervisors in each pre-existing district in accordance with this section shall be used.

II. An updated checklist shall be used at all cooperative school district elections and meetings for the same purposes as checklists are used by towns as provided in RSA 669:5.

III. Notwithstanding any other provision of law, any registered voter on a town or city checklist, who has his domicile within a cooperative school district, shall be eligible to vote at any cooperative school district election or meeting in the district where he has his domicile. The supervisors of the checklists for the various cities and towns within a cooperative school district shall make an appropriate notation on their respective checklists with respect to which school district a registered voter is entitled to vote in.

IV. Notwithstanding any other provision of law, any cooperative school district, which uses the checklists of the cities and towns within the district for an election or meeting pursuant to paragraph III, shall not be required to maintain a separate school district checklist or conduct sessions of the supervisors of the checklist.

Source. 1996, 158:13, eff. July 1, 1996.

195:20 Proportional Representation.

[Repealed 1979, 321:2, II, eff. Aug. 21, 1979.]

History

Former RSA 195:20, which was derived from 1971, 252:1, related to changes in membership and reapportionment of cooperative school boards. See now RSA 671:9.

195:21 Composition of Cooperative School Boards.

[Repealed 1979, 321:2, III, eff. Aug. 21, 1979.]

History

Former RSA 195:21, which was derived from 1971, 252:1, related to composition of cooperative school boards. See now RSA 671:8.

195:22 Method of Proposal. A plan for reapportionment, including the terms of office of members to be elected pursuant thereto, as provided for by RSA 195:19–c:

I. May be submitted to the voters by the school board at any regular meeting of the district, and

II. Shall be submitted to the voters on petition, which shall include the proposed plan, to the school board, signed by no less than 10 percent of the qualified voters in a cooperative district at the next regular meeting or at a special meeting of the district if requested in the petition.

Source. 1971, 252:1. 1996, 158:14, eff. July 1, 1996.

195:23 Tenure of Existing Board Members.

[Repealed 1979, 321:2, IV, eff. Aug. 21, 1979.]

History

Former RSA 195:23, which was derived from 1971, 252:1, related to tenure of cooperative school board members in office under prior apportionment. See now RSA 671:9.

Withdrawal From Cooperative School District

195:24 Withdrawal Vote.

[Repealed 1996, 158:19, eff. July 1, 1996.]

History

Former RSA 195:24, which was derived from 1977, 439:1, relating to the withdrawal vote of a pre-existing school district.

195:25 Procedure for Withdrawal. After the tenth anniversary of the date of operating responsibility, the school board of a cooperative school district may undertake a study of the feasibility and suitability of the withdrawal of one or more member districts from the cooperative district. A similar study shall be undertaken if, after the tenth anniversary of the date of operating responsibility, a pre-existing district shall, by a majority vote on a warrant article at a regular or special town meeting, direct the school board to conduct such a study. The study shall be conducted by a committee composed of at least one member of the school board from each of the pre-existing districts, one member of the board of selectmen from each town, and such other members as may be appointed by the committee. Within 180 days after the date of its formation, the committee shall report its findings to the state board of education. The committee shall submit to the state board of education either a report that withdrawal is not feasible or suitable, or a report that includes a withdrawal plan prepared in accordance with RSA 195:26. If the committee determines that withdrawal is not feasible or suitable, the town which voted to undertake the study may submit a minority report at the same time as the committee report is filed with the state board of education. If the committee report does not include a withdrawal plan, the minority report may include a withdrawal plan prepared in accordance RSA 195:26. If the state board approves a withdrawal plan, whether submitted by the committee or by minority report, the plan shall be submitted to the

voters of the cooperative school district in accordance with RSA 195:29.

Source. 1977, 439:1. 1979, 129:1. 2005, 110:1, eff. June 15, 2005.

195:26 Withdrawal Plan. A plan for the withdrawal of a member district or districts of a cooperative school district shall include the following:

I. The name of the withdrawing district or districts and the grades.

II. The number, composition, method of selection, and terms of office of the school board of the withdrawing district or districts and of the cooperative school board.

III. The method of apportioning the operating and capital expenses among the members of the cooperative school district if a change is to be proposed in conjunction with the withdrawal procedure.

IV. The proposed date of operating responsibility, at which time the withdrawing district shall be responsible for the education of its pupils and after which the cooperative district will no longer have such financial and educational responsibility.

V. The liability of the withdrawing district for its share of any outstanding indebtedness of the cooperative school district as detailed in RSA 195:27.

VI. A plan for the education of all students in the withdrawing school district and for the continuation of the school system of the cooperative district. This shall detail the proposed assignment of students in grades operated by the cooperative and withdrawing district or districts including, if any, tuition arrangements or contracts.

VII. Any other matters, not incompatible with law, which the planning committee may consider appropriate to include in the withdrawal plan.

Source. 1977, 439:1, eff. Sept. 3, 1977.

195:27 Liability of Withdrawing District. Each withdrawing district shall remain liable for its share of the indebtedness of the capital costs of the cooperative school district which is outstanding when the withdrawal vote takes effect, and the withdrawing district shall pay to the cooperative school district annually (a) that percentage of the payments of principal and interest of such debt thereafter due which is the same as the percentage for which the withdrawing district was responsible in the school year immediately preceding the effective date of the withdrawal vote, and (b) all amounts of state aid for the purchase or construction of school buildings and any other state aids which are lost by the cooperative school district after the withdrawal of a district as a result of such withdrawal, as determined by the state board of education, except that the withdrawing district shall not be liable for any indebtedness or loss of state aid or other aid contracted after the district has duly notified the remaining districts in the cooperative that a withdrawal study is being requested. Payments in discharge of such liability shall be made in accordance with a schedule agreed upon by the school board of the cooperative school district and the withdrawing school district or, in the event they fail to agree, as fixed by the state board of education. Such payments shall be deemed to be trust funds and shall be applied by the cooperative school district solely in payment of its indebtedness which was incurred to finance cooperative school facilities and which was outstanding on the effective date of the withdrawal vote. A school district which withdraws from the cooperative school district shall forfeit its equity in any cooperative district schools.

Source. 1977, 439:1, eff. Sept. 3, 1977.

195:28 Disposition of Property. If a pre-existing school district withdraws from the cooperative school district, the cooperative school district shall transfer and convey title to any school building and land located in the withdrawing district to the withdrawing district upon payment by the withdrawing district of the costs of capital improvements and additions to said school building incurred by the cooperative school district, less the share which the withdrawing school district has already paid toward such costs and the share which the withdrawing school district is required to contribute toward such costs as provided in RSA 195:27. The amount of said capital improvements and additions and the time of transfer of title shall be determined by the agreement for withdrawal between the cooperative school district and the withdrawing school district. The withdrawing school district forfeits its equity in all other cooperative school district facilities.

Source. 1977, 439:1, eff. Sept. 3, 1977.

195:29 Vote on Withdrawal. If the state board approves the plan for withdrawal, the board shall cause the withdrawal plan to be published once in some newspaper generally circulated within the cooperative school district. Upon receipt of a written notice of the board's approval of the withdrawal agreement, the school board of the cooperative district shall cause the withdrawal plan to be filed with the clerk of the cooperative school district and submitted to the voters of the district as soon as may reasonably be possible at an annual or special meeting called for the purpose, the voting to be by ballot with the use of the checklist, after reasonable oppor-

tunity for debate in open meeting. The article in the warrant for the district meeting and the question on the ballot to be used at the meeting shall be in substantially the following form:

> "Shall the school district accept the provisions of RSA 195 (as amended) providing for the withdrawal of the pre-existing district of _____ from the _____ cooperative school district in accordance with the provisions of the proposed withdrawal plan filed with the school district clerk?"

Yes _____ No _____

If a majority of the voters present and voting shall vote in the affirmative, the clerk of the cooperative school district shall forthwith send to the state board of education a certified copy of the warrant, certificate of posting, evidence of publication, and minutes of the meeting. If the board finds that a majority of the voters present and voting have voted in favor of the withdrawal plan, it shall issue its certificate to that effect and such certificate shall be conclusive evidence of the withdrawal of the pre-existing district and the continuation of the cooperative school district as of the date of its issuance, or the dissolution of a 2-district cooperative if the cooperative was formed by 2 pre-existing districts, provided, however, that a withdrawal plan shall be prepared for a 2-district cooperative and it shall provide for the disposition of property held within the cooperative and a statement of assumption of liabilities. If a majority of voters present and voting reject the plan, the withdrawing district shall have the right to appeal such vote to the state board of education. The state board shall upon receipt of such appeal investigate and report back to the district on its findings and recommendations; and this report may require that there will be another special meeting for a vote of reconsideration.

Source. 1977, 439:1. 1979, 129:2. 1996, 158:15, eff. July 1, 1996.

195:30 Time of Withdrawal. The vote to withdraw from a cooperative school district shall take effect on July 1 of the calendar year one year subsequent to the date on which the withdrawal vote is passed. A preexisting school district which withdraws from a cooperative school district shall remain a part of the school administrative unit of which it was a member prior to withdrawal unless the withdrawing district complies with the school administrative unit withdrawal process set forth in RSA 194–C:2. After passage of the withdrawal vote and the issuance by the state board of education of its certificate of withdrawal, a special meeting of the voters in the withdrawing district shall be held at a time set by the state board of education. The warrant for this special meeting, approved by the state board of education and signed by the commissioner, shall provide for the election of officers in the withdrawing school district. The commissioner of education shall have authority to appoint officers pro tem as may be necessary and prepare the warrant for the special meeting held to elect officers. This meeting shall have the same power and authority as an annual meeting with reference to the raising or appropriating of money. The district officers elected at said meeting shall take office immediately and shall carry out the duties of their office and may take any action otherwise permitted by law which is necessary in order to carry out the provisions of the withdrawal.

Source. 1977, 439:1. 1979, 129:3, eff. Aug. 4, 1979. 2010, 5:3, eff. June 18, 2010.

195:31 Modification. In the event that the cooperative district adopts the provisions of RSA 194–B, the percentage of pupils authorized by a vote of the cooperative school district shall be permitted to attend a chartered public school which may be established in the district and approved by the voters in accordance with RSA 194–B:3.

Source. 2000, 106:1, eff. July 7, 2000. 2008, 354:1, eff. Sept. 5, 2008. 2009, 241:12, eff. Sept. 14, 2009.

Commission to Study Issues Relating to Pre-Existing Districts Withdrawing from a Cooperative School District

195:32 Commission Established.

[Repealed 2016, 225:2, eff. Nov. 1, 2017.]

History

Former RSA 195:32, which was derived from 2016, 225:1, related to the commission to study pre-existing districts withdrawing from a cooperative school district.

CHAPTER 195–A

AUTHORIZED REGIONAL ENROLLMENT AREA (AREA) SCHOOLS

195–A:1 Definitions. The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. "School district" shall mean a town school district, a special school district, a cooperative school district, an incorporated school district operating within a city, and a city operating a dependent school department.

II. "Elementary school" shall mean a program comprising all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.

III. "Secondary school" shall mean a program comprising all grades from grade 7 through grade 12, or grade 9 through grade 12 and may include a junior high school program comprising grades 7 and 8 or 7, 8 and 9 as well as a high school program.

IV. "Area school" shall mean an authorized regional enrollment area school, which may be elementary or secondary, and which when approved as hereinafter provided, shall be the assigned school for all the resident elementary or secondary pupils of the school districts or portions thereof within the region which it is established to serve.

V. "Sending district" shall mean any school district or portion thereof which sends its resident pupils to an area school located in a receiving district, paying tuition therefor to the receiving district.

VI. "Receiving district" shall mean a school district in which an area school is located.

VII. "School board" shall mean the school board, board of education or school committee of each school district.

VIII. [Repealed.]

IX. "Tuition" shall mean the sum of money which each sending district is obligated to pay to the receiving district to defray the cost of education of each of its resident pupils, for a school year, at the area school in the receiving district to which such pupils are assigned and it may be subdivided into elementary school tuition, junior high school tuition, high school tuition, or any other reasonable combination of grades, and shall be fixed as provided in RSA 195–A:3. Tuition may include an annual rental charge per pupil. The obligation of a sending district to pay tuition to a receiving school shall not be deemed indebtedness of such district for the purpose of determining its borrowing capacity under RSA 33.

X. "Annual rental charge per pupil" shall mean that additional payment included in tuition as defined in paragraph IX which represents a fair charge for building occupancy. It may also include a fair charge for any debt service and reduction of principal, which may become due between date of bond issue and date of building occupancy.

XI. "Date of operating responsibility" shall mean the date on which the area school shall officially open and shall relieve the schools of the sending districts, serving the corresponding grades, of their obligation to operate.

XII. "Meeting of a receiving district" may include any regular or special session of its legislative body in the case of a city with a dependent school department, or of its school board in the case of any separately incorporated school district within a city in which district meetings have been abolished.

Source. 1963, 277:1. 1965, 112:1, 2; 311:1. 1967, 152:1. 1969, 104:7. 1986, 41:29, VIII, eff. April 3, 1988.

195–A:2 Policy and Standards.

I. It is the purpose of this chapter to increase educational opportunities within the state by encouraging the establishment of area schools in the receiving districts which will serve the receiving district and the sending districts throughout a natural social and economic region which has an adequate minimum taxable valuation and a number of pupils sufficient to permit efficient use of such area school facilities and to provide improved instruction. The state board may formulate and adopt additional standards consistent with this purpose and these standards; and the state board shall approve plans for the establishment of area schools only after determining that such establishment will be in accord with such standards and purposes set forth herein.

II. GEOGRAPHICAL PLAN. The state board is authorized and directed to prepare and publish a plan subdividing the territory of the state into suggested regions for area schools indicating the suggested receiving district or districts for the schools of each region, which shall be compatible with the plan for suggested cooperative school districts, and which plan shall meet the standards formulated under paragraph I. This plan shall be reasonably compatible with the

areas of the several school administrative units. From time to time thereafter the state board may modify such plan.

III. Advisory Powers of State Board. The state board may prepare recommended forms of written plans for area schools and for enlargement of the areas served thereby and may furnish its advisory services to area school planning boards or school boards who have such matters under consideration.

Source. 1963, 277:1. 1979, 459:4, eff. Aug. 24, 1979.

195–A:3 Procedure.

I. Any town, city or special school district pursuant to an article in the warrant for any annual or special meeting may vote to create an area school planning committee consisting of 3 qualified voters of whom at least one shall be a member of the school board. The members of the committee shall be elected at the meeting at which the committee is created, unless the district determines that they shall be appointed by the moderator. The members of the committee shall serve without pay for a term ending (a) at the third annual meeting of the district following the creation of the committee, if the committee is created at an annual meeting, or (b) at the first annual meeting of the district next following the expiration of 3 years from the date of the creation of the committee, if the committee is created at a special meeting, or (c) upon issuance by the state board of its certificate that a plan for an area school has been adopted in which the district is a participant. If the term of the committee ends at an annual meeting of the district, the district may create a successor area school planning committee pursuant to the foregoing provisions. Vacancies on the committee shall be filled by the moderator for the balance of the unexpired term. The district may appropriate money to meet the expenses of the committee at the meeting at which it is created or at any subsequent district meeting, notwithstanding the provisions of RSA 32 or RSA 197:3; and such expenses may include the cost of publication and distribution of reports. Area school planning committees from any 2 or more school districts may join together to form an area school planning board, which shall organize by the election of a chairman and a clerk-treasurer. The planning board may thereafter admit to membership planning committees from other school districts, but the members of a planning committee shall not be members of more than one planning board at any one time; provided, however, that a planning board so created may also study the advisability of forming a cooperative school district, if eligible therefor. An area school planning board shall act by a majority vote of its total membership.

II. In cities which operate a dependent school department, the power to create and appoint such an area school planning committee of 3, whose members shall serve for a term of 3 years from date of appointment, is vested in the school board; but the expenses of such planning committee, as defined in paragraph I, shall be raised and appropriated by the legislative body of such city upon certification by the school board. Vacancies on the committee shall be filled by the school board for the balance of the unexpired term, and the school board may create and appoint a successor area school planning committee pursuant to the foregoing provisions.

III. In cities in which there is a separately incorporated school district but where district meetings have been abolished, the power to create and appoint such an area school planning committee of 3, whose members shall serve for a term of 3 years from date of appointment, is vested in the school board who shall also have the power to raise and appropriate money for the expenses of such committee as defined in paragraph I. Vacancies on the committee shall be filled by the school board for the balance of the unexpired term, and the school board may create and appoint a successor area school planning committee pursuant to the foregoing provisions.

IV. It shall be the duty of the area school planning board to study the advisability of adopting an area school plan within the region in accordance with the standards set forth in RSA 195–A:2 and the advisability of establishing or constructing, maintaining and operating an area school or schools to serve the needs of such region; to estimate the construction and operating costs thereof; to estimate the tuition costs; to investigate the methods of financing such area school or schools, and any other matters pertaining to the organization and operation of an area school; and to submit a report or reports of its findings and recommendations to the several school districts.

V. An area school planning board may recommend that there be established an authorized regional enrollment area plan for elementary or secondary schools, or both, or any other reasonable combination of grades, composed of all the school districts represented by its membership or any specified combination thereof. At the time such recommendation is made, the planning board shall prepare a written plan for the proposed regional enrollment area, which

shall be signed by at least a majority of the membership of such board, which shall set forth the following:

(a) The name or names of each area school or schools proposed, and the receiving district in which such schools shall be located;

(b) The sending districts or portions thereof which, together with the receiving district, shall form the region which each area school or schools shall serve;

(c) The grades for which each area school or schools shall be responsible (which may include a combination of elementary and secondary grades or any other reasonable classification);

(d) The formula for calculation of tuition;

(e) The manner in which any form of state aid shall be credited, unless otherwise expressly provided by law;

(f) The existing school buildings in the several school districts which shall be discontinued;

(g) The existing school buildings in the receiving district which shall be designated as an area school or schools including any existing buildings to be initially enlarged;

(h) The proposed new area school building or buildings to be initially constructed in the receiving district and the initial location of same;

(i) The estimated initial enrollment in each area school from each of the sending districts and from the receiving district;

(j) The proposed date or dates of operating responsibility of each planned area school, which date may be subsequently postponed by the state board upon petition of a receiving or sending district, in the event of unforeseen circumstances or for good cause shown;

(k) The scheduled date or dates during each year upon which tuition payments shall be made by the sending districts to the receiving districts and whether the tuition shall be payable in installments, or in a lump sum;

(*l*) Procedure for improvement or changes in curriculum and other school programs and services;

(m) The method, time, and manner in which the plan may be amended, subject to state board approval, where not incompatible with law;

(n) The term of the agreement, which shall be for a minimum of 10 years unless otherwise provided by mutual agreement of the school districts consistent with the provisions of RSA 195–A:3, XI;

(*o*) The manner in which the interests of the school boards of the sending districts will be addressed;

(p) Whether the districts within the area plan shall adopt the provisions of RSA 194–B, and how the adoption of such provisions will affect the districts within the area plan;

(q) Any other matters, not incompatible with law, which the area school planning board may consider appropriate to include in such written plan.

VI. Before finally agreeing upon a proposed regional plan, the area school planning board shall hold at least one public hearing thereon in each district within the proposed region and shall give such notice thereof as it shall determine to be reasonable. An executed copy of the proposed plan shall be submitted by such planning board to the state board, and when the state board finds that such plan is in accord with the provisions of RSA 195–A:2 and of paragraph V of this section and is otherwise lawful and feasible, it shall approve the same and cause it to be submitted to the school boards of the several school districts included in the plan for acceptance by these school districts as provided in paragraph VII. The planning board may amend a proposed regional plan to conform to recommendations of the state board without holding further public hearings thereon.

VII. Upon receipt of written notice of the state board's approval of such plan, the school board of each town or special school district and of each incorporated school district within a city, which is included in the plan, shall cause such plan to be filed with the district clerk and to be submitted to the voters of the district as soon as may reasonably be possible at an annual or special meeting called for the purpose, the voting to be by ballot with the use of the checklist, after reasonable opportunity for debate in open meeting. The duty to call such meeting for such purpose may be enforced by the superior court in an equity proceeding commenced by any voter or taxpayer of such school district. The article in the warrant for such district meeting and the question on the ballot to be used at the meeting, shall be in substantially the following form:

> "Shall the school district accept the provisions of RSA 195–A (as amended) providing for the establishment of an area school or schools located in _____ to serve the following grades _____ from the school districts of _____ and

_____ and _____, etc. in accordance with the provisions of the plan on file with the district clerk?"

Yes ☐ No ☐

VIII. In the case of cities with dependent school departments, the school board shall submit such plan, as approved by the state board, to the city clerk who shall communicate it to the legislative body of such city, and it shall be the duty of such legislative body, as soon as may be reasonably possible, to act upon the question set forth in paragraph VII with such nominal modification in the question as may be necessary, voting by roll call. In the case of any separately incorporated school district within a city in which district meetings have been abolished, the school board shall have power to adopt such plan for the district, voting by roll call on the question set forth in paragraph VII.

IX. If a majority of the voters present and voting in such school district meeting, including the legislative body of a city with a dependent school department and the school board of a city school district which has abolished district meetings, shall vote in the affirmative, the clerk of each school district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting or resolution adopted, as may be applicable to his district. If the state board finds that the plan has been thus adopted by each of the school districts named in the plan, it shall issue its certificate to that effect, which shall be conclusive evidence of the lawful adoption of the plan.

X. If any school district fails to vote in the affirmative on the proposed plan within 90 days after its school board receives notice of approval thereof by the state board, such district shall be deemed to have rejected the same. If the proposed plan fails of adoption by one or more of such school districts as herein required, it may be resubmitted to all or a different combination of such school districts either in its original form or as amended by the area school planning board, with the approval of the state board, and shall in such case be again acted upon by each school district as provided herein, but no further public hearing need be held by the planning board prior to such resubmission.

XI. An area plan adopted by the voters of the sending and receiving districts shall be valid for a minimum of 10 years unless otherwise provided by mutual agreement of the school districts. The area plan may be renegotiated at the request of a sending or receiving district or extended for additional 10-year periods upon a mutual vote of each sending and receiving school district legislative body 2 years prior to the expiration of the area plan.

Source. 1963, 277:1. 1965, 112:3, 4; 311:2, 3. 1969, 104:8. 1998, 271:3. 1999, 15:1; 119:1. 2000, 106:2, eff. July 7, 2000. 2009, 241:13, eff. Sept. 14, 2009.

195–A:4 Application of School Laws. An area school shall be maintained and operated by the receiving district and its school board in accordance with all the general school laws applicable to schools of the grades which it includes, except only as otherwise provided in this chapter. The receiving district shall be obligated to provide for the elementary or secondary school education, or both, of all the resident pupils of the sending districts as well as its own, in accordance with the approved regional plan as adopted under RSA 195–A:3. The sending districts shall be obligated to assign and send their resident pupils to the area school, or schools, in the receiving district as provided in such plan and to raise and appropriate annually the tuition of each such pupil to be paid to the receiving district. The liability to pay tuition may be enforced by the receiving district in an action of debt against a delinquent sending district to be commenced in the superior court for the county in which either district is located. Transportation of resident pupils of the sending districts to the area school shall be governed by the general school laws applicable thereto and shall be the responsibility of each sending district. An area school shall be deemed the assigned school for all resident pupils in the region which it is established to serve, for purposes of the school attendance laws, except as provided in RSA 193:3.

Source. 1963, 277:1, eff. July 1, 1964.

195–A:4–a Exception. Notwithstanding any other provision of law or any agreement between a receiving district and a sending district, the school board of a receiving district and the school board of a sending district may mutually agree upon a showing of hardship by pupils from a sending district to exempt such pupils from any agreement requiring them to attend the receiving district's schools. A pupil exempted from such agreement would make suitable arrangements to attend school outside the receiving district. The sending district shall be liable for tuition payments to the district of actual attendance. Any exception so granted shall be for the period of one school year and shall be renewed only upon mutual agreement between the school boards concerned. In the case of the withdrawal of accredi-

tation by the accrediting agency of the school attended in the receiving district, and by application of the person having custody of the pupil, the board of the sending district may agree to exempt pupils from a sending district from any agreement requiring them to attend the receiving district's schools. If the sending district grants the exemption, this exemption provision shall remain in effect until the accreditation of the receiving school is reinstated. A pupil exempted under this section may complete the academic year in the school to which the pupil is assigned. The provisions of this section shall apply only to area agreements negotiated on or after the effective date of this act unless the agreement indicates otherwise.

Source. 1973, 78:1. 1992, 134:2, eff. July 3, 1992.

195–A:5 Joint School Board Meetings. The state board shall cause to be held, at reasonable intervals, at the request of a school board or school boards of the receiving or sending district, or on its own motion, a joint board meeting of the school boards of all school districts in the authorized regional enrollment area for the purpose of consulting and advising about any and all matters of joint interest. Each school board shall be entitled to 3 representatives at such meetings, which shall be presided over by an agent of the state board designated by the commissioner of education. Such meetings shall be advisory, consultative, and informational in nature and shall not infringe upon the legal authority and responsibility of the school board of the receiving district over the schools within such district.

Source. 1963, 277:1, eff. July 1, 1964.

195–A:6 Area School Property. The legal title to, and administration of, an area school building, land and equipment, shall be vested in the receiving district, but it shall hold such property in trust for the benefit of all the school districts in the authorized regional enrollment area, as their respective equitable interests therein may appear.

Source. 1963, 277:1, eff. July 1, 1964.

195–A:7 Construction of Area Schools. The construction of an area school including the purchase of school buildings, the construction of additions or alterations to existing buildings, the required new construction of such facilities during the life of the plan, the equipment thereof, and necessary land acquisition therefor, shall be the responsibility of the receiving district but it must, at all times, provide facilities of sufficient capacity to meet the estimated educational needs of the receiving and sending districts together. A receiving district may borrow money for such purposes as provided in RSA 33 as amended. However, in calculating whether it is within its debt limit, there shall be charged thereto an amount no greater than its proportionate share of any such required capital outlay, which shall be the proportion which its then estimated enrollment in the area school to be purchased, constructed or enlarged, bears to the then estimated total enrollment therein as determined by order of the state board. Also in determining the debt limit of the receiving district this same proportion of its estimated enrollment in the area school shall apply to any indebtedness outstanding of the receiving district that existed at the time of the date of operating responsibility of the authorized regional enrollment area, when such indebtedness was incurred for facilities which are included in the area school plan. The total amount of such bond or serial note issue shall be general obligations of the receiving district, fully secured by its powers of taxation. Upon application of the school board of the receiving district, that amount of such bond or serial note issue, which is in excess of the proportionate share of the receiving district as determined by the state board, shall be eligible for state guarantee, either on a declining balance basis or as a separate issue fully guaranteed, as the governor and council may decide, in accordance with RSA 195–C. The school board of the receiving district, without vote of the district, shall apply all tuition payments received from sending districts in each year first to the payment of the currently scheduled, or any past due, annual installments of principal or interest on that amount of such bond or serial note issue which is guaranteed by the state; and only after adequate provision has been made therefor may any portion of such revenue be used for other purposes.

Source. 1963, 277:1. 1965, 112:5. 1969, 347:1. 1971, 83:1, eff. June 30, 1971.

195–A:8 Repayment of Loans Made by School Building Authority.

[Repealed 1965, 112:6, eff. May 28, 1965.]

History

Former RSA 195–A:8, which was derived from 1963, 277:1, related to repayment of loans. See now RSA 195–A:7.

195–A:9 Discontinuance of Schools Replaced by an Area School. Upon the date of operating responsibility of an area school, the school buildings of the various sending districts and receiving district which formerly served the same grades as the area school and have been rendered surplus thereby under the approved plan, shall automatically be deemed closed and discontinued notwithstanding the provisions of RSA 194:35 or any other applicable statute, unless the school district in which any such building is

located shall have expressly voted to devote the same to some different educational use.

Source. 1963, 277:1, eff. July 1, 1964.

195–A:10 Area School Aid.

[Repealed 1969, 104:13, eff. June 24, 1969.]

History

Former RSA 195–A:10, which was derived from 1963, 277:1 and 1965, 112:7, related to area school aid. See now RSA 198:19.

195–A:11 Special Aid to Small Area High Schools. In certain areas of the state where due to sparsity of population and distance between centers of population, an area high school cannot be established to serve as many school districts or pupils as would otherwise be standard, the receiving districts in any such small authorized regional enrollment areas as may be approved and established hereunder for a high school, in addition to the aid granted in RSA 198:19, shall be paid annually by the state board, from a fund appropriated by the general court, special supplemental aid in such proportionate amounts from the fund thus made available as may be determined by the state board, in accordance with the relative need of such smaller area high schools, for the purpose of faculty improvement. Such special aid shall be fairly and equitably apportioned by the state board as of June 30 in each year and paid to the eligible receiving districts in the succeeding fiscal year based upon conditions prevailing in the preceding fiscal year. Such special aid shall be deducted from current expenses of operation before tuition is calculated.

Source. 1963, 277:1, eff. July 1, 1964.

195–A:12 Enlargement of Authorized Regional Enrollment Area.

I. The school board of a school district located in proximity to an authorized regional enrollment area, which did not join the plan when it was initially established, may petition the school board of the receiving district of such area to join the area plan. Thereupon it shall be the duty of the 2 school boards to engage in a joint study of the advisability thereof. The 2 school boards acting jointly shall have all the powers of an area school planning board as provided in RSA 195–A:3 and may prepare and sign a written plan which shall contain such of the provisions required by RSA 195–A:3, V, as may be applicable.

II. An executed copy of the proposed plan shall be submitted by the joint board to the state board and thereafter the procedure shall be that prescribed in paragraphs VI, VII, VIII, IX and X of RSA 195–A:3; provided, however, that such plan shall be submitted only to the voters of the receiving district and proposed new sending district and that prior public hearing thereon may be waived by the joint board.

Source. 1963, 277:1. 1965, 112:8, eff. May 28, 1965.

195–A:13 Addition of New Grades to Area Plan. Whenever several school districts have adopted and established an authorized regional enrollment area plan as provided in this chapter but have not applied such plan to all grades of elementary and secondary schools in the area, they may subsequently extend such plan to all or part of the omitted grades by establishing a new area school planning board as provided in RSA 195–A:3 and by proceeding as provided in said section to prepare a supplemental authorized regional enrollment area plan for such additional grades.

Source. 1963, 277:1, eff. July 1, 1964.

195–A:14 Review of Area Plan and Withdrawal of Districts.

I. After the third anniversary of the date of operating responsibility, if requested by either a sending or receiving district governing body, an area school plan review board shall be established. The review board shall consist of 3 members from the school board of each school district which belongs to the area plan, and such members shall be selected by and from their respective school boards. The review board may also include 3 members from the school board of each of any one or more school districts located in proximity to the authorized regional enrollment area. The review board shall organize by the election of a chairman and a clerk, and may adopt rules for the calling and conduct of its meetings. It shall be the duty of the review board to consider the effectiveness of the area school plan as a method for providing improved educational services. If the review board by a majority vote of all its members determines that the area school plan should be modified, it shall submit an amended area school plan to the state board for its approval. An amended area school plan may provide for the addition of one or more new sending districts, the withdrawal of one or more sending districts, the withdrawal of the receiving district, the substitution of a different district as the receiving district, a change in the grades covered by the area plan, or any combination of the foregoing, or for the dissolution of the area; and it shall provide for the equitable adjustment of the rights and responsibilities of each member of the plan, whether present or prospective, with respect to area school facilities. If such provisions include payments from one school

district to another, they may be made over a period of not more than 10 years, but the obligation to make such payments shall not be deemed indebtedness of the obligor school district for the purpose of determining its borrowing capacity under RSA 33. In addition to the foregoing powers, an area school plan review board may act as a cooperative school district planning board pursuant to RSA 195–A:15; and instead of submitting an amended area school plan, the review board may prepare and recommend the adoption of articles of agreement for a cooperative school district.

II. In considering whether to approve an amended area school plan, the state board shall apply the standards set forth in RSA 195–A:2 and shall also consider the capacity of each school district which would be affected by the adoption of the amended area school plan to successfully discharge the educational and financial responsibilities which would result from such adoption. If the state board finds that the adoption of the amended area school plan would be in the best interests of the state and of the school districts affected thereby, it shall so notify the school board of each such school district. Thereafter, each school district, its school board, voters or legislative body, and other appropriate officers, shall deal with the amended area school plan in accordance with the procedures set forth in RSA 195–A:3 as though such amended plan were an original plan being submitted under RSA 195–A:3, except that the form of the question used in each school district shall be prepared by the state board and included in its notice to each district; and the forms of question used in the several districts may be different as circumstances require. If the amended area school plan is adopted, the state board shall issue its certificate to that effect, which shall be conclusive evidence of the lawful adoption of the amended area school plan. If the amended plan is not adopted, no further action with respect to the amended area school plan shall be taken until another area school plan review board has been established pursuant to paragraph I of this section.

III. After the third anniversary of the date of operating responsibility a sending or receiving school district, at an annual or special school district meeting, may vote to undertake a study of the feasibility and suitability of a withdrawal from the area. The study shall be conducted by a committee composed of 2 school board members from each district of the area, the superintendent of schools as a non-voting member, and 2 members of the town or city governing body from the school district requesting the study. Within 180 days after the date of its formation, the committee shall submit to the state board of education either a report that withdrawal is not feasible or suitable or a report that includes a withdrawal plan prepared in accordance with paragraph IV. If the committee determines that withdrawal is not feasible or suitable, the district which voted to undertake the study may submit a minority report at the same time as the committee report is filed with the state board of education. If the committee report does not include a withdrawal plan, the minority report may include a withdrawal plan prepared in accordance with paragraph IV.

IV. A plan for the withdrawal of a district or districts from an area shall include the following:

(a) The name or names of the withdrawing district or districts and the grades.

(b) The proposed date of withdrawal from the area, at which time the withdrawing district shall be responsible for the education of its pupils and after which the area shall no longer have such educational responsibility.

(c) The liability of the withdrawing district for its share of any outstanding indebtedness of the area in accordance with paragraph V or, if the area was formed by 2 districts, provision for the disposition of property and a statement of assumption of liabilities upon dissolution of the area.

(d) A detailed analysis of the financial and educational consequences of the proposed withdrawal.

(e) The manner in which the withdrawing district or districts shall provide for the education of all pupils in the withdrawing district or districts and a plan for the education of the pupils in the remaining sending and/or receiving districts. This shall include the proposed assignment of pupils and any necessary tuition arrangements or contracts.

(f) Modifications to the area agreement necessitated by the withdrawal plan.

(g) Any other matters which the committee, consistent with the law, may consider appropriate to include in the withdrawal plan.

V. Each withdrawing sending district shall remain liable to the area, or to the receiving district in the case of a dissolution of the area, for a rental charge, as determined by the area agreement, for the length of any outstanding bond issue, and for the reduction of school building aid based on the decrease of the annual grant for the payment of debt service for school construction. Payments in discharge of such liability shall be made in accordance with a schedule which may provide for annual payments for

the length of the existing bond issue or any other schedule agreed upon by the school boards of the area, or, in the event they fail to agree, as determined by the state board of education. Such payments shall be deemed to be trust funds and shall be applied by the area solely in payment of its indebtedness which was incurred to finance area school facilities and which was outstanding on the effective date of the withdrawal vote.

VI. A receiving district, 4 months prior to a vote on a bond issue for construction of new facilities or additions to an area school, shall notify a sending district of a pending vote on a bond issue. Upon receipt of such notice, a sending district may initiate a withdrawal study in accordance with paragraph III. If the sending district has initiated a withdrawal study prior to the vote in the receiving district, the sending district shall not be further obligated to any bonded indebtedness as a result of such bond issue vote if the voters in the sending district approve, by a majority vote, the withdrawal plan.

VII. The committee established pursuant to paragraph III shall submit a copy of all reports, including any minority reports, to the state board of education. If a report includes a plan for withdrawal, the state board of education shall review the proposed plan to determine whether or not the proposed plan meets the requirements of paragraph IV. If, in the opinion of the state board, the requirements have been properly addressed, the state board shall recommend for or against its adoption based on its assessment of the plan's feasibility. If, in the opinion of the state board, the requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board shall promptly review the revised plan, return the plan, and make a recommendation for or against its adoption based on its assessment of the plan's feasibility. The state board's recommendation shall be reported to the legislative body of the area districts. The state board shall forward the plan for withdrawal to the school board of the withdrawing school district. The school board shall publish the withdrawal plan once in a newspaper generally circulated within the area districts. The school board shall file the plan for withdrawal with the clerk of the withdrawing district and shall insert the plan in the warrant for the next annual meeting. The article in the warrant for the district meeting and the question on the ballot to be used at the meeting shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 195–A:14, as amended, providing for the withdrawal of the sending (or receiving) district of _____ from the _____ area in accordance with the provisions of the proposed withdrawal plan filed with the school district clerk?"

Yes _____ No _____

If a majority of the voters present and voting shall vote in the affirmative, the clerk of the school district shall forthwith send to the state board of education a certified copy of the warrant, certificate of posting, evidence of publication, and minutes of the meeting. If the board finds that a majority of the voters present and voting have voted in favor of the withdrawal plan, it shall be conclusive evidence of the withdrawal of the district and the continuation of the area or the dissolution of a 2-district area.

VIII. The vote to withdraw from an area shall take effect on July 1 of the calendar year which shall be at least 2 years after the date on which the withdrawal vote is adopted. The plan may provide for an earlier date.

Source. 1963, 277:1. 1969, 347:2. 1971, 187:1, 2. 1979, 9:1. 1988, 214:1. 1998, 271:4, 5. 1999, 15:2, eff. June 25, 1999; 119:2, eff. Aug. 9, 1999.

195–A:15 Conversion of Area School Plan to Cooperative School District.

I. The school districts comprising an authorized regional enrollment area plan may convert the plan to a cooperative school district as provided in RSA 195:18 upon the expiration of 5 years after date of operating responsibility, and thereafter. Provided, however, that, if such area plan then includes a city school district or the dependent school department of a city, such conversion may only be accomplished by special act of the legislature upon petition of the cooperative school district planning board. In proceedings for conversion, the school boards of the several school districts in the area plan, acting jointly, shall constitute the cooperative school district planning board. The articles of agreement for such conversion shall provide for assumption by the cooperative school district of all outstanding debt of each receiving district incurred for its area schools, and shall provide for termination of tuition payments on date of operating responsibility of the new cooperative district.

II. [Repealed.]

Source. 1963, 277:1. 1969, 347:3. 1991, 188:4, eff. May 27, 1991 at 12:01 a.m.

195–A:16 Modification. Parties to any authorized regional area agreement may, either at the time of the original agreement, or at any subsequent modification of the agreement, specify that the agreement shall cover less than 100 percent of the student population of the sending district. In the event that a chartered public school is approved within a sending or receiving district, after final approval by the state board, an area review board shall be convened pursuant to RSA 195–A:14 solely for the purpose of considering an amendment to the area agreement relative to the adoption of the chartered public school provisions under RSA 194–B. Any such amendment shall be consistent with the provisions of RSA 195–A:3, V(p). An area plan amended under this section shall be submitted to the state board for approval no later than December 1 of the year of amendment.

Source. 1992, 134:1. 2000, 106:3, eff. July 7, 2000. 2008, 354:1, eff. Sept. 5, 2008.

CHAPTER 195–B

STATE GUARANTEE

[Repealed 1967, 154:6, eff. July 24, 1967.]

History

Former RSA ch. 195–B, comprising RSA 195–B:1 to 195–B:5, which was derived from 1963, 277:1; 1965, 112:11; and 311:4, 5, related to the New Hampshire School Building Authority. See now RSA 195–C.

CHAPTER 195–C

SCHOOL BUILDING AUTHORITY— STATE GUARANTEE

195–C:1 School Building Authority.

I. There shall be a school building authority, referred to in this chapter as the authority, consisting of the state treasurer, the commissioner of education, the state fire marshal or designee, and 3 other members appointed by the governor, one of whom shall have expertise in education, one of whom shall have expertise in finance, and one of whom shall have expertise in building construction or engineering, with the advice and consent of the council, for terms of 3 years and until their successors are appointed and qualify. The governor shall designate one of said members as chairman. In case of vacancy among the appointive members of the authority, the governor, with the advice and consent of the council, shall fill the same for the unexpired term. The appointive members of the authority shall receive as compensation for their services, while actually engaged in the business of the authority, the sum of $8 per day plus their necessary subsistence expenses. The appointive members of the authority shall be paid mileage at the state employees rate, plus necessary travel expenses, only when performing activities at the request of the state board of education.

II. It shall be the duty of the authority to consider and investigate all applications of school districts for awards of state guarantees with respect to borrowings authorized by such districts for school projects of not less than $100,000 involving the construction, enlargement or alteration of school buildings, and to make a written report on each application to the governor and council. If the authority finds that a school project will be of public use and benefit and that the amount of the authorized borrowing appears to be within the financial means and available resources of the school district making the application, the authority may include in its report a recommendation that a state guarantee be awarded on a split issue basis with respect to a specific amount of the bonds or notes of the district or that a state guarantee be awarded on a declining balance basis with respect to a specific percentage of each of such bonds or notes. In determining what amount or percentage to recommend under the provisions of this chapter, the authority shall consider the need for the project in comparison with the need for other projects throughout the state and the capacity of the state to guarantee indebtedness within the limits contained in this chapter.

III. The authority may make reasonable procedural rules and regulations and prescribe forms to be used in its proceedings. The authority may also establish from time to time schedules of service charges to be paid by districts which issue bonds or notes guaranteed by the state pursuant to this chapter, but no charge shall exceed 1/10 of one percent of the principal amount of the bonds or notes which are issued and with respect to which the state guarantee is applicable. The charge to a district shall not be payable until after the bonds or notes on which the charge is based have been issued, and such charge may be paid from the proceeds of the bonds or notes including premiums, but exclusive of accrued interest. Service charges shall be paid to the state treasurer and shall be credited to the account of the authority. Such account shall not lapse and shall be available to the authority as a continuing fund subject to expendi-

ture for the use of the authority pursuant to votes thereof.

IV. (a) The authority shall advise the state board of education by investigating matters concerning school facilities referred to them by the state board of education. Such matters shall include, but shall not be limited to, standards for school building construction pursuant to RSA 21–N:9, II(c), safety standards related to school buildings, financing of school construction projects, award of high performance school construction grants under RSA 198:15–b, I–b, and any other specific concerns about particular school buildings that have been brought to the attention of the state board of education.

(b) The authority shall seek the assistance and expertise of state and local agencies and private entities as may be necessary.

Source. 1967, 154:1. 1970, 51:7. 1985, 240:1, eff. Aug. 3, 1985. 2008, 289:1, 2, eff. Aug. 26, 2008. 2012, 275:7, eff. Aug. 18, 2012.

195–C:2 State Guarantee. Upon the receipt of a report from the authority containing a recommendation that bonds or notes of a school district should be guaranteed by the state, the governor with the advice and consent of the council may award an unconditional state guarantee with respect to such bonds or notes in accordance with the authority's recommendation or in some lesser amount or percentage, or on the alternative basis of guarantee, as the best interests of the state may require. The full faith and credit of the state are and shall be pledged for any such guarantees, and the total outstanding amount of the principal of and interest on such bonds and notes which has been guaranteed by the state under this section shall at no time exceed $95,000,000. The governor, with the advice and consent of the council, is authorized to draw a warrant for such a sum out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. In the event that any state funds shall be so used, the state may recover the amount thereof as provided in RSA 530.

Source. 1967, 154:1. 1970, 51:8. 1971, 294:1. 1985, 240:2. 1986, 172:1. 1987, 191:1. 1999, 335:1, eff. Jan. 1, 2000. 2008, 49:2, eff. July 1, 2008. 2009, 144:200, eff. July 1, 2009.

195–C:3 Definition and Limit of Split Issue Guarantee. An award of a state guarantee on a split-issue basis under RSA 195–C:2 shall specify the face amount of the bonds or notes which shall comprise the guarantee portion of the total authorized borrowing, and such guarantee shall be applicable with respect to that amount of the bonds or notes and interest on such bonds or notes. The guaranteed portion of the total authorized borrowing shall not exceed 75 percent thereof. Bonds or notes bearing a state guarantee awarded on a split-issue basis shall be offered and sold at public sale, after such advertisement as the school board deems appropriate, as a separate and distinct issue from any issue of bonds or notes which are not guaranteed by the state. All state guaranteed bonds or notes issued to finance a particular project shall be made payable no later than the payment date of the last maturing unguaranteed bond or note which is issued to finance the same project. The bonds or notes comprising the guaranteed portion of an authorized borrowing and the bonds or notes comprising the unguaranteed portion of an authorized borrowing may be issued from time to time, provided that the guaranteed portion which shall have been issued at any time shall not exceed 3 times the unguaranteed portion which shall then have been issued. The state's guarantee shall be evidenced on each guaranteed bond or note by an endorsement signed by the state treasurer in substantially the following form:

The State of New Hampshire hereby unconditionally guarantees the payment of the whole of the principal and interest of the within (bond) (note) and for the performance of such guarantee the full faith and credit of the State are pledged.

_____

State Treasurer

Source. 1967, 154:1. 1970, 51:9. 1985, 240:3, eff. Aug. 3, 1985.

195–C:4 Definition and Limit of Declining Balance Guarantee. An award of a state guarantee on a declining balance basis under RSA 195–C:2 shall specify the percentage of the guarantee, and such guarantee shall be applicable in such percentage with respect to any amount of a bond, note or coupon comprising the authorized borrowing which the issuing district is unable to pay or refuses to pay upon the presentation of such bond, note or coupon. Such percentage shall not be more than 75 percent. The bonds or notes comprising an authorized borrowing guaranteed on a declining balance basis may be issued from time to time and may be sold at public or private sale. The state's guarantee shall be evidenced on each bond or note by an endorsement signed by the state treasurer in substantially the following form:

The State of New Hampshire hereby unconditionally guarantees the payment of ... percent of any amount of the principal of or the interest on this (bond) (note) which the issuer of this (bond) (note) is unable to pay or refuses to pay upon presentation,

and for the performance of such guarantee the full faith and credit of the State are pledged.

State Treasurer

Source. 1967, 154:1. 1970, 51:10. 1985, 240:4, eff. Aug. 3, 1985.

195–C:5 Application to Pending Issues.

[Repealed 1985, 240:6, eff. Aug. 3, 1985.]

History

Former RSA 195–C:5, which was derived from 1967, 154:1, related to the application of this chapter to pending issues.

CHAPTER 195–D

NEW HAMPSHIRE HEALTH AND EDUCATION FACILITIES AUTHORITY

195–D:1 Declaration of Policy. It is declared to be the policy of the state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youths be given the fullest opportunity to learn and develop their intellectual and mental capacities; that it is essential that participating educational institutions within the state be provided with appropriate additional means to assist such youths in achieving the required levels of learning and development of their intellectual and mental capacities; that it is essential that participating health care institutions within the state be provided with appropriate additional means to expand, enlarge and establish health care and other related facilities; that it is essential that participating health care institutions and participating educational institutions within the state be encouraged and assisted in reducing the costs of providing health care or education; that it is essential that powers be conferred on the New Hampshire health and education facilities authority as will assure the successful completion of projects to be initiated by the corporation or the refinancing of existing indebtedness as provided in this chapter so as to accomplish the purposes of this chapter all to the public benefit and good. It is further declared that the exercise by the corporation of the powers conferred on the corporation under this chapter will constitute the performance of an essential governmental function.

Source. 1969, 318:1. 1970, 16:1. 1979, 384:1. 1981, 532:1. 1982, 16:1. 1991, 298:1. 1999, 253:2, eff. July 9, 1999.

195–D:2 Citation. This chapter as amended may be referred to as and cited as the "New Hampshire Health and Education Facilities Authority Act".

Source. 1969, 318:1. 1970, 16:2. 1971, 198:1. 1999, 253:3, eff. July 9, 1999.

195–D:3 Definitions. As used in this chapter, the following words and terms have the following meanings, unless the context indicates another or different meaning or intent:

I. "Corporation" means the New Hampshire health and education facilities authority created and established as a corporation and constituted and established as a public body corporate and agency of the state under RSA 195–D:4, or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the corporation by this chapter shall be given by law.

II. "Project."

(a) In the case of a participating educational institution, means any structure designed for use as a dormitory or other housing facility, dining facility, student union, academic building, administrative facility, library, classroom building, research facility, faculty office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility, child day care facility, or other building or structure essential, necessary or useful for instruction in a program of education provided by a participating educational institution,

or any multi-purpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated above, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the aforementioned structures, and shall also include landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, and;

(b) In the case of a participating health care institution means any structures designed for use as a hospital, clinic, nursing home providing sheltered care, intermediate care, life-care, continuing care or medical services, health maintenance organization, home health care provider, ambulatory care clinic or other health care facility, laboratory, laundry, nurses' or interns' residence or other multi-unit housing facility for staff, employees, patients or relatives of patients admitted for treatment in such health care facility, doctors' office building, appropriately designed housing facilities for the residence or care of the elderly, administration building, research facility, maintenance, storage, or utility facility or other structures or facilities related to any of the foregoing or required or useful for the operation of a participating health care institution, including parking and other facilities or structures essential or convenient for the orderly conduct of such participating health care institution, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, parking lots, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the aforementioned structures, and shall also include landscaping, site preparation, furniture, machinery and equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended.

III. "Cost" as applied to a project or any portion thereof financed under the provisions of this chapter shall mean the cost of construction, building, acquisition, equipping, alteration, enlargement, reconstruction and remodeling of a project and acquisition of all lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and interests acquired, necessary, used for, or useful for or in connection with a project and all other undertakings which the corporation deems reasonable or necessary for the development of a project, including but not limited to the cost of demolishing or removing any buildings or structures on land so acquired, the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction, and if judged advisable by the corporation, for a period after completion of such construction the cost of financing the project, including interest on bonds and notes issued by the corporation to finance the project; provisions for working capital, whether or not in connection with a project; reserves for principal and interest and for extensions, enlargements, additions and improvements; cost of architectural, engineering, financial, legal or other special services, plans, specifications, studies, surveys, estimates of cost and revenues; administrative and operating expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses necessary or incident to the construction and acquisition of the project, the financing of such construction, and acquisition and the placing of the project in operation and all costs and expenses necessary or incidental to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any federally insured mortgage note.

IV. "Bonds" or the words "revenue bonds" means revenue bonds of the corporation issued under the provisions of this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by the mortgage or the full faith and credit of a participating educational institution or of a participating health care institution or any other lawfully pledged security of a participating educational institution or of a participating health care institution.

V. "Institution for postsecondary education or higher education" means an educational institution situated within the state which by virtue of law or charter is a public or other nonprofit educational institution empowered to provide a program of education beyond the high school level and awards a bachelor's or graduate degree or provides a program of not less than 2 years' duration which is accepted for full credit toward a bachelor's degree. Said definition shall include the university system of New Hampshire or any of its components when revenue

bonds are to be issued for the acquisition, construction, renovation or refinancing of any structure designed for use as a dormitory or other housing facility, dining hall or other food service facility, student union, bookstore, or other revenue-producing facility of the university system of New Hampshire or any of its components, which revenue bonds are to be secured by the pledge of the revenue from such revenue-producing facilities, but not by the full faith and credit of the university system, any of its components, or the state of New Hampshire.

VI. "Participating educational institution" means an institution for postsecondary education or higher education; an institution for secondary education; an institution providing an educational program; or a child care provider which, pursuant to the provisions of this chapter undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or other obligations or of a mortgage or of advances as provided in and permitted by this chapter.

VI–a. "Institution providing an educational program" means a not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to section 501 of the Internal Revenue Code of 1986, as amended, and which provides a program of education for the purpose of enhancing the knowledge or abilities of its members or the general public.

VII. "Hospital" means any nonprofit hospital located within and incorporated under the laws of the state which is licensed by the department of health and human services.

VIII. "Participating health care institution" means a hospital; nursing home; health maintenance organization; home health care provider; an institution providing a health care program; or ambulatory care clinic which, pursuant to the provisions of this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or other obligations or of a mortgage or of advances as provided in and permitted by this chapter.

VIII–a. "Institution providing a health care program" means a not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to section 501 of the Internal Revenue Code of 1986, as amended, and which is either licensed by the state of New Hampshire to provide any health care service or function or which, although not itself licensed by the state of New Hampshire, provides a program involving or otherwise related to the delivery of healthcare by institutions or professionals licensed by the state of New Hampshire, whether in the form of treatment, education, the provision or delivery of health care services or otherwise.

IX. "Refinancing of existing indebtedness" means (a) liquidation, with the proceeds of bonds or notes issued by the corporation, of any indebtedness of a participating institution incurred to finance or aid in financing a lawful purpose of such participating institution which would constitute a project had it been undertaken and financed by the corporation; or (b) consolidation of such indebtedness with indebtedness of the corporation incurred for a project of such participating institution; or (c) purchase of a federally guaranteed security issued with respect to the financing of a lawful purpose of a participating institution which would constitute a project had it been undertaken and financed by the corporation.

X. "Federally guaranteed security" means any security, investment or evidence of indebtedness which is issued pursuant to the national housing act or any successor provision of law, each as amended from time to time, and which is either, directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of principal and interest by the United States of America or any instrumentality thereof.

XI. "Federally insured mortgage note" means any loan secured by a mortgage for any facility of a participating institution which is either, directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instrumentality thereof to so insure or guarantee such a loan secured by a mortgage.

XII. "Nursing home," notwithstanding any other provision of law to the contrary, means any nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended, and which is engaged in the operation of, or formed for the purpose of operating, a facility in which nursing care, sheltered care, intermediate care, life-care or continuing care, and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in New Hampshire, and in whole or in part is, or shall be upon completion, licensed as a residential care facility under RSA 151:2, I(e) or licensed as a nursing home under the laws of New Hampshire.

XIII. "Health maintenance organization" means the same as defined in RSA 420–B which is nonprofit and whether or not it is affiliated with a hospital or any other association of medical practitioners.

XIV. "Institution for secondary education" means a nonprofit institution for education, which is located within the state and which:

(a) Provides a program of education within the state which is preparatory for postsecondary or higher education; or

(b) Is a residential facility which is licensed as a group home or child care institution by the department of health and human services pursuant to RSA 170–E.

XV. "Participating institution" means a participating educational institution or a participating health care institution.

XVI. "Home health care provider" means a home health care provider as defined in RSA 151:2–b which offers, and is licensed under RSA 151:2, I(b) to offer health care services and which is a nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended.

XVII. "Ambulatory care clinic" means any nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended, and which is engaged in the operation of, or formed for the purpose of operating, an ambulatory health care facility in which health care services are offered to the public on an outpatient basis by or under the direction of physicians licensed by the state of New Hampshire and licensed health care professionals.

XVIII. "Child care provider" means a provider of child day care as defined in RSA 170–E:2, III, including a child day care agency as defined in RSA 170–E:2, IV, and any other not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to the Internal Revenue Code of 1986 as amended, 26 U.S.C. section 501 et seq., and which provides or otherwise assists in the provision of facilities, equipment, services, or economic assistance of any type to a child day care agency.

Source. 1969, 318:1. 1970, 16:3–6. 1971, 198:2–6. 1979, 384:2, 3. 1981, 532:2–4. 1982, 16:2–4. 1983, 291:1, I; 423:24–26. 1986, 151:1. 1990, 90:1. 1991, 298:2. 1992, 276:5–8. 1993, 335:17, 18. 1998, 303:3–5. 1999, 253:4–10, eff. July 9, 1999. 2012, 282:13, eff. June 30, 2015.

195–D:4 New Hampshire Health and Education Facilities Authority Constituted Public Body Corporate and Agency of the State.

I. The New Hampshire Health and Education Facilities Authority is created as a corporation and is constituted and established as a public body corporate and agency of the state for the exercising of the powers conferred on the corporation by this chapter.

II. All of the powers of the corporation are vested in a board of directors of 7 members who shall be appointed by the governor and council. The terms of 2 of the members shall expire on June 30, 1970; the terms of 2 members shall expire on June 30, 1971; and the terms of 3 members shall expire respectively on June 30, 1972, June 30, 1973 and June 30, 1974. Successors to those members of the board of directors whose terms expire each year shall be appointed by the governor and council prior to June 1 in each year, for terms of 5 years each. If a vacancy occurs in the membership of the board of directors, the governor and council shall appoint a successor for the unexpired term. Any member of the board of directors shall be eligible for re-appointment.

III. Each member of the board of directors, before entering upon his duties, shall take an oath to administer the duties of his office faithfully and impartially, and such oath shall be filed in the office of the secretary of state.

IV. The board of directors shall elect one of its members as chairperson, another as vice chairperson, and shall also elect a secretary, who need not be a member of the board. Four members of the board of directors constitute a quorum, and the vote of a majority of the members constituting a quorum present and voting is necessary for any action taken by the corporation. A vacancy in the membership of the board of directors of the corporation does not impair the right of a quorum to exercise all the powers and perform the duties of the corporation. Notwithstanding RSA 91–A or any other law to the contrary, members of the board shall be permitted to participate in meetings by telephone, provided that any board member so participating shall be able to be heard and to hear every other board member participating in the meeting, and unless the board is meeting in nonpublic session pursuant to RSA 91–A:3, shall be able to hear and be heard by all members of the public attending the meeting, and that the meeting is held at a physical location available to the public and identified in the notice of the meeting, and that at least 2 members of the authority are physically present at the meeting. Voting members of the

board participating by telephone shall be treated as present at the meeting for all purposes, including the establishment of quorum.

V. Any action taken by the corporation under the provisions of this chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. However, any action taken that directly affects any institution by name is not effective as to that institution until notice of the action has been delivered to the institution, by mail or otherwise.

VI. The members of the board of directors and the officers of the corporation shall not receive any compensation for the performance of their duties under this chapter, but each such member or officer shall be paid his necessary expenses incurred while in the performance of such duties. These expenses, as well as any expenses incurred by the corporation as a result of indemnifying or holding harmless its directors, officers, and employees, are part of the expenses authorized by RSA 195–D:5, to be a charge as an administration cost.

Source. 1969, 318:1. 1970, 16:7–10. 1994, 86:1. 1999, 253:11, 12, eff. July 9, 1999.

195–D:5 General Grant of Powers. The corporation has the following powers, together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

I. To have perpetual succession as a public body corporate and agency of the state and to adopt bylaws for the regulation of its affairs and the conduct of its business;

II. To sue and be sued, plead and be impleaded;

III. To adopt an official seal and alter the same at pleasure;

IV. To maintain an office at such place or places as it may designate;

V. To determine the location and character of any project to be financed under the provisions of this chapter, and to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same; to enter into contracts for any or all of such purposes; to enter into contracts for the management and operation of a project; and to designate a participating institution as its agent to determine the location and character of a project undertaken by such participating institution under the provisions of this chapter as its agent to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same; and as its agent to enter into contracts for any or all of such purposes, including contracts for the management and operation of such projects;

VI. To issue bonds, bond anticipation notes and other obligations of the corporation for any of its corporate purposes, and to fund or refund the same, all as provided in this chapter;

VII. Generally, to fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by a project or any portion thereof; and to contract with any person, partnership, association or corporation or other body, public or private, in respect thereof and to designate a participating institution as its agent to fix, revise, charge and collect such rates, rents, fees and charges and to make such contracts;

VIII. To establish rules and regulations for the use of a project or any portion thereof and to designate a participating institution as its agent to establish rules and regulations for the use of a project undertaken by such participating institution;

IX. To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as are necessary in its judgment, and to fix their compensation;

X. To receive and accept from any public agency loans or grants for or in aid of the construction of a project or any portion thereof, and to receive and accept loans, grants, aid, or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such loans, grants, aid, and contributions are made;

XI. To mortgage any project and the site thereof for the benefit of the holders of revenue bonds issued to finance the project;

XII. To make loans to any participating institution for the construction of a project in accordance with an agreement between the corporation and the participating institution. However, no such loan shall exceed the total cost of construction and equipment of the project as determined by the participating institution and approved by the corporation;

XIII. To acquire any federally guaranteed security with respect to the financing of a project or the refinancing of existing indebtedness and to pledge or otherwise use such federally guaranteed security in such manner as the corporation deems necessary or appropriate to secure or otherwise provide a source

of repayment on any of its bonds or notes or to enter into any appropriate agreement with a participating institution whereby the corporation may make a loan to such participating institution for the purpose of acquiring and entering into commitments to acquire any federally guaranteed security with respect to financing of a project or the refinancing of existing indebtedness; provided, however, that the corporation, prior to making any such acquisition, commitment or loan with respect to financing a project, shall first determine, and thereafter shall enter into an agreement with any such participating institution to require, that the proceeds derived from the acquisition of any such federally guaranteed security will be used for the purpose of providing for a project;

XIV. To charge to and equitably apportion between participating institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

XV. To accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or any agency or instrumentality thereof or from any other source, and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

XVI. To do all things necessary or convenient to carry out the purposes of this chapter; and

XVII. To provide for the refinancing of existing indebtedness or to make loans to a participating institution for the purpose of providing for the refinancing of existing indebtedness or repaying advances made or given by such participating institution with respect to the acquisition or construction of a project.

XVIII. Before the university system of New Hampshire or any of its components may participate in any of the provisions of this chapter, each project must receive the approval of the capital budget overview committee of the general court and the approval of the governor.

XIX. To protect, indemnify, and hold harmless its members of the board of directors, officers and employees from any costs, damages, awards, judgments, or settlements arising from any claim, civil action, lawsuit, or other proceeding against them.

Source. 1969, 318:1. 1970, 16:11–16. 1979, 384:4, 5. 1986, 151:2. 1991, 298:3. 1994, 86:2, eff. July 5, 1994.

195–D:5–a Exemption From Rules of Other Agencies; Exemption From Administrative Procedure Act; Rulemaking Authority.

I. The corporation shall be exempt from the rules of any department, commission, board, bureau, or agency of the state except as provided in this chapter.

II. The corporation shall be exempt from the provisions of RSA 541–A and may adopt rules in accordance with its own procedures to facilitate, implement, execute the powers, duties, and purposes of the corporation enumerated in this chapter, and such additional powers and duties as may be conferred upon it by the legislature. The corporation shall file in the office of legislative services a copy of all existing rules adopted by the corporation. Any rule adopted after the effective date of this section or any amendment or repeal of any existing rule shall be filed in the office of legislative services within 7 days of such adoption, amendment, or repeal.

Source. 1999, 253:13, eff. July 9, 1999.

195–D:6 Acquisition of Property. The corporation is authorized and empowered, directly or by and through a participating institution, as its agent to acquire by purchase, gift or devise, solely from funds provided under the authority of this chapter, such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements and other interests in land, including lands lying under water and riparian rights, which are located within or without the state as it judges necessary or convenient for the construction or operation of a project, upon such terms and at such prices as considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the corporation.

Source. 1969, 318:1. 1970, 16:17. 1991, 298:4, eff. Aug. 19, 1991.

195–D:7 Title to Projects. When the principal of and interest on revenue bonds of the corporation issued to finance the construction and acquisition of a particular project or projects at a participating institution, including any revenue refunding bonds issued to refund and refinance such revenue bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions thereof, the corporation shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating institution,

free and clear of all liens and encumbrances, all to the extent that title to such project or projects is not, at the time, then vested in such participating institution.

Source. 1969, 318:1. 1970, 16:18. 1991, 298:5, eff. Aug. 19, 1991.

195–D:8 Notes of the Corporation. The corporation has the power and is hereby authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any project or the refinancing of existing indebtedness, and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The corporation may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the corporation or any issue thereof may contain any provisions which the corporation is authorized to include in any resolution or resolutions authorizing revenue bonds of the corporation or any issue thereof, and the corporation may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. All such notes shall be payable solely from the revenues of the corporation, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

Source. 1969, 318:1. 1971, 198:7. 1979, 384:6, eff. Aug. 22, 1979.

195–D:9 Bonds of the Corporation.

I. The corporation is authorized to issue its negotiable revenue bonds from time to time for any corporate purposes, including the financing of all or part of the costs of any projects or the refinancing of existing indebtedness.

II. In anticipation of the sale of such revenue bonds the corporation may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the corporation available therefor and not otherwise pledged, or from the proceeds of sale of the revenue bonds of the corporation in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitations which a bond resolution of the corporation may contain.

III. The revenue bonds and notes of every issue shall be payable solely out of revenue of the corporation, subject only to any agreements with the holders of particular revenue bonds or notes pledging any particular revenues. Notwithstanding that revenue bonds and notes may be payable from a special fund, if they are otherwise of such form and character as to be negotiable instruments under the terms of the uniform commercial code of the state the revenue bonds and notes shall be and are hereby made negotiable instruments within the meaning of and for all purposes of the uniform commercial code, subject only to the provisions of the revenue bonds and notes for registration.

IV. The revenue bonds may be issued as serial bonds or as term bonds, or the corporation, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the corporation and shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, shall be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions provide. In the event that term bonds are issued, the resolution authorizing the same may make such provisions for the establishment and management of adequate sinking funds for the payment thereof, as the corporation judges necessary. The revenue bonds or notes may be sold at public or private sale for such price or prices as the corporation determines. Pending preparation of the definitive bonds, the corporation may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

V. Any resolution or resolutions authorizing any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the revenue bonds to be authorized, as to:

(a) Pledging all or any part of the revenues of a project or any revenue producing contract or contracts made by the corporation with any individual, partnership, corporation, or association or other body, public or private, to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to such agreements with bondholders as then exist;

(b) The rentals, fees, and other charges to be charged, and the amounts to be raised in each year

thereby, and the use and disposition of the revenues;

(c) The setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) Limitations on the right of the corporation or its agent to restrict and regulate the use of the project;

(e) Limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the revenue bonds or any issue of the revenue bonds;

(f) Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds;

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) Limitations on the amount of moneys derived from the project to be expended for operating, administrative or other expenses of the corporation;

(i) Defining the acts or omissions to act which shall constitute a default in the duties of the corporation to holders of its obligations and providing the rights and remedies of such holders in the event of a default;

(j) The mortgaging of a project and the site thereof for the purpose of securing the bondholders;

(k) Such other additional covenants, agreements, and provisions as are judged desirable or necessary by the corporation for the security of the holders of such bonds.

VI. Neither the members of the corporation nor any person executing the revenue bonds or notes shall be liable personally on the revenue bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

VII. The corporation has the power, out of any funds available therefor, to purchase its bonds or notes. The corporation may hold, pledge, cancel, or resell such bonds, subject to and in accordance with agreements with bondholders.

VIII. [Repealed.]

Source. 1969, 318:1. 1971, 198:8, 9. 1979, 384:7. 1991, 298:6. 1999, 253:18, eff. July 9, 1999.

195–D:10 Trust Agreement. In the discretion of the corporation, any revenue bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the corporation and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such revenue bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the issuance of such revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including particularly such provisions as have been specifically authorized in this chapter to be included in any resolution or resolutions of the corporation authorizing revenue bonds thereof. It is lawful for any bank or trust company incorporated under the laws of the state which may act as depositary of the proceeds of bonds or of revenues or other moneys to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the corporation judges reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of a project.

Source. 1969, 318:1, eff. Aug. 29, 1969.

195–D:11 Credit of State Not Pledged. Revenue bonds issued under the provisions of this chapter do not and shall not be construed to constitute a debt or liability of the state or of any municipality or political subdivision thereof or a pledge of the faith and credit of the state or of any such municipality or political subdivision. These revenue bonds are payable solely from the revenue funds provided by this chapter for their payment. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state nor the corporation are obligated to pay the same or the interest thereon except from revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the state or of any municipality or political subdivision thereof is pledged to the payment

of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the state or any municipality or political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

Source. 1969, 318:1, eff. Aug. 29, 1969.

195–D:12 Revenues. The corporation is authorized to fix, revise, charge, and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues, if any, (a) to pay the cost of maintaining, repairing, and operating the project and each and every portion thereof, to the extent that the corporation has not otherwise adequately provided for the payment thereof, (b) to pay the principal of and the interest on outstanding revenue bonds of the corporation issued in respect of such project as the same become due and payable, and (c) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such revenue bonds of the corporation. Such rates, rents, fees, and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of the state other than the corporation. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair, and operation and to provide reserves and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of any revenue bonds of the corporation or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such revenue bonds as the same become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges, and other revenues or other moneys so pledged and thereafter received by the corporation are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the corporation. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as otherwise provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such revenue bonds issued to finance projects at a particular participating institution without distinction or priority of one over another. However, the corporation in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at a participating institution and for the revenue bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of revenue bonds having a subordinate lien in respect of the security herein authorized to other revenue bonds of the corporation and, in such case, the corporation may create separate sinking or other similar funds in respect of such subordinate lien bonds.

Source. 1969, 318:1. 1970, 16:19. 1991, 298:7, eff. Aug. 19, 1991.

195–D:13 Trust Funds. All moneys received pursuant to the authority of this chapter whether as proceeds from the sale of bonds or as revenues, are trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this chapter, subject to such regulations as this chapter and the resolution authorizing the bonds of any issue or the trust agreement securing such bonds provide.

Source. 1969, 318:1, eff. Aug. 29, 1969.

195–D:14 Remedies. Any holder of revenue bonds issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any such resolution authorizing the issuance of, or any such trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state or granted under this chapter or under such resolution or trust agreement, and may enforce and compel

the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the corporation or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees and charges authorized in this chapter and required by the provisions of such resolution or trust agreement to be fixed, established, and collected.

Source. 1969, 318:1, eff. Aug. 29, 1969.

195–D:15 Exemption From Taxation; Payments in Lieu of Taxes. The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and will constitute the performance of an essential governmental function, and neither the corporation nor its agent shall or may be required to pay any taxes or assessment upon or in respect of a project or any property acquired or used by the corporation or its agent or under the jurisdiction, control, possession or supervision of the same or upon the activities of the corporation or its agent in the operation or maintenance of the project under the provisions of this chapter, or upon income or other revenues received therefrom, and any bonds, notes and other obligations issued under the provisions of this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, as well as the income and property of the corporation, are at all times exempt from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state; provided that the participating institution shall be required to make annual payments in lieu of taxes on;

I. Any project or any portion thereof owned by such participating institution or by the corporation pursuant to the provisions of this chapter if said project or any portion thereof would not be exempt from taxation pursuant to RSA 72:23 as amended and as in effect on the date that the findings of the designee of the governor and council are made for the particular project pursuant to RSA 195–D:21; or

II. Any portion or all of a project which provides permanent housing for married students, staff, or employees of a participating educational institution or permanent housing for staff, employees or relatives of patients of a participating health care institution. The amount of the annual payment in lieu of taxes shall be equal to that sum which would otherwise have been payable for real estate taxes on such project or part thereof pursuant to RSA 74 and RSA 75. All such payments in lieu of taxes shall be made to the city or town in which such project or portion thereof is located on December 1 of each year. The corporation shall not be liable to make any such payments in lieu of taxes, except to the extent that moneys have been deposited with it for the specific purpose of making such payments in lieu of taxes. The liability for such payments in lieu of taxes shall constitute a general obligation of the participating institution. Upon any failure of such participating institution to make such payments in lieu of taxes as herein provided, no liens of any nature shall attach against any project, or any portion thereof, or against the assets or revenues of such participating institution, pledged to secure bonds or other obligations of the corporation for the period during which bonds or other obligations issued to finance the project are outstanding; provided, however, the city or town shall have a lien to secure the making of such payments in lieu of taxes which lien shall attach against all real estate of the participating institution not pledged, mortgaged or otherwise encumbered to secure bonds or other obligations of the corporation and which lien shall further attach against all real estate comprising the project but only on the date the bonds or other obligations issued to finance such project or part thereof have been fully retired. The corporation shall within 5 days of such date notify such city or town of the date on which the bonds or other obligations issued to finance the project or part thereof have been fully retired. The city or town may enforce the foregoing liens by a collector's sale of property subject to such liens in the manner provided in RSA 80. Notwithstanding the foregoing provisions, the governing body of such city or town, as defined in RSA 203:3, III, may agree with such participating institution to waive its rights to such payments in lieu of taxes, or any portion thereof, over the period during which bonds or other obligations issued to finance the project are outstanding or for some lesser period of time.

Source. 1969, 318:1. 1971, 198:10; 554:2. 1991, 298:8, eff. Aug. 19, 1991.

195–D:16 Revenue Refunding Bonds.

I. The corporation is authorized to provide for the issuance of its revenue bonds for the purpose of refunding any revenue bonds of the corporation then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such revenue bonds, and, if judged advisable by the corporation, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improve-

ments, extensions, or enlargements of a project or any portion thereof.

II. The proceeds of any such revenue bonds issued for the purpose of refunding outstanding revenue bonds may, in the discretion of the corporation, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date, and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the corporation.

III. Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations of or guaranteed by the United States of America, or in obligations of agencies of the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing at such time or times that are appropriate to assure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding revenue bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding revenue bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the corporation for use by it in any lawful manner.

IV. The portion of the proceeds of any such revenue bonds issued for the additional purpose of paying all or any part of the cost of construction and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in obligations of or guaranteed by the United States of America, or in obligations of agencies of the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the corporation in any lawful manner.

V. All such revenue bonds shall be issued and secured and are subject to the provisions of this chapter in the same manner and to the same extent as any other revenue bonds issued pursuant to this chapter.

Source. 1969, 318:1. 1970, 16:20, 21, eff. June 27, 1970.

195–D:17 Bonds Eligible for Investment. Bonds issued by the corporation under the provisions of this chapter are securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, and retirement funds may properly invest funds, including capital in their control or belonging to them. Such bonds are securities which may properly be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may be authorized by law after August 29, 1969.

Source. 1969, 318:1, eff. Aug. 29, 1969.

195–D:18 Biennial Report and Audit.

I. Within 4 months after the close of the second fiscal year of the corporation and biennially thereafter, it shall make a report to the governor and council of its activities for both preceding fiscal years and such report shall set forth a complete operating and financial statement covering the corporation's operations during the 2 preceding fiscal years including a complete and detached report setting forth:

(a) Its operations and accomplishments;

(b) Its receipts and expenditures during each preceding fiscal year in accordance with the categories or classifications established by the corporation for its operating and capital outlay purposes;

(c) Its assets and liabilities at the end of each preceding fiscal year; and

(d) A schedule of its bonds and notes outstanding at the end of each preceding fiscal year, together with a statement of the amounts redeemed and incurred during each preceding fiscal year.

II. The corporation shall cause an audit of its books and accounts to be made at least once each second fiscal year by certified public accountants and the cost thereof shall be paid by the corporation from funds available to it pursuant to this chapter.

Source. 1969, 318:1. 1971, 198:11. 1973, 140:28, eff. Jan. 1, 1974.

195–D:19 Source of Payment of Expenses. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the corporation under this chapter, beyond the extent to which

moneys shall have been provided under the provisions of this chapter.

Source. 1969, 318:1, eff. Aug. 29, 1969.

195–D:20 State Not Liable. The state is not liable for the payment of the principal of or interest on any bonds of the corporation, or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the corporation, and none of the bonds of the corporation nor any of its agreements or obligations shall be construed to constitute an indebtedness of the state within the meaning of any constitutional or statutory provision whatsoever, nor shall the issuance of bonds under the provisions of this chapter directly or indirectly or contingently obligate the state or any municipality or political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

Source. 1969, 318:1, eff. Aug. 29, 1969.

195–D:21 Procedure Before Issuance of Bonds. Notwithstanding any other provision of this chapter, the corporation is not empowered to undertake any project or refinancing of existing indebtedness authorized by this chapter unless, prior to the issuance of any bonds hereunder, the governor and his council, or their designee, have found after a hearing thereon that:

I. In the case of undertaking a project, the construction and acquisition of such project will enable or assist a participating educational institution to provide education within the state or a participating health care institution to provide health care facilities within the state; and

II. Such project to be undertaken or a project to which the refinancing of existing indebtedness relates will be leased to, or owned by, a financially responsible participating institution within the state; and

III. Adequate provision has been, or will be, made for the payment of the cost of the construction and acquisition of such project to be undertaken or for the refinancing of existing indebtedness and that under no circumstances will the state be obligated directly or indirectly, for the payment of the principal of, or interest on, any obligations issued to finance such construction and acquisition or to provide for the refinancing of existing indebtedness, or obligations to which such refinancing of existing indebtedness relates; and

IV. Adequate provision has been, or will be, made in any lease or mortgage or financing of the project to be undertaken or any property leased or mortgaged or financed in connection with the issuance of bonds or notes hereunder for the payment of all costs of operation, maintenance and upkeep of such project or property by the lessee, sublessee, mortgagor, borrower or occupant so that under no circumstances will the state be obligated, directly or indirectly, for the payment of such costs; and

V. In the case of undertaking a project, adequate provision has been made to obligate a participating educational institution to hold and use the project for educational purposes or to obligate a participating health care institution to hold and use the project for health care purposes so long as the principal of and interest on bonds or other obligations issued by the corporation to finance the cost of such project or projects, including any refunding bonds issued to refund and refinance such bonds, have not been fully paid and retired and all other conditions of the resolution or trust agreement authorizing and securing the same have not been satisfied and the lien of such resolution or trust agreement has not been released in accordance with the provisions thereof; and

VI. The construction and acquisition of such project or projects or any refinancing of existing indebtedness will be within the authority conferred by this chapter upon the corporation; and

VII. In the case of undertaking a project, the construction and acquisition of such project or projects serves a need presently not fulfilled in providing education or health care facilities within the state and is of public use and benefit; and

VIII. In the case of refinancing of existing indebtedness, such refinancing will assist the participating institution in either lowering the cost of providing education or health care facilities within the state or such refinancing is in connection with a project being provided by the participating institution.

Source. 1969, 318:1. 1970, 16:22, 23. 1971, 198:12. 1979, 384:8. 1981, 532:5–8. 1982, 16:5–8. 1991, 298:9, eff. Aug. 19, 1991.

195–D:22 Agreement of the State. The state does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued under this chapter, and with those parties who may enter into contracts with the corporation pursuant to the provisions of this chapter, that the state will not limit, alter, restrict, or impair the rights hereby vested in the corporation and the participating institutions to acquire, construct, reconstruct, maintain and operate any project as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of

maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds, notes or other obligations authorized and issued by this chapter, and with the parties who may enter into contracts with the corporation pursuant to the provisions of this chapter, or in any way impair the rights or remedies of the holders of such bonds, notes or other obligations or such parties until the bonds, notes and such other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the corporation. However, nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes or other obligations of the corporation or those entering into such contracts with the corporation. The corporation is authorized to include this pledge and undertaking for the state in such bonds, notes or other obligations or contracts.

Source. 1969, 318:1. 1971, 198:13. 1991, 298:10, eff. Aug. 19, 1991.

195–D:23 Act Cumulative; No Notice Required. Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the New Hampshire health and education facilities authority might otherwise have under any laws of this state, and this chapter is cumulative of any such powers. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of revenue bonds, notes and other obligations and revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations and contracts for the construction and acquisition of any project undertaken pursuant to this chapter need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state owned property. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this chapter.

Source. 1969, 318:1. 1970, 16:24. 1971, 198:14. 1999, 253:14, eff. July 9, 1999.

195–D:24 Act Liberally Construed. This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effect its purposes.

Source. 1969, 318:1, eff. Aug. 29, 1969.

CHAPTER 195–E

LOAN CORPORATIONS

195–E:1 Declaration of Policy. It is declared to be the policy of this state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that students attending higher educational institutions be given the fullest opportunity to learn and develop their intellectual and mental capacities. It is recognized that the financial costs to obtain an education beyond the high school level are often burdensome or prohibitive, and it is essential that qualified students or their parents be provided with low cost financial assistance in order that the students may attend such schools and to reduce the total amount of loan payments following graduation. In order to achieve this policy, it is essential that state residents be provided with an appropriate source of financing their postsecondary educations and that educational institutions wherever situated be provided with appropriate additional means to assist qualified students or their parents financially so that the students might achieve the required levels of learning and development of their intellectual and mental capacities. In order to assure the continued viability of existing loan programs whereby educational loans are made available to qualified students or their parents, it is necessary and desirable to provide an efficient, stable secondary

market to which such loans may be sold, transferred, or pledged in exchange for funds with which the original lender will be enabled to continue or increase participation in such loan programs. Therefore, the general court has conferred certain powers on educational institutions, on loan corporations, on the New Hampshire higher education assistance foundation, and on the New Hampshire health and education facilities authority to assure the successful origination, distribution and collection of loans so as to accomplish the purposes of this chapter, all to the public benefit and good. It is further declared that the exercise by the educational institutions, the loan corporations, the New Hampshire higher education assistance foundation and the New Hampshire health and education facilities authority of the powers conferred under this chapter will constitute the performance of an essential governmental function.

Source. 1981, 229:1. 1983, 112:1. 1986, 23:1. 1994, 86:3. 1999, 253:15. 2005, 120:1, eff. Aug. 14, 2005.

195–E:2 Definitions. In this chapter:

I. "Authority" means the New Hampshire health and education facilities authority, established under RSA 195–D:4.

II. "Loan corporation" means any corporation established under RSA 195–E:3. A loan corporation may make student loans to students of more than one qualified educational institution, or to the parents of those students.

III. "Educational institution" means any institution for postsecondary or higher education as defined in RSA 195–D:3, V, and in addition means any institution for postsecondary training and education or which awards an undergraduate or advanced degree, whether located within or without the state of New Hampshire.

IV. "Qualified educational institution" means any educational institution whose principal campus or principal facilities are located within the state of New Hampshire.

V. "Eligible student" means any student attending a qualified educational institution and any New Hampshire resident attending an educational institution.

VI. "Foundation" means the New Hampshire higher education assistance foundation or any voluntary nonprofit corporation organized under RSA 292 by 5 members of the board of trustees of the New Hampshire higher education assistance foundation who have been duly authorized so to do by a ⅔ vote of the said board of trustees.

VII. "Parent" means mother, father or adoptive parent and shall include any person with the duty and authority to make important decisions in matters having a permanent effect on the life and development of the student and to be concerned about the general welfare of the student.

Source. 1981, 229:1. 1983, 112:2. 1986, 23:2, 3. 1999, 253:16, eff. July 9, 1999.

195–E:3 Loan Corporation Authorized.

I. Any qualified educational institution may form a voluntary nonprofit corporation in accordance with this chapter for the purposes specified in this chapter. A qualified educational institution may form a loan corporation either:

(a) By organizing a new voluntary nonprofit corporation as provided in this chapter; or

(b) By amending the articles of agreement and bylaws of an existing voluntary nonprofit corporation organized under RSA 292 to conform the articles and bylaws to the requirements of RSA 195–E:5-9; or

(c) By adopting the articles of agreement and bylaws of an existing corporation validly organized by any other entity pursuant to subparagraphs (a) or (b); or

(d) By merging any voluntary nonprofit corporation organized under RSA 292 with any existing loan corporation validly organized by any other entity pursuant to subparagraphs (a) or (b).

II. The provisions of RSA 195–E:3-9 shall not apply to the foundation.

Source. 1981, 229:1. 1983, 112:3, eff. May 25, 1983.

195–E:4 Incorporators.

I. A qualified educational institution may, by a ⅔ vote of its board of trustees or other governing body, agree to form a loan corporation for the purpose of providing low cost financial assistance to qualified students enrolled at the institution or to their parents. The articles of agreement, articles of amendment, articles of merger, or agreement adopting the articles of agreement and bylaws of any existing loan corporation shall be signed by 5 members of the board of trustees or other governing body who are so authorized in writing by the board of trustees or other body. If a loan corporation is formed pursuant to RSA 195–E:3, I(a) or (b), the 5 members of the board of trustees or other governing body shall act as the incorporators of the loan corporation.

II. The incorporators shall be deemed to be acting in their capacities as members of and on behalf of the board of trustees or other governing body.

Source. 1981, 229:1. 1983, 112:4. 1986, 23:4, eff. June 17, 1986.

195–E:5 Articles of Agreement. The articles of agreement of a loan corporation shall contain the following:

I. The name of the loan corporation, which shall clearly identify the qualified educational institution or institutions involved and shall contain the words "Loan Corporation";

II. The object for which the loan corporation is established;

III. The provisions for disposition of the corporate assets in the event of dissolution of the loan corporation;

IV. The address at which the business of the loan corporation is to be carried on;

V. The amount of capital stock, if any, or the number of shares, if any;

VI. The signature and post office address of each of the incorporators;

VII. A true copy of the vote of the educational institution agreeing to form a loan corporation; and

VIII. A true copy of the authorization for each incorporator to sign the articles of incorporation.

Source. 1981, 229:1. 1983, 112:5, eff. May 25, 1983.

195–E:6 Certification by Attorney General.

[Repealed 1983, 112:12, eff. May 25, 1983.]

History

Former RSA 195–E:6, which was derived from 1981, 229:1, related to certification by the attorney general of articles of agreement and other documents.

195–E:7 Recording. The secretary of state shall record the articles of agreement in his office. When so recorded the signers shall be a loan corporation. The loan corporation and its officers and members shall have all the rights and powers and shall be subject to all the duties and liabilities as those of voluntary corporations established under RSA 292; provided that these rights, powers, duties or liabilities may be limited or expanded by this chapter.

Source. 1981, 229:1, eff. Aug. 10, 1981.

195–E:8 Fees for Recording. The fee for recording the articles of agreement and any record of amendment in the office of the secretary of state shall be the same as the fees which are required for voluntary nonprofit corporations under RSA 292:5.

Source. 1981, 229:1, eff. Aug. 10, 1981.

195–E:9 Bylaws.

[Repealed 1983, 112:12, eff. May 25, 1983.]

History

Former RSA 195–E:9, which was derived from 1981, 229:1, related to approval of bylaws by the attorney general.

195–E:10 Issuance of Bonds.

I. The authority is empowered to issue bonds and other obligations for the purposes specified in this chapter in accordance with this section.

II. [Repealed.]

III. No bonds or other obligations shall be issued except after the governor and council, or their designee, after hearing, shall have found that:

(a) The origination or acquisition of low cost loans by a loan corporation, a qualified educational institution or the foundation to qualified students or their parents will assist the students in attending their educational institutions and will lower the cost to the students of financing their educations;

(b) Adequate provision has been or will be made for the payment of the principal of, or interest on, any obligations issued by the authority to finance such loan programs.

(c) Adequate provision has been made for the payment of the reasonable expenses of administration of the loan programs as are necessitated by the programs.

(d) The proposed procedures for redistribution of the bond proceeds, collection of student payments, interest charges and any other matters concerning the administration of the loan program are in conformance with law.

IV. The authority, to further its student loan programs, shall have the power to:

(a) Determine the nature of student loan programs for eligible students or their parents for which the authority will issue bonds;

(b) Enter into contracts for any or all student loan program purposes;

(c) Enter into contracts for the administration or servicing of student loans;

(d) Designate the foundation, a particular qualified educational institution or institutions, or loan corporation or corporations, as its agent for accomplishing its purposes;

(e) Make loans with proceeds of the sale of its bonds to the foundation, any qualified educational institution, or any loan corporation in accordance with an agreement between the authority and such other party or parties; provided that the proceeds

of any loan made to the foundation shall be used by the foundation to purchase, originate or make loans to any eligible student or to the parents of any eligible student, but the proceeds of any loan made to a qualified educational institution or to a loan corporation shall be used by such qualified educational institution or such loan corporation to purchase, originate or make loans only to eligible students attending qualified educational institutions, or to the parents of these students;

(f) Receive and accept from any public agency or any other source loans, grants, guarantees or insurance with respect to student loans and the student loan programs;

(g) Establish guidelines governing the actions of the foundation, loan corporations, and qualified educational institutions in participating in the authority's student loan program; and

(h) Exercise all powers incidental and necessary for the performance of the powers listed in this paragraph.

Source. 1981, 229:1. 1983, 112:6, 7. 1986, 23:5–7. 1994, 86:4, 6, eff. July 5, 1994.

195–E:11 Rights of the Authority, Foundation, Qualified Educational Institution and Loan Corporations. In issuing bonds for a student loan program, the authority, the foundation, any qualified educational institution and any loan corporations created under this chapter shall have all the power and authority and be subject to all of the rights, liabilities and responsibilities as provided in RSA 195–D, insofar as these provisions do not conflict with this chapter. Nothing in this chapter shall otherwise limit any other bond issuance or other powers of the authority set forth in RSA 195–D.

Source. 1981, 229:1. 1983, 112:8, eff. May 25, 1983.

195–E:12 Credit of State Not Pledged.

I. Revenue bonds issued under this chapter do not constitute a debt or liability of the state or of any municipality or political subdivision of the state or a pledge of the faith and credit of the state or of any municipality or political subdivision.

II. These revenue bonds are payable solely from the revenues or other funds derived from student loans, either directly or indirectly provided by this chapter for their payment. All such revenue bonds shall contain on the face of the bond a statement to the effect that neither the state nor the authority is obligated to pay the bond or the interest on the bond except from revenues or other funds derived from student loans, either directly or indirectly provided by this chapter, and that neither the faith and credit nor the taxing power of the state or of any municipality or political subdivision of the state is pledged to the payment of the principal of or the interest on the bonds. The issuance of revenue bonds under this chapter shall not directly or indirectly or contingently obligate the state or any municipality or political subdivision of the state to levy or to pledge any form of taxation whatever for the bonds or to make any appropriation for their payment.

Source. 1981, 229:1, eff. Aug. 10, 1981.

195–E:13 Source of Payment of Expenses. All reasonable expenses incurred in carrying out the provisions of this chapter shall be payable by the foundation, the respective qualified educational institutions, or the respective loan corporations, as the case may be, and no liability or obligation shall be incurred by the authority or any other state agency.

Source. 1981, 229:1. 1983, 112:9, eff. May 25, 1983.

195–E:14 Administration of Loans; No Discrimination.

I. The foundation, a qualified educational institution and a loan corporation shall have the full power and authority and be subject to all rights, responsibilities and liabilities for the administration of a loan program and for the distribution and collection of loans to qualified students or their parents, including the determination of who is eligible to receive loans, the amounts of the loans, repayment schedules and interest rates to be charged; provided that the terms are in accordance with law and do not discriminate against any person on account of race, creed, national origin, sex or age. In the case of student loans made to eligible students or the parents of such students who attend educational institutions that are not qualified educational institutions, the foundation shall have primary responsibility for the administration of such portion of the loan program and the servicing of such loans; provided, however, that this sentence shall not prohibit the foundation from contracting with another entity for assistance in such administration and servicing as agent for the foundation.

II. The foundation, any qualified educational institution, and any loan corporation are authorized to contract with other service corporations to provide bookkeeping, data processing, loan servicing, loan administration and related fiscal services required for the conduct of their business.

Source. 1981, 229:1. 1983, 112:10. 1986, 23:8, eff. June 17, 1986.

195–E:15 Exemption From Taxation. The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state,

for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and will constitute the performance of an essential governmental function. Neither the authority nor the loan corporations shall be required to pay any taxes or assessment upon the activities of the authority or the loan corporations or their agents in the administration and operation of loan programs pursuant to this chapter.

Source. 1981, 229:1, eff. Aug. 10, 1981.

195–E:15–a Designation of Eligible Lender for Federally Guaranteed Student Loans. New Hampshire Higher Education Loan Corporation, a New Hampshire voluntary, nonprofit corporation, is hereby designated as "eligible lender" within the meaning of 20 U.S.C. section 1085(d)(1)(D), to enable it to provide a secondary market for federally guaranteed student loans. Furthermore, New Hampshire Higher Education Loan Corporation is requested to acquire student loan notes pursuant to and in accordance with the provisions of 26 U.S.C. section 150(d), as it may be amended from time to time.

Source. 1993, 335:19. 1994, 86:5, eff. July 5, 1994.

195–E:16 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

Source. 1981, 229:1, eff. Aug. 10, 1981.

CHAPTER 195–F

NEW HAMPSHIRE MUNICIPAL BOND BANK EDUCATIONAL INSTITUTIONS BOND FINANCING ACT

195–F:1 Declaration of Policy. It is declared to be the policy of the state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their living conditions, it is essential that this and future generations of youths be given the fullest opportunity to learn and develop their intellectual and mental capacities; that it is essential that educational institutions, as defined herein, within the state be provided with appropriate additional means to assist such youths in achieving the required levels of learning and development of their intellectual and mental capacities; that it is essential that the state, through the New Hampshire municipal bond bank acting on its behalf, foster and promote by all reasonable means the provision of adequate markets and facilities for borrowing money by educational institutions, as defined herein, for the financing of their projects and improvements from proceeds of bonds or notes issued by such educational institutions, and to assist such educational institutions in fulfilling their needs for such purposes by creation of indebtedness and to the extent possible to encourage continued investor interest in the bonds or notes of such educational institutions as sound and preferred securities for investment, particularly for those educational institutions not otherwise able readily to borrow for such purposes at reasonable rates of interest, so as to accomplish the purposes of this chapter all to the public benefit and good.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:2 Citation. This chapter shall be known as, and may be cited as, the New Hampshire municipal bond bank educational institutions bond financing act.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:3 Definitions. As used in this chapter:

I. "Bank" means the New Hampshire municipal bond bank created and established by RSA 35–A:4.

II. "Bonds" means bonds of the bank issued pursuant to this chapter.

III. "Educational institution" means a public or other nonprofit institution situated within the state, which is either approved by the state board of education as a public academy under the standards pertaining to public high schools, and empowered to provide a program of education at the elementary or secondary level to students whose tuition costs are paid by the municipalities or the school districts in

which the students reside, or any other institution which provides a program of education within the state which is preparatory for secondary, postsecondary, or higher education.

IV. "Educational institution project or improvement" means any structure designed for use as a dining facility, academic building, administrative facility, library, research facility, faculty office facility, athletic facility, first-aid room or its equivalent, laboratory, maintenance, storage or utility facility, or any multi-purpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated above, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the above mentioned structures, and shall also include landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, but shall not include such items as books, fuel, supplies, or other items which are customarily considered as a current operating charge.

V. "Educational institution bond" means a bond or note or other evidence of debt issued by an educational institution and payable from the revenues of such educational institution and secured by the revenues, the mortgage, the full faith and credit of an educational institution or any other lawfully pledged security of an educational institution, including a pledge of revenues to be received by the educational institution pursuant to agreements between the educational institution and school districts entered into pursuant to RSA 194:22.

VI. "Educational institution general fund" means the fund created or established as provided in RSA 195–F:7.

VII. "Educational institution reserve fund" means any of the educational institution reserve funds created or established as provided in RSA 195–F:6.

VIII. "Fully marketable form" means an educational institution bond duly executed and accompanied by such opinion of counsel and other documentation as is customary in the field of educational institution financing, provided that the educational institution bond so executed need not be printed or lithographed nor be in more than one denomination.

IX. "Notes" means any notes of the bank issued pursuant to this chapter.

X. "Revenues" means all fees, charges, moneys, profits, payments of principal of or interest on educational institution bonds and other investments, gifts, grants, contributions, appropriations and all other income derived or to be derived by the bank under this chapter.

Source. 1982, 5:1. 1998, 69:1, eff. July 11, 1998.

195–F:4 Bond Bank's Authority.

I. The New Hampshire municipal bond bank established pursuant to RSA 35–A is hereby authorized and empowered to lend money to educational institutions through the purchase by the bank of educational institution bonds in fully marketable form. The bank, for the purposes authorized by this chapter, including the funding of interest during construction and for not more than 18 months thereafter, is hereby authorized and empowered to authorize and issue its bonds and notes payable solely from the revenues or funds therefor available to the bank for financing educational institution projects or improvements, and to otherwise assist educational institutions as provided in this chapter.

II. The bank shall establish a special division to administer the purchase and sale of educational institution bonds and of its bonds and notes issued pursuant to this chapter.

III. The bank shall administer the educational institution general fund and educational institution reserve fund established by this chapter separate from those general funds and reserve funds established pursuant to RSA 35–A and RSA 374–C.

IV. Bonds and notes of the bank issued under the provisions of this chapter shall not be in any way a debt or liability of the state and shall not create or constitute any indebtedness, liability or obligation of the state or be or constitute a pledge of the faith and credit of the state but all such bonds and notes, unless funded or refunded by bonds or notes of the bank, shall be payable solely from revenues or funds pledged or available for their payment as authorized herein. Each bond and note shall contain on its face a statement to the effect that the bank is obligated to pay the principal thereof and the interest thereon only from revenues or funds of the bank and that the state is not obligated to pay such principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds or notes.

V. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from revenues or funds provided or to be provided under the provisions of this chapter and nothing in this chapter shall be construed to authorize the bank to incur any indebtedness or liability payable by the state.

VI. The bank may contract with holders of its bonds and notes in the manner provided in RSA 35–A:9.

VII. In the event of default by the bank on any bonds or notes issued under this chapter, a trustee shall be appointed pursuant to RSA 35–A:15, but shall act only with respect to such bonds or notes issued hereunder.

VIII. The provisions of RSA 35–A:4; RSA 35–A:6, I through X, inclusive; XI, but with respect to educational institutions rather than governmental units, and XV; RSA 35–A:7, II through IV, inclusive; RSA 35–A:8, I and III through VIII, inclusive; RSA 35–A:9, but with respect to educational institution bonds rather than municipal bonds; RSA 35–A:10; RSA 35–A:15, but with respect to educational institution bonds rather than municipal bonds; RSA 35–A:16; RSA 35–A:17; RSA 35–A:23; RSA 35–A:24, but with respect to educational institutions and educational institution bonds rather than governmental units and municipal bonds; RSA 35–A:25; RSA 35–A:26; RSA 35–A:36; and RSA 35–A:37 shall apply as they may be applicable to the financing of educational institution projects or improvements in accordance with this chapter.

IX. Notwithstanding any other provision of this chapter, the bank shall not lend money to an educational institution for any educational institution project or improvement as authorized by this chapter unless, prior to the issuance of any bonds hereunder, the bank has found that:

(a) The construction and acquisition of such project or improvement will enable or assist an educational institution to provide education within the state; and

(b) Such project or improvement will be leased to, or owned by, a financially responsible educational institution within the state; and

(c) Adequate provision has been, or will be, made for the payment of the cost of the construction and acquisition of such project or improvement and that under no circumstances will the state be obligated directly or indirectly, for the payment of the principal of, or interest on, any obligations issued to finance such construction and acquisition; and

(d) Adequate provision has been, or will be, made in any lease or mortgage of the project for the payment of all costs of operation, maintenance and upkeep of such project by the lessee, sublessee, mortgagor or occupant so that under no circumstances will the state be obligated, directly or indirectly, for the payment of such costs; and

(e) Adequate provision has been made to obligate the educational institution to hold and use the project for educational purposes so long as the principal of and interest on bonds issued by the bank to finance the cost of such project or improvement, including any refunding bonds issued to refund and refinance such bonds, have not been fully paid and retired and all other conditions of the resolution or trust agreement, if any, authorizing and securing the same have not been satisfied and the lien of such resolution or trust agreement has not been released in accordance with the provisions thereof;

(f) The lending of money by the bank to the educational institution is within the authority conferred by this chapter upon the bank; and

(g) The construction and acquisition of such project or improvement serves a need presently not fulfilled in providing education within the state and is of public use and benefit.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:5 General Power. In addition to those powers enumerated in RSA 35–A:6, the bank shall have the authority to purchase or hold educational institution bonds at such prices and in such manner as the bank shall deem advisable and to sell educational institution bonds acquired or held by it at such prices without relation to cost and in such manner as the bank shall deem advisable. The bank may require the educational institution to secure the bonds as to payment of both principal and interest by a pledge of, lien upon or bond interest in, its revenues or properties, including a mortgage thereof, as the bank determines necessary to secure the payment of such bonds purchased and the interest thereon as the same become due. The bank may assign any such pledge, lien or bond interest to or for the benefit of the holders of its bonds. The bank may fix and prescribe any form of application or procedure to be required of an educational institution for the purpose of any loan or the purchase of its educational institution bonds, and to fix the terms and conditions of any such loan or purchase and to enter into agreements with educational institutions with respect to any such

loan or purchase. The bank shall have the powers prescribed in RSA 35–A:8 with respect to bonds issued under this chapter, provided, however, that such bonds shall not be general obligations of the bank, but shall be special obligations of the bank payable only from the revenues pledged to their payment. Any pledge of revenues or moneys under this chapter shall have the same effect as a pledge under RSA 35–A:10.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:6 Reserve Funds.

I. The bank may create and establish one or more educational institution reserve funds, hereafter referred to as "reserve funds", and shall pay into each such reserve fund any proceeds of sale of notes or bonds to the extent provided in the resolution or resolutions of the bank authorizing the issuance thereof and any other moneys which may be or become available to the bank for the purpose of such fund from any other source or sources. All moneys held in any reserve fund are hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds with respect to which such reserve fund may be established, as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys to the credit of such reserve fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such reserve fund shall be a fund for all such bonds issued pursuant to a particular resolution to provide financing for educational institutions without distinction or priority of any bond over another.

II. Moneys in any reserve fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the reserve fund requirement, if any, established for such fund, as provided in paragraph IV, except for the purpose of making, with respect to bonds secured in whole or in part by such fund, payment when due, of principal, interest, redemption premiums and the sinking fund payments, if any, with respect to such bonds for the payment of which other moneys of the bank are not available. Any income or interest earned by any reserve fund resulting from the investment thereof or any other moneys therein may be transferred by the bank to other funds or accounts of the bank to the extent it does not reduce the amount of that reserve fund below the reserve fund requirements for such fund.

III. The bank shall not at any time issue bonds, secured in whole or in part by a reserve fund, if upon the issuance of such bonds, the amount in such reserve fund will be less than the reserve fund requirement for such fund, unless the bank at the time of issuance of such bonds shall deposit in such fund from the proceeds of the bonds issued, or from other sources, an amount which, together with the amount then in such fund, will not be less than the reserve fund requirement for such fund. The bank may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet such higher or additional reserve as may be fixed by the bank with respect to such fund. In computing the amount of the required debt service reserve, investments, held as a part thereof shall be valued in the manner provided in the bond resolution.

IV. As used herein "reserve fund requirement" means, as of any date of computation, the amount or amounts, if any, required to be on deposit in the reserve fund as provided by resolution of the bank authorizing such bonds. The required reserve fund requirement shall be as of any date of computation, an aggregate amount of not more than 150 percent of the largest amount of money, required by the terms of all contracts between the bank and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of that portion of outstanding bonds the proceeds of which were applied solely to the purchase of educational institution bonds and sinking fund payments required by the terms of any such contracts to sinking funds established for the payment or redemption of such bonds, all calculated on the assumption that bonds shall cease to be outstanding after the date of such computation by reason of the payment of such bonds at their respective maturities and the payments of such required moneys to sinking funds and the application thereof in accordance with the terms of all such contracts to the retirement of bonds.

V. Moneys at any time in the reserve fund may be invested in the same manner as permitted for investment of funds belonging to the state or held in the treasury.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:7 Educational Institution General Fund.

I. The bank shall establish and maintain a fund called the "educational institution general fund" which shall consist of and in which there shall be deposited (1) fees received or charges made by the bank for use of its services or facilities under this chapter; (2) any moneys which the bank shall transfer thereto from the reserve fund pursuant to RSA 195–F:6, II; (3) moneys received by the bank as payments of principal of or interest on educational institution bonds purchased by the bank, or received as proceeds of sale of any educational institution bonds or investment obligations of the bank, or received as proceeds of sale of bonds or notes of the bank, and required under the terms of any resolution of the bank or contract with the holders of its bonds or notes to be deposited therein; (4) any moneys required under the terms of any resolution of the bank or contract with the holders of its bonds or notes to be deposited therein; and (5) any moneys transferred thereto from any other fund or made available for the purpose of the fund or for the operating expenses of the bank. Any such moneys in the educational institution general fund may, subject to any contracts between the bank and its bondholders or noteholders, be transferred to the educational institution reserve fund to pay principal of or interest on bonds or notes of the bank when the same shall become due and payable, whether at maturity or upon redemption including payment of any premium upon redemption prior to maturity, and any moneys in the educational institution general fund may be used for the purchase of educational institution bonds and for all other purposes of the bank including payment of its operating expenses.

II. No amount shall be paid or expended out of the educational institution general fund or from any account therein (which account the bank may establish therein for the purpose of payment of its operating expenses) for operating expenses of the bank relative to the purchase, holding and sale of educational institution bonds in any year in excess of the amount provided for the operating expenses of the educational institution division of the bank by the annual budget then in effect with respect to such year or any amendment thereof in effect at the time of such payment or expenditure for operating expenses relative to this chapter.

III. The bank may at any time use any available moneys in the educational institution general fund for the purchase of its bonds or notes or for the redemption thereof, and any such bonds purchased for retirement shall be thereupon cancelled.

IV. The bank is hereby authorized and empowered to create and establish in the educational institution general fund such accounts, subaccounts or special accounts which in the opinion of the bank are necessary, desirable or convenient for the purposes of the bank under this chapter.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:8 Additional Accounts. The bank may establish such additional and further reserves or such other funds or accounts as may be, in its discretion, necessary, desirable or convenient to further the accomplishment of the purposes of the bank delineated under this chapter or to comply with the provisions of any agreement made by or any resolution of the bank.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:9 Agreement by State. The state does pledge to and agree with the holders of the bonds or notes issued pursuant to authority contained in this chapter that the state will not limit or restrict the rights hereby vested in the bank to purchase, acquire, hold, sell or dispose of educational institution bonds or other investments or to make loans to educational institutions or to establish and collect such fees or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of operation of the bank, and to fulfill the term of any agreements made with the holders of its bonds or notes authorized by this chapter or in any way impair the rights or remedies of the holders of such bonds or notes until the bonds and notes, together with interest thereon, and interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met, paid and discharged.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:10 Legal Investments. To the extent that other securities of an educational institution are legal investments under state law, the state and all public officers, and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued pursuant to this chapter, and such bonds or notes shall be authorized security for any and all public deposits.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:11 Exemption From Taxes, Levy and Sale.

I. All property of the educational institution division of the bank is hereby declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the state or any subdivision thereof. All bonds or notes issued pursuant to this chapter are hereby declared to be issued by a body corporate and public of this state and for an essential public and governmental purpose and such bonds and notes, and the interest thereon and the income therefrom, and all fees, charges, funds, revenues, income and other moneys pledged or available to pay or secure the payment of such bonds or notes, or interest thereon, shall at all times be exempt from taxation except for transfer, inheritance and estate taxes.

II. All property of the educational institution division of the bank shall be exempt from levy and sale by virtue of an execution and no execution or other judicial process shall issue against the same nor shall any judgment against the bank be a charge or lien upon its property; provided, that nothing herein contained shall apply to or limit the rights of the holder of any bonds or notes to pursue any remedy for the enforcement of any pledge or lien given by the bank on its revenues or other moneys.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:12 Insurance or Guaranty. The bank is authorized and empowered to obtain from any department or agency of the United States or from any nongovernmental insurer any insurance or guaranty (to the extent now or hereafter available) as to, or of, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds or notes issued by the bank, or on any educational institution bonds purchased or held by the bank, pursuant to the provisions of this chapter; and notwithstanding any other provisions of this chapter to enter into any agreement or contract whatsoever with respect to any such insurance or guaranty except to the extent that the same would in any way impair or interfere with the ability of the bank to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the bank.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:13 Federal Funds; Withholding of Moneys.

I. The state treasurer is hereby authorized to receive from the United States or from any department or agency thereof any amounts of money as and when appropriated, allocated, granted, turned over or in any way provided for the purposes of this chapter, and said amounts shall be paid to the bank and be available to the bank.

II. Any funds or moneys in the custody or control of the state treasurer whether the same shall become available by reason of any grant, allocation or appropriation by the United States or the state or agencies thereof to assist any educational institution in payment of its educational institution bonds owned or held by the bank, or required by the terms of any other law to be paid to holders or owners of educational institution bonds upon failure or default of an educational institution to pay the principal of or interest on its educational institution bonds as and when due and payable, shall, to the extent that any such funds or moneys be applicable with respect to educational institution bonds of a particular educational institution which are then owned or held by the bank and as to which such educational institution has failed or defaulted to make payment of principal or interest as and when due, be paid to the bank for deposit in the reserve fund and made available to the bank.

III. To the extent that the state treasurer shall be the custodian at any time of any funds of moneys due or payable to an educational institution at any time subsequent to written notice to the state treasurer from the bank to the effect that such educational institution has not paid or is in default as to the payment of principal of or interest on any educational institution bonds then held or owned by the bank, the state treasurer shall withhold the payment of such funds or moneys from such educational institution until the amount of such principal or interest then due and unpaid has been paid to the bank, or the state treasurer has been advised that arrangements, satisfactory to the bank, have been made for the payment of such principal and interest.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:14 Additional Powers. In order to carry out the purposes and provisions of this chapter, the bank, in addition to any powers granted to it elsewhere in this chapter and in RSA 35–A, shall have the following powers:

I. To charge for its costs and services in review or consideration of any proposed loan to an educational institution or purchase of educational institution bonds, and to charge therefor whether or not such loan shall have been made or such educational institution bonds shall have been purchased;

II. In connection with any loan to an educational institution, to consider the need, desirability or eligibility of such loan and the ability of such educational institution to secure borrowed money from other sources and the costs thereof;

III. To fix and establish any and all terms and provisions with respect to any purchase of educational institution bonds by the bank, including date and maturities of such bonds, provision as to redemption or payment prior to maturity, and any and all other matters which in connection therewith are necessary, desirable or advisable in the judgment of the bank;

IV. To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term or bond or note, contract or agreement of any kind to which the bank is a party; and

V. To apply for, accept, receive and expend any grants or other moneys that may be made available to it by the federal government or any other public or private source for the purposes of this chapter.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:15 Limitations Not Applicable; Contracts of Educational Institutions; Terms of Bonds. Notwithstanding the provisions of any law or statute applicable to or constituting any limitation on the maximum rate of interest per annum payable on bonds or notes, or as to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, every educational institution is hereby authorized and empowered to contract to pay interest on, or an interest cost per annum for, money borrowed from the bank and evidenced by their educational institution bonds purchased by the bank notwithstanding any statutory limitation as to rate of interest per annum payable or as to annual interest cost to maturity of money borrowed by such educational institution. Notwithstanding the provisions of any law or statute to the contrary and without taking any further action or obtaining any further approval than required by this chapter, every educational institution is hereby authorized and empowered to take any action necessary to secure such educational institution bonds as provided in RSA 195–F:5, to contract with the bank with respect to any loan from the bank or purchase of such educational institution bonds and such contract shall contain the terms and conditions of such loan or purchase. Every educational institution is hereby authorized and empowered to pay fees and charges required to be paid to the bank for its services. Notwithstanding the provisions of any law or statute applicable to or constituting any limitation on the sale of bonds or notes, any educational institution may sell bonds or notes to the bank without limitation as to denomination and such bonds or notes may be fully registered, registrable as to principal or in bearer form, may bear interest at such rate or rates all in accordance with the foregoing provisions of this section, may be evidenced in such manner and may contain other provisions not inconsistent herewith, and may be sold to the bank without advertisement at a price of par and accrued interest, all as shall be provided in respect of the foregoing or other matters in the proceedings of the educational institution pursuant to which the bonds or notes are authorized to be issued. The educational institution may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in such manner as may be provided in the proceedings authorizing their issuance, provided the bonds in changed form or denominations shall be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid, and such bonds in changed form or denominations shall bear interest at the same rate or rates and shall mature on the same date or dates as the bonds for which they are exchanged. Where any exchange is made under this section the bonds surrendered by the holders at the time of the exchange shall be cancelled. The exchange shall be made only at the request of the holders of the bonds to be surrendered. The educational institution may require all expenses incurred in connection with the exchange to be paid by the holders. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of such bonds, such signatures shall be valid or sufficient for all purposes, the same as if they had remained in office.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:16 Waiver of Defenses; Rights of Holders. Upon the sale and issuance of any educational institution bonds to the bank by any educational institution, such educational institution shall be held and be deemed to have agreed that in the event of the failure of such educational institution to pay the interest on or the principal of any of such educational institution bonds owned or held by the bank as and when due and payable, such educational institution shall have waived all and any defenses to nonpay-

ment, the bank shall thereupon constitute a holder or owner of such educational institution bonds as being in default, and that notwithstanding the provisions of any other law as to time or duration of default or percentage of holders or owners of bonds entitled to exercise rights of such holders or owners of bonds in default, or to invoke any remedies or powers thereof or of any trustee in connection therewith or of any board, body, agency or commission of the state having jurisdiction in such matter or circumstance, the bank may then and thereupon avail itself of all other remedies, rights and provisions of law applicable in such circumstance, and that the failure to exercise or exert any such rights or remedies within any time or period provided by law shall not be raised as a defense by such educational institution, and that all of the bonds of the issue of bonds of such educational institution as to which there has been such nonpayment shall for all of the purposes of this section be held and be deemed to have become due and payable and to be unpaid. The bank is hereby authorized and empowered to carry out the provisions of this section and to exercise all of the rights and remedies and provisions of law herein provided or referred to.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:17 Cooperation by State Agencies. All officers, departments, boards, agencies, divisions and commissions of the state are hereby authorized and empowered to render any and all of such services to the bank as may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the bank. All of such officers, departments, boards, agencies, divisions and commissions are authorized and directed to comply promptly with any such reasonable request by the bank as to the making of any study or review as to desirability, need, cost or expense with respect to any educational institution project or improvement, or the financial feasibility thereof or the financial or fiscal responsibility or ability in connection therewith of any educational institution making application for a loan to the bank and for the purchase by the bank of educational institution bonds to be issued by such educational institution. The cost and expense of any services requested by the bank shall, at the request of the officer, department, board, agency, division or commission rendering such service, be met and provided for by the bank.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:18 Agreements With Financial Institutions. The bank is hereby authorized and empowered to enter into such agreements or contracts with any banks, trust companies, banking or financial institutions, within or without the state, as may be necessary, desirable or convenient in the opinion of the bank for rendering services to the bank in connection with the care, custody or safekeeping of educational institution bonds or other investments held or owned by the bank and services in connection with the payment or collection of amounts due and payable as to principal or interest, and for services in connection with the delivery to the bank of educational institution bonds or other investments purchased by it or sold by it, and to pay the cost of such services. The bank is further authorized and empowered in connection with any of such services to be rendered by any such banks, trust companies or banking or financial institutions as to the custody and safekeeping of any of its educational institution bonds or investments, to require security in the way of collateral bonds, surety agreements or security agreements in such form and in such amount as, in the opinion of the bank, is necessary or desirable for the purpose of the bank.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:19 Effectuation of Purposes. In order to effectively carry out its purpose under this chapter of making loans to educational institutions by purchase of educational institution bonds, and by receipt of its income from service charges and from payments of interest on and the maturing principal of educational institution bonds purchased and held by it, and in order to produce revenues or income to the bank sufficient at all times to meet its costs and expenses of operation under this chapter and to pay the principal of and interest on its outstanding bonds and notes when due, the bank shall at all times, and to the greatest extent possible, so plan to issue its bonds and notes and so lend money to educational institutions by the purchase of educational institution bonds so that the aforesaid intention and purpose is achieved without in any manner or respect jeopardizing any rights of the holders of bonds or notes of the bank or affecting other matters provided for in or pursuant to this chapter.

Source. 1982, 5:1, eff. Feb. 19, 1982.

195–F:20 Form of Investments. All educational institution bonds or other investments of moneys of the bank permitted or provided for under this chapter shall at all times be purchased and held in fully marketable form (subject to provisions for any registration in the name of the bank). All educational institution bonds at any time purchased, held or owned by the bank shall upon delivery to the bank be accompanied by all documentation customary in the field of educational institution financing, including

opinion of counsel, certification and guaranty as to signatures, and certification as to absence of litigation and such other or further documentation as shall from time to time be required by the bank.

Source. 1982, 5:1, eff. Feb. 19, 1982.

CHAPTER 195–G

COLLEGE SAVINGS BOND PROGRAM

195–G:1 Declaration of Policy. It is declared to be the policy of this state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that students attending higher educational institutions be given the fullest opportunity to learn and develop their intellectual and mental capacities. It is recognized that the financial costs to obtain an education beyond the high school level are often burdensome or prohibitive, and it is essential that qualified students or their parents be provided with methods to finance postsecondary education. It is essential that state residents be provided with an appropriate method of financing their postsecondary educations so that they might achieve the required levels of learning and development of their intellectual and mental capacities. Therefore, the general court has conferred certain powers on the state treasurer to accomplish the purposes of this chapter, all to the public benefit and good. It is further declared that the exercise by the state treasurer of the powers conferred under this chapter shall constitute the performance of an essential governmental function.

Source. 1989, 394:1, eff. Aug. 4, 1989.

195–G:2 Definitions. In this chapter "college saving bonds" means general obligation bonds of the state issued pursuant to RSA 6–A and this chapter.

Source. 1989, 394:1, eff. Aug. 4, 1989.

195–G:3 College Savings Bonds. Bonds sold pursuant to RSA 6–A:12 may be designated by the state treasurer as college savings bonds. Such college savings bonds shall mature not less than 5 years nor more than 20 years from the date of issuance, unless the state treasurer determines otherwise, and shall be subject to such financial incentives as may be otherwise provided.

Source. 1989, 394:1, eff. Aug. 4, 1989.

195–G:4 Negotiated Sale of Bonds. No college savings bonds shall be sold at a negotiated sale unless the underwriter or underwriters to which such bonds are sold:

I. Are organized, incorporated or have their principal place of business in the state; or

II. In the judgment of the state treasurer, have sufficient capability to make a broad distribution of such bonds to investors residing in the state.

Source. 1989, 394:1, eff. Aug. 4, 1989.

CHAPTER 195–H

COLLEGE TUITION SAVINGS PLAN

195–H:1 Definitions. In this chapter:

I. "Commission" means the New Hampshire college tuition savings plan advisory commission.

II. "Eligible educational institution" means that which is defined in 26 U.S.C. section 529(e)(5).

III. [Repealed.]

IV. "Savings plan" means any plan administered as the New Hampshire college tuition savings plan.

Source. 1997, 304:2. 1998, 150:1. 2007, 196:1, 7, I, eff. Aug. 17, 2007.

195–H:2 Advisory Commission Established; Reports.

I. (a) There is established the New Hampshire college tuition savings plan advisory commission which shall ensure the proper administration and management of the savings plan. The advisory commission shall ensure that the savings plan complies with the requirements of section 529 of the Internal Revenue Code of 1986, as amended, and any related federal law applicable to the savings plan. The commission shall also be responsible for ensuring the proper administration, implementation, and management of the New Hampshire excellence in higher education endowment trust fund established in RSA 6:38. The commission shall consist of the following members:

(1) The state treasurer.

(2) Two members of the house of representatives, one of whom shall be a member of the house finance committee, appointed by the speaker of the house.

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

(4) The governor, or designee.

(5) Two public members, one of whom shall have business experience, appointed by the governor.

(6) One member representing the college and university system of New Hampshire, appointed by the chancellor.

(7) One member of the higher education commission established in RSA 21–N:8–a, II, appointed by majority vote of the members of the commission.

(8) One member representing the community college system of New Hampshire, appointed by the chancellor of the community college system of New Hampshire.

(9) One member representing the New Hampshire college and university council, appointed by the members of the council.

(10) One member representing the New Hampshire Higher Education Assistance Foundation, appointed by the foundation.

(b) Except for the members appointed under subparagraphs (a)(1)-(4), members shall be appointed for 2-year terms.

II. Members of the commission shall serve without compensation, except that legislative members shall receive mileage at the legislative rate.

III. The commission shall keep written records of all its proceedings.

IV. No member of the commission shall have any personal interest in the gains or profits of any investment made by the commission; nor shall any member of the commission, directly or indirectly, for such member or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the commission; nor shall any member of the commission become an endorser or surety, or in any manner an obligor, for money loaned to or borrowed from the commission.

V. Members of the commission shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this chapter.

VI. (a) The state treasurer shall make quarterly reports regarding the status of the savings plan to the commission.

(b)(1) At least annually, the commission shall issue to each participant, a statement which shall include the participant's beginning balance, contributions, and earnings credited to their account during the previous fiscal year.

(2) At least annually, the commission shall make annual reports regarding the status of the savings program to each participant in the savings plan and to the state library.

Source. 1997, 304:2. 1999, 328:2. 2007, 196:2, eff. Aug. 17, 2007; 361:27, eff. July 17, 2007. 2011, 224:133, eff. July 1, 2011.

195–H:3 Rulemaking. The commission shall adopt rules relative to:

I. The administration, management, promotion, and marketing of the savings plan.

II. Maintaining the tuition savings program in compliance with Internal Revenue Service standards for qualified state tuition programs.

III to VII. [Repealed.]

VIII. The administration, implementation, and promotion of the New Hampshire excellence in higher education endowment trust fund established in RSA 6:38.

Source. 1997, 304:2. 1998, 150:2. 1999, 328:3. 2007, 196:7, II, eff. Aug. 17, 2007.

195–H:4 College Tuition Savings Plan.

I. (a) The treasurer shall, as needed, issue requests for proposals to evaluate and determine the vehicle for investments of the savings plan and its administration.

(b) The commission shall consider and, if appropriate, give preference to proposals best meeting the following criteria:

(1) Ability to administer financial programs with individual account maintenance and reporting.

(2) Ability to develop and administer an investment program of a nature similar to the objectives of the college tuition savings plan.

(3) Ability to augment the college tuition savings plan with other programs or informational services considered beneficial by the commission.

(c) The final selection of the vehicle for investments and its administration shall be made by the commission.

II. The commission shall determine and make recommendations regarding the use of personnel in

the treasurer's office with costs for such administrative support to be funded from the savings plan.

III. The savings plan shall be on a "cash only" basis, and shall include provisions for automatic deductions.

IV. The savings plan shall be established in such form as shall be determined by the commission and may be established as a trust to be declared by the state treasurer. The savings plan or such trust may be divided into multiple investment portfolios. If so divided, and if distinct records are maintained for any such portfolio and the assets associated with any such portfolio are accounted for separately from the other assets of the trust, then the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular portfolio shall be enforceable against the assets of such portfolio only, and not against the assets of the trust generally.

V. [Repealed.]

Source. 1997, 304:2. 1998, 150:3. 2007, 196:3, 4, eff. Aug. 17, 2007. 2011, 224:123, eff. July 1, 2011. 2013, 144:92, eff. July 1, 2013.

195–H:5 Residency. Persons shall be eligible to participate in and benefit from the savings plan, regardless of state of residency.

Source. 1997, 304:2. 2007, 196:5, eff. Aug. 17, 2007.

195–H:6 to 195–H:8 Repealed.

[Repealed 2007, 196:7, III, eff. Aug. 17, 2007.]

History

Former RSA 195–H:6, which was derived from 1997, 304:2, related to use of tuition savings.

Former RSA 195–H:7, which was derived from 1997, 304:2, related to deferred use of funds in a college tuition savings program.

Former RSA 195–H:8, which was derived from 1997, 304:2, related to withdrawal, refund, and transfer of tuition savings.

195–H:9 Liability Exemption. Neither the state nor any eligible educational institution shall be liable for any shortage of funds in the event that the accruals from the savings plan are insufficient to meet the tuition requirements of such institution chosen by the student for which the plan was intended.

Source. 1997, 304:2. 2007, 196:6, eff. Aug. 17, 2007.

195–H:10 Funds Exempt From Interest and Dividends Tax. Income and distributions from any qualified tuition program as defined in the Internal Revenue Code of 1986, as amended, shall be exempt from the New Hampshire interest and dividends tax pursuant to RSA 77:4–e, provided that distributions from the plan which are subject to federal income tax shall be subject to the interest and dividends tax pursuant to RSA 77 on the accrued income portion of the savings plan distribution.

Source. 1997, 304:2. 2003, 64:2. 2007, 196:6, eff. Aug. 17, 2007.

CHAPTER 195–I

AUTOMATED EXTERNAL DEFIBRILLATOR ADVISORY COMMISSION

[Repealed 2009, 42:2, III, eff. Jan. 1, 2014.]

History

Former RSA 195–I:1, which was derived from 2007, 62:2, related to the declaration of purpose of the automated external defibrillator advisory commission.

Former RSA 195–I:2, which was derived from 2007, 62:2 and 2009, 42:1, related to the establishment of the automated external defibrillator advisory commission.

Former RSA 195–I:3, which was derived from 2007, 62:2 and was repealed by 2009, 42:2, I, eff. May 15, 2009, related to the authority of the commission to accept and disburse gifts and donations.

Former RSA 195–I:4, which was derived from 2007, 62:2 and was repealed by 2009, 42:2, II, eff. May 15, 2009, related to the commission's rulemaking authority.

Former RSA 195–I:5, which was derived from 2007, 62:2, related to the automated external defibrillator advisory commission's report.

CHAPTER 195–J

NEW HAMPSHIRE CHILDREN'S SAVINGS ACCOUNT PROGRAM

195–J:1 Program Established. There is hereby established in the office of the state treasurer the New Hampshire children's savings account program. The purpose of the program is to increase opportunities for college and career success for all students, to encourage positive postsecondary education savings behavior for low and moderate income families, and to provide, in cooperation with the public schools, financial literacy education for all students and their parents.

Source. 2015, 271:2, eff. July 1, 2015.

195–J:2 Commission Established.

I. The children's savings account program commission is hereby established to ensure the proper administration, management, and development of the children's savings account program. The members of the commission shall be as follows:

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

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

(c) The state treasurer, or designee.

(d) The director of the division of higher education, department of education, or designee.

(e) The chairperson of the university system of New Hampshire board of trustees, or designee.

(f) The director of the New Hampshire financial literacy education program, or designee.

(g) One member from a community philanthropic organization, appointed by the governor.

(h) One member representing the interests of the New Hampshire children's trust fund, appointed by the governor.

(i) One member from the New Hampshire Higher Education Assistance Foundation, appointed by the foundation.

(j) One member from the Coos Coalition for Young Children and Families, appointed by that organization.

(k) One member representing the Federal Reserve Bank of Boston, appointed by the bank.

(*l*) One member representing the New Hampshire Community Loan Fund, appointed by that organization.

II. The commission shall elect a chairperson from its membership, and any other officers it deems necessary. The terms of the elected members of the commission shall be coterminous with their terms in office; the terms of all other appointed members shall be 3 years. In the event of a vacancy, a new member shall be appointed for the unexpired term in the same manner as the original appointment. Eight members of the commission shall constitute a quorum.

III. Members of the commission shall serve without compensation, but shall be reimbursed for necessary travel and other necessary expenses. Legislative members shall receive mileage at the legislative rate when attending to the duties of the commission.

IV. The department of education shall provide administrative and clerical support to the commission as may be necessary.

V. The commission shall keep written records of all its proceedings.

VI. No member of the commission shall have any personal interest in the gains or profits of any investment made by the commission; nor shall any member of the commission, directly or indirectly, for such member or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the commission; nor shall any member of the commission become an endorser or surety, or in any manner an obligor, for money loaned to or borrowed from the commission.

VII. Members of the commission shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this chapter.

Source. 2015, 271:2, eff. July 1, 2015.

195–J:3 Duties of the Commission. The commission shall:

I. Investigate methods for encouraging increased participation of families with young children, including those of low and moderate income, in the New Hampshire college tuition savings plan as defined in RSA 195–H and other children's savings plans.

II. Establish and promote kindergarten to college savings plans pilot programs in Coos county and in the city of Manchester no later than September of 2016, which would consist of creating a savings account at a local financial institution with a minimum deposit of $50.00 for each eligible child attending public kindergarten in Coos county and in the city of Manchester, and would include financial literacy education for such children and their families in cooperation with local public schools. The pilot programs shall be funded to the extent of any gifts, grants, or donations received from any source.

III. Establish policies that ensure that children's savings accounts are accessible and eventually offered on an opt-out basis statewide, are seeded with gifts, grants, or donations from local or private philanthropic foundations, and are connected to local public school financial literacy education programs.

IV. Develop administrative and operational practices such as staffing, structuring, managing, marketing, and funding mechanisms to sustain a statewide children's savings accounts program and include clearly stated objectives, action plans, and evaluation procedures.

V. Establish recordkeeping and reporting procedures regarding the status of the children's savings account program fund, including records of beginning balances, contributions, earnings, bonuses, and matches earned by each program participant during the fiscal year.

VI. Establish a fund raising plan to secure state matching funds from federal, state, or private sources.

VII. Establish ongoing communication with the New Hampshire college tuition savings plan advisory commission established in RSA 195–H to ensure that more families become educated about the potential of investing in the New Hampshire college tuition savings program, and to facilitate the advisory committee's future administration and responsibility for the children's savings account program.

Source. 2015, 271:2, eff. July 1, 2015.

195–J:4 Reports.

I. (a) The treasurer shall, as needed, issue requests for proposals to evaluate and determine proposals which are best suited to the reporting and recordkeeping needs of the children's savings account program and fund.

(b) The commission shall consider and, if appropriate, give preference to proposals which best demonstrate experience in administering financial programs requiring individual account maintenance and reporting.

(c) The final selection of the proposal shall be made by the commission.

II. The state treasurer shall make quarterly reports regarding the status of the children's savings account program and children's savings account fund to the commission.

(a) At least annually, the commission shall issue or cause to be issued to each participant, a statement which shall include the participant's beginning balance, contributions, and earnings credited to their account during the previous fiscal year.

(b) At least annually, the commission shall make or cause to be made an annual report regarding the status of the children's savings account program to each participant in the program, to the speaker of the house of representatives, the senate president, and the state library.

(c) Prior to the implementation of the pilot programs in Coos county and in the city of Manchester, the commission shall submit a report to the speaker of the house of representatives and the senate president regarding the policies adopted by the commission pursuant to RSA 195–J:3.

Source. 2015, 271:2, eff. July 1, 2015.

195–J:5 Children's Savings Account Fund Established. There is established a children's savings account fund in the office of the state treasurer. This fund shall be kept distinct and separate from other funds. The fund shall be administered by the children's savings account commission established in RSA 195–J:2 and shall be nonlapsing and continually appropriated to the commission for the purposes of establishing children's savings accounts initially through pilot programs, and eventually statewide, pursuant to RSA 195–J:3. The commission may accept and shall deposit any gifts, grants, donations, or other moneys from any source into the fund.

Source. 2015, 271:2, eff. July 1, 2015.

195–J:6 Privacy.

I. In establishing the pilot programs in Coos county and in the city of Manchester, and in establishing policies, practices, and procedures pursuant to RSA 195–J:3 and RSA 193–E:5, the commission shall insure that neither the commission, the state, nor any political subdivision of the state, nor any office, department, or agency of any of the foregoing, obtains or retains social security numbers of any applicant or participant.

II. Neither the state, any political subdivision of the state, nor any office, department, or agency of any of the foregoing, except for the commission and the office of the state treasurer, shall have access to individually-identifiable information with respect to applicants or participants in the program.

III. The names, addresses, telephone numbers, and any other individually-identifiable information about applicants or participants in the program shall be exempt from the provisions of RSA 91–A. This paragraph shall not apply to aggregated data from which individuals cannot be identified.

Source. 2015, 271:2, eff. July 1, 2015.

CHAPTER 195–K

ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) SAVINGS ACCOUNT PROGRAM

[RSA Chapter 195–K repealed by 2016, 9:3, I, effective as provided by 2016, 9:4.]

195–K:1 Definitions. In this chapter:

[RSA 195–K:1 repealed by 2016, 9:3, I, effective as provided by 2016, 9:4.]

I. "Achieving a Better Life Experience Act of 2014" means the federal Achieving a Better Life Experience (ABLE) Act of 2014 which allows individuals with disabilities to establish tax-free 529A savings accounts to save for medical, housing, transportation, employment training, education, and other quality of life expenses.

II. "Executive director" means the executive director of the governor's commission on disability established in RSA 275–C.

III. "Individuals with disabilities" means individuals who are eligible for the program because their disabilities occurred on or before the individual attained age 26, as required by 26 U.S.C. section 529A(e)(1)–(2) of the federal Achieving a Better Life Experience Act of 2014.

IV. "Savings plan" means any plan administered as the New Hampshire ABLE savings account program.

Source. 2016, 9:1, eff. Mar. 16, 2016.

195–K:2 Achieving a Better Life Experience (ABLE) Savings Account Program.

[RSA 195–K:2 repealed by 2016, 9:3, I, effective as provided by 2016, 9:4.]

I. The state treasurer and the executive director shall establish and administer a qualified ABLE savings account program as authorized in the Achieving a Better Life Experience Act of 2014, and in accordance with the provisions of section 529A of the United States Internal Revenue Code of 1986, as amended, and may enter into such contracts as the state treasurer and the executive director deem necessary to achieve this purpose, subject to the approval of the governor and council.

II. The state treasurer and the executive director shall adopt rules relative to the administration, management, promotion, and marketing of the qualified ABLE program and ensure that the qualified ABLE program complies with section 529A of the Internal Revenue Code of 1986, as amended, and any related federal law applicable to the qualified ABLE program.

III. Any personnel and administrative costs related to plan administration within the state treasurer's office and the governor's commission on disability shall be funded from the savings plan.

IV. No general fund moneys shall be expended in support of the savings plan or its implementation.

Source. 2016, 9:1, eff. Mar. 16, 2016.

195–K:3 ABLE Savings Plan.

[RSA 195–K:3 repealed by 2016, 9:3, I, effective as provided by 2016, 9:4.]

I. (a) The state treasurer and the executive director shall, as needed, issue requests for proposals to evaluate and determine the vehicle for investments of the savings plan and its administration.

(b) The state treasurer and the executive director shall consider and, if appropriate, give preference to proposals best meeting the following criteria:

(1) Ability to administer financial programs with individual account maintenance and reporting.

(2) Ability to develop and administer an investment program of a nature similar to the objectives of the ABLE savings plan.

(c) The final selection of the vehicle for investments and its administration shall be made by the state treasurer and the executive director.

(d) The state treasurer and the executive director may consider and contract with an ABLE savings account program previously established in another state.

II. The savings plan may be on a "cash only" basis, and may include provisions for automatic deductions.

III. The savings plan or such trust may be divided into multiple investment portfolios. If so divided, and if distinct records are maintained for any such portfolio and the assets associated with any such portfolio are accounted for separately from the other assets of the trust, then the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular portfolio may be enforceable against the assets of such portfolio only, and not against the assets of the trust generally.

Source. 2016, 9:1, eff. Mar. 16, 2016.

195–K:4 Funds Exempt From Interest and Dividends Tax.

[RSA 195–K:4 repealed by 2016, 9:3, I, effective as provided by 2016, 9:4.]

Income and distributions from any qualified ABLE program as defined in the Internal Revenue Code of 1986, as amended, shall be exempt from the interest

and dividends tax pursuant to RSA 77:4–h, provided that distributions from the plan which are subject to federal income tax shall be subject to the interest and dividends tax pursuant to RSA 77 on the accrued income portion of the savings plan distribution.

Source. 2016, 9:1, eff. Mar. 16, 2016.

195–K:5 Authority to Issue Request for Proposals.

[RSA 195–K:5 repealed by 2016, 9:3, I, effective as provided by 2016, 9:4.]

I. Within 6 months of the issuance of regulations by the Internal Revenue Service and the federal Department of Treasury governing implementation of any savings account programs authorized pursuant to the federal Achieving a Better Life Experience Act of 2014 (ABLE), the state treasurer, in consultation with the executive director, shall issue a request for proposals from third-party vendors to implement a savings plan pursuant to this chapter and in accordance with provisions of section 529A of the United States Internal Revenue Code of 1986, as amended. The state treasurer and executive director shall implement a savings plan pursuant to this chapter within 6 months after a suitable third-party vendor has been selected.

II. In selecting a third-party vendor, the state treasurer and executive director of the governor's commission on disability shall consider, and, if appropriate, give preference to proposals best meeting the following criteria:

(a) Ability to administer financial programs with individual account maintenance and reporting.

(b) Ability to develop and administer an investment program of a nature similar to the objectives of the ABLE plan.

III. The final selection of the vehicle for investments and administration shall be made by the treasurer and the executive director.

IV. The state treasurer and the executive director may consider and contract with an ABLE savings account program previously established in another state.

Source. 2016, 9:1, eff. Mar. 16, 2016.

CHAPTER 196

SCHOOL DISTRICT BONDS

[Omitted.]

CHAPTER 197

SCHOOL MEETINGS AND OFFICERS

School Meetings

District Officers

School Meetings

197:1 Annual. A meeting of every school district shall be held annually between March 1 and March 25, inclusive, or in accordance with RSA 40:13 if that provision is adopted in the district, for raising and appropriating money for the support of schools for the fiscal year beginning the next July 1, for the transaction of other district business and, in those

districts not electing their district officers at town meeting, for the choice of district officers.

Source. RS 70:3. CS 74:1. GS 79:3. GL 87:3. PS 90:1. 1921, 85, V:1. PL 120:1. RL 139:1. RSA 197:1. 1961, 134:1. 1981, 250:3. 1997, 318:10, eff. Aug. 22, 1997.

197:1–a Election at Town Meeting.

[Repealed 1979, 321:2, V, eff. Aug. 21, 1979.]

History

Former RSA 197:1–a, which was derived from 1961, 134:2; 1971, 261:1; and 1973, 29:1, related to election of school district officers at town meetings. See now RSA 671:22.

197:1–b Checklist and Nonpartisan Ballot System.

[Repealed 1979, 321:2, VI, eff. Aug. 21, 1979.]

History

Former RSA 197:1–b, which was derived from 1961, 134:2, related to adoption of the checklist of the town and the nonpartisan ballot system. See now RSA 671:24 and 671:30.

197:1–c Duties of Clerk of School District.

[Repealed 1979, 321:2, VII, eff. Aug. 21, 1979.]

History

Former RSA 197:1–c, which was derived from 1961, 134:2, related to filing declarations of candidacy and preparation and delivery of ballots. See now RSA 671:19, 20 and 25.

197:1–d Election Officials; Counting Ballots.

[Repealed 1979, 321:2, VIII, eff. Aug. 21, 1979.]

History

Former RSA 197:1–d, which was derived from 1961, 134:2 and 1971, 261:2, related to town election officials' duties in school district elections. See now RSA 671:26.

197:1–e Other Coordination of Town and School District Elections.

[Repealed 1979, 321:2, IX, eff. Aug. 21, 1979.]

History

Former RSA 197:1–e, which was derived from 1961, 134:2, related to other coordination of town and school district elections.

197:1–f Inapplicability to Cities.

[Repealed 1979, 321:2, X, eff. Aug. 21, 1979.]

History

Former RSA 197:1–f, which was derived from 1961, 134:2, related to application of this chapter to cities. See now RSA 671:22, IV.

197:1–g Posting Warrants. If the annual meeting of the school district for other business is to be held at some other time than at the town meeting the school board shall post the warrant for said annual meeting omitting the article relative to election of district officers. The school warrant for the election of district officers shall prescribe the time the polls are to open and also an hour before which the polls may not close. Said prescribed times shall be the same as those set for the opening and closing of polls for the town meeting.

Source. 1963, 195:1. 1979, 321:5, eff. Aug. 21, 1979.

197:2 Special. A special meeting of a school district shall be held whenever, in the opinion of the school board, there is occasion therefor, or whenever 50 or more voters, or ¼ of the voters of the district, whichever is less, shall have made written application to the school board therefor, setting forth the subject matter upon which action is desired. No special school district meeting shall be held in conjunction with the biennial election, except when a special school district meeting has been approved by the court and a school district has adopted the official ballot referendum form of meeting pursuant to RSA 40:14.

Source. RS 70:4. CS 74:2. GS 79:3. GL 87:3. PS 90:2. 1921, 85, V:2. PL 120:2. RL 139:2. RSA 197:2. 1969, 104:9. 1991, 370:6. 2005, 83:1, eff. Aug. 6, 2005.

197:3 Raising Money at Special Meeting.

I. (a) No school district at any special meeting shall raise or appropriate money nor reduce or rescind any appropriation made at a previous meeting, unless the vote thereon is by ballot, nor unless the ballots cast at such meeting shall be equal in number to at least ½ of the number of voters of such district entitled to vote at the regular meeting next preceding such special meeting; and, if a checklist was used at the last preceding regular meeting, the same shall be used to ascertain the number of legal voters in said district; and such checklist, corrected according to law, may be used at such special meeting upon request of 10 legal voters of the district. In case an emergency arises requiring an immediate expenditure of money, the school board may petition the superior court for permission to hold a special district meeting, which, if granted, shall give said district meeting the same authority as an annual district meeting.

(b) "Emergency" for the purposes of this section shall mean a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

(c) To verify that an emergency exists, a petitioner shall present, and the court shall consider, a number of factors including:

(1) The severity of the harm to be avoided.

(2) The urgency of the petitioner's need.

(3) Whether the claimed emergency was foreseeable or avoidable.

(4) Whether the appropriation could have been made at the annual meeting.

(5) Whether there are alternative remedies not requiring an appropriation.

II. Ten days prior to petitioning the superior court, the school board shall notify, by certified mail, the commissioner of the department of revenue administration that an emergency exists by providing the commissioner with a copy of the explanation of the emergency, the warrant article or articles and the petition to be submitted to the superior court. The petition to the superior court shall include a certification that the commissioner of the department of revenue administration has been notified pursuant to this paragraph.

III. In the event that the legislative body at an annual meeting amends or rejects the cost items or fact finder's reports as submitted pursuant to RSA 273–A, notwithstanding paragraphs I and II, the school board may call one special meeting for the sole purpose of addressing all negotiated cost items without petitioning the superior court for authorization. Such special meeting may be authorized only by a contingent warrant article inserted on the warrant or official ballot either by petition or by the governing body. The wording of the question shall be as follows: "Shall (the local political subdivision), if article _____ is defeated, authorize the governing body to call one special meeting, at its option, to address article _____ cost items only?" The refusal of the legislative body to authorize a special meeting as provided in this paragraph shall not affect any other provision of law. Any special meeting held under this paragraph shall be combined with the revised operating budget meeting under RSA 40:13, XI, if any, and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.

IV. When the school board votes to petition the superior court for permission to hold a special school district meeting, the school board shall post notice of such vote within 24 hours after taking the vote and a minimum of 10 days prior to filing the petition with the court. The school board shall post notice of the court date for an evidentiary hearing on the petition within 24 hours after receiving notice of the court date from the court. Such notices shall be posted at the office of the school board and at 2 or more other conspicuous places in the school district, and in the next available edition of one or more local newspapers with a wide circulation in the school district. If the district is a multi-town school district, the notices shall be posted at the office of the school board and at 2 or more other conspicuous places in each town of the multi-town school district, and in the next available edition of one or more newspapers with a wide circulation in all towns of the multi-town school district.

V. Notwithstanding any other provision of law, no special meeting to raise and appropriate money, or to reduce or rescind any appropriation made at a previous meeting, may be held unless the vote is taken on or before December 31 of any budget cycle. However, the district may bring such items as could not be addressed prior to December 31 before the voters at the next annual school district meeting. Such supplemental appropriations, together with appropriations raised under RSA 197:1, shall be assessed against property as of April 1.

Source. 1907, 121:1. 1921, 85, V:3. PL 120:3. 1927, 56:2. RL 139:3. 1947, 178:1. RSA 197:3. 1989, 172:3. 1997, 317:2; 318:11; 319:1. 1998, 55:2, eff. July 4, 1998; 190:1, eff. Aug. 15, 1998.

197:3–a Special Meeting for Change in Education Funding. In response to statutory changes resulting in reductions or increases in distribution of state revenues for education pursuant to RSA 198:41 to school districts which would take effect after the adoption of a new school district budget and would apply in the fiscal year covered by the new budget, the governing body of a school district may, after consultation with the budget committee, call a special meeting of the legislative body to consider a reduction, rescission, or increase of appropriations made at an annual meeting, subject to the following:

I. The governing body of a school district that has adopted the official ballot referendum form of meeting under RSA 40:13 may elect to hold and conduct the meeting in accordance with the provisions of this section in a single session for deliberating and voting, and without regard to the provisions of RSA 40:13.

II. A special meeting under this section shall not be petitioned under RSA 197:2, and no petitioned warrant articles shall be inserted in the warrant.

III. The governing body's warrant shall specify, in one or more articles, the amounts of appropriations proposed for reduction, rescission, or increase from the operating budget or separate warrant articles, or both, adopted at the annual meeting.

IV. The governing body shall hold a public hearing on the proposed reductions, rescissions, or increase at least 14 days prior to the meeting. Notice of the time, place, and subject of such hearing shall be posted in at least 2 public places within the school

district, one of which shall be on the school district's website, if such exists, at least 7 days prior to the hearing.

V. The governing body of such school district shall post a notice of the meeting, which shall include the warrant, in at least 2 public places within the school district, one of which shall be on the school district's website, if such exists, at least 7 days prior to the meeting. Additional notice shall be published in a newspaper of local or regional circulation in the school district, provided that if there is no newspaper of local or regional circulation in which notice can be published at least 7 days before the date of the meeting, public notice shall be posted in at least one additional place within the school district.

VI. The meeting shall be conducted in accordance with the provisions of this section. The most recently updated checklist shall be used.

VII. The legislative body may approve or disapprove any proposed reduction, rescission, or increase of appropriations, or may approve lesser reductions. The legislative body shall not approve greater reductions than what is in the warrant, or reduce or rescind an appropriation not specified in the warrant, or act on any other business at the meeting.

VIII. Except as provided in this section, the provisions of the following chapters, as they apply to special meetings of the legislative body of a school district, shall not be required for special meetings held pursuant to this paragraph: RSA 32, RSA 39, RSA 49–D, RSA 197, RSA 654, RSA 669, RSA 670, and RSA 671.

Source. 2013, 197:1, eff. Sept. 7, 2013.

197:4 Meeting Places. School district meetings, including the first session of meetings in school districts which have adopted official ballot voting procedures under RSA 40:13 and 14, may be held at such suitable places, which have 2-way visual and audio closed circuit capacity, as in the opinion of the officers calling the meeting will best accommodate the voters.

Source. 1879, 57:37. PS 90:3. 1921, 85, V:4. PL 120:4. RL 139:4. 1997, 319:2, eff. Aug. 22, 1997.

197:4–a Meeting Outside District.

I. A school district may hold its district meeting outside the geographical boundaries of the district, if the district does not have a facility with a large enough seating capacity to accommodate the meeting.

II. Warrants and other items required to be posted shall be posted for review by qualified voters at the place of the meeting on the day of the meeting.

III. The school district officers shall arrange transportation, for those voters who need it, from the usual polling place in the district to the out-of-district facility and back to the usual polling place.

IV. The out-of-district meeting shall be held in an adjacent town or nearest appropriate facility.

Source. 1993, 120:2, eff. July 16, 1993.

197:5 Warning. School district meetings shall be warned by the school board, or, in cases authorized by law, by a justice of superior court, by a warrant addressed to the voters of the district, stating the time and place of the meeting and the subject matter of the business to be acted upon. In all districts which have not adopted the provisions of this title providing for medical inspection in schools the warrant shall contain an article relating thereto.

Source. RS 70:3. CS 74:1. GS 79:1, 3. GL 87:1, 4. PS 90:4. 1921, 85, V:5. PL 120:5. RL 139:5. RSA 197:5. 1969, 182:1. 2003, 289:20, eff. Sept. 1, 2003.

197:5–a Budget. The school board, if the school district is not controlled by the municipal budget act, shall prepare a budget for the annual or any special meeting upon a form prescribed and provided by the commissioner of revenue administration and shall post the same with and at the same time as the warrant for the meeting is posted.

Source. 1963, 120:7. 1973, 544:8, eff. Sept. 1, 1973.

197:5–b Budgetary Official Ballot. Notwithstanding any other provision of law, any school district may vote to raise and appropriate money for the support of schools by official ballot as provided for in RSA 49–D:3, II–a by following the procedures set forth in RSA 49–B. The school district may also include within its charter a plan for voting by official ballot, pursuant to RSA 49–B and RSA 49–D, on such other warrant articles as the school district may determine. The membership of any charter commission established in a multi-town school district shall reflect each member town's proportionate membership on the school board. For purposes of this section, all references in RSA 49–B and RSA 49–D to "municipal," "municipality," "city," and "town" shall mean and include "school district," and all references to "elected body" and "governing body" shall mean and include "school board."

Source. 1995, 53:6. 1997, 319:9. 1998, 100:1, eff. July 19, 1998.

197:6 Warrant and Articles. Upon the written application of 25 or more voters or 2 percent of the voters of the school district, whichever is less, although in no event shall fewer than 10 registered voters be sufficient, presented to the school board or one of them not later than 30 days before the date

prescribed for the school district meeting or the second Tuesday in March, whichever is earlier, the school board shall insert in the school district warrant for such meeting the petitioned article with only such minor textual changes as may be required. No article may be inserted after posting of said warrant. The right to have an article inserted in the warrant conferred by this section shall not be invalidated by the provisions of RSA 32.

Source. PS 90:5. 1921, 85, V:6. PL 120:6. RL 139:6. 1949, 284:1. RSA 197:6. 1965, 36:1. 1971, 79:2. 1991, 242:1. 1993, 176:11. 2000, 199:1, eff. July 29, 2000.

197:6–a Penalty. A school board is guilty of a violation if it refuses to insert an article in the warrant, after being petitioned to do so in accordance with RSA 197:6.

Source. 1971, 79:3. 1977, 588:25, eff. Sept. 16, 1977.

197:7 Posting Warrant. The school board or justice issuing a warrant shall cause an attested copy of it to be posted at the place of meeting, and a like copy at one other place in the district, 14 days before the day of meeting, not counting the day of posting nor the day of the meeting, but including any Saturdays, Sundays and legal holidays within said period.

Source. PS 90:6. 1921, 85, V:7. PL 120:7. RL 139:7. RSA 197:7. 1967, 90:2. 1975, 11:4, eff. April 25, 1975.

197:8 Special Meetings. The school board when calling a special meeting shall, within one week after posting the warrant therefor, cause a copy of said warrant to be published once in a newspaper of general circulation in said district.

Source. 1945, 39:3, eff. March 6, 1945.

197:9 By a Justice of Superior Court. If the school board unreasonably neglect or refuse to warn an annual meeting, or to call a special meeting after a sufficient application therefor is made to them, a justice of superior court, upon petition of 10 or more voters, or ⅙ of the voters of the district, may issue such warrant and cause it to be posted, and, if for a special meeting, to be published as required by law. The members of the school board shall be made parties defendant to such petition.

Source. RS 70:5. CS 74:3. GS 79:4. GL 87:4. PS 90:7. 1921, 85, V:8. PL 120:8. RL 139:8. RSA 197:9. 1969, 182:2, eff. May 28, 1969.

197:10 Return; Record. The warrant, with a certificate thereon, verified by oath, stating the time and places when and where copies of it were posted, shall be given to the clerk of the district at or before the time of the meeting, and shall be recorded by the clerk in the records of the district.

Source. 1845, 222:4. CS 74:4. GS 79:5. GL 87:5. PS 90:8. 1921, 85, V:9. PL 120:9. RL 139:9. 1997, 319:3, eff. Aug. 22, 1997.

197:11 Voters.

[Repealed 1979, 321:2, XI, eff. Aug. 21, 1979.]

History

Former RSA 197:11, which was derived from RS 70:6; CS 74:5; GS 79:6; GL 87:6; 1878, 46:1; 1879, 57:18; PS 90:9; 1921, 85, V:10; PL 120:10; RL 139:10; RSA 197:11; and 1957, 18:1, related to qualified voters in school district elections. See now RSA 671:14.

197:12 Checklist.

[Repealed 1979, 321:2, XII, eff. Aug. 21, 1979.]

History

Former RSA 197:12, which was derived from 1851, 1118:1; CS 74:16; GS 79:7, 8; GL 87:7, 8; PS 90:10; 1895, 97:1; 1921, 85, V:11; PL 120:11; RL 139:11; RSA 197:12; and 1967, 235:1, related to use of a checklist during meetings concerning elections and bond issues. See now RSA 671:15 and 671:16.

197:12–a Preparation of Checklist.

[Repealed 1979, 321:2, XIII, eff. Aug. 21, 1979.]

History

Former RSA 197:12–a, which was derived from 1957, 57:1, related to adoption of town checklist by the school district. See now RSA 671:24.

197:13 Wrongful Voting; Penalty.

[Repealed 1979, 321:2, XIV, eff. Aug. 21, 1979.]

History

Former RSA 197:13, which was derived from 1847, 496:1; CS 74:6; GS 79:9; GL 87:9; PS 90:11; 1921, 85, V:12; PL 120:12; RL 139:12; RSA 197:13; 1957, 18:2; 1973, 72:16, and 528:108, related to illegal voting. See now RSA 659:34.

District Officers

197:14 Officers to be Chosen.

[Repealed 1979, 321:2, XV, eff. Aug. 21, 1979.]

History

Former RSA 197:14, which was derived from RS 70:7; CS 74:7; GS 79:10; GL 87:10; 1879, 57:19; 1885, 43:4; PS 90:12; 1921, 85, V:13; PL 120:13; RL 139:13; 1949, 14:1; RSA 197:14; 1973, 544:10; and 1975, 67:1, 439:23, related to number and types of school district officers not provided for by law. See now RSA 671:4-671:7.

197:15 School Board.

[Repealed 1979, 321:2, XVI, eff. Aug. 21, 1979.]

History

Former RSA 197:15, which was derived from PS 90:13; 1921, 85, V:14; PL 120:14; 1933, 127:1; RL 139:14; RSA 197:15; 1961, 45:1; 1967, 343:1; and 1971, 57:1, related to members of the school board as provided for at annual meeting. See now RSA 671:4.

197:16 Eligibility.

[Repealed 1979, 321:2, XVII, eff. Aug. 21, 1979.]

History

Former RSA 197:16, which was derived from RS 70:7; CS 74:7; 1872, 8:1, 2; GL 87:10; 1879, 57:19; PS 90:14; 1909, 20:1; 1921, 85, V:15; PL 120:15; RL 139:15; RSA 197:16; 1965, 108:1; 1971, 177:1; and 1975, 106:1, related to eligibility to hold school district office. See now RSA 671:18.

197:17 Election.

[Repealed 1979, 321:2, XVIII, eff. Aug. 21, 1979.]

History

Former RSA 197:17, which was derived from CS 74:8; GS 79:10; GL 87:10; 1879, 59:10; 1889, 87:1; PS 90:15; 1897, 69:1; 1921, 85, V:16; PL 120:16; RL 139:16; and 1951, 156:1, related to election of moderator, clerk, school board and treasurer by ballot by a majority vote. See now RSA 671:30.

197:18 Term.

[Repealed 1979, 321:2, XIX, eff. Aug. 21, 1979.]

History

Former RSA 197:18, which was derived from RS 70:7; CS 74:7; GS 79:10; 1868, 1:30; 1877, 42:2; GL 87:10; 1879, 57:19; 1885, 43:4; PS 90:16; 1921, 85, V:17; 87:1; PL 120:17; RL 139:17; RSA 197:18; 1967, 343:2; and 1975, 67:2, related to terms of school district officers and board members. See now RSA 671:3, 33.

197:19 Moderator. The moderator shall have the like power and duty as a moderator of a town meeting to conduct the business and to preserve order, and in the conduct of a school district meeting, all the statutory duties, powers and authority granted to town moderators, and may administer oaths to district officers and in the district business.

Source. 1852, 1301. CS 74:8. GS 79:11. GL 87:11. PS 90:17. 1921, 85, V:18. PL 120:18. RL 139:18. RSA 197:19. 1971, 524:5. 1979, 321:6, eff. Aug. 21, 1979.

197:19–a Assistant Moderator. The moderator may appoint an assistant moderator, who shall take the oath of office in the same manner as the moderator and shall hold office at the pleasure of the moderator, and shall have all the powers and duties which the moderator has subject to the control of the moderator.

Source. 1957, 84:2, eff. April 24, 1957.

197:20 Clerk. The clerk shall keep a true record of all the doings of each meeting; shall make an attested copy of any record of the district for any person upon request and tender of legal fees therefor; shall act as moderator of any meeting until a moderator pro tempore shall be chosen, if the moderator is absent or the office has become vacant; and shall have the same power to administer oaths which the moderator has. If the clerk is absent at any meeting a clerk pro tempore shall be chosen.

Source. RS 70:8. CS 74:10. GS 79:12. 1868, 1:28. GL 87:12. PS 90:18. 1921, 85, V:19. PL 120:19. RL 139:19. 1951, 37:2. RSA 197:20. 1963, 120:5, eff. Jan. 1, 1964.

197:20–a Inspectors.

[Repealed 1979, 321:2, XX, eff. Aug. 21, 1979.]

History

Former RSA 197:20–a, which was derived from 1957, 84:3, related to appointment, qualification and duties of inspectors. See now RSA 671:28.

197:21 Reports by Clerk.

[Repealed 1979, 321:2, XXI, eff. Aug. 21, 1979.]

History

Former RSA 197:21, which was derived from 1889, 17:2; PS 90:19; 1921, 85, V:20; PL 120:20; RL 139:20; RSA 197:21; 1965, 34:3; and 1973, 544:8, related to reports to the commissioners of revenue administration and education. See now RSA 671:31.

197:22 Treasurer's Bond. The treasurer shall, before entering upon the duties of such office, give a bond to the district with sufficient sureties, to the acceptance of the school board, for the faithful performance of the treasurer's official duties.

Source. 1887, 105:8. PS 90:20. 1921, 85, V:21. PL 120:21. RL 139:21. 1997, 319:4, eff. Aug. 22, 1997.

197:23 Treasurer's Duties.

[Repealed 1963, 87:2, eff. July 16, 1963.]

History

Former RSA 197:23, which was derived from 1887, 105:8; PS 90:21; 1921, 85, V:22; PL 120:22; and RL 139:22, related to duties of treasurer. See now RSA 197:23–a.

197:23–a Treasurer's Duties.

I. The treasurer shall have custody of all moneys belonging to the district and shall pay out the same only upon orders of the school board or upon orders of the 2 or more members of the school board empowered by the school board as a whole to authorize payments. The treasurer shall deposit the moneys in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in federally insured banks chartered under the laws of New Hampshire or the federal government with a branch within the state, except that funds may be deposited in banks outside the state if such banks pledge and deliver to a third party custodial bank or the regional federal reserve bank collateral security for such deposits of the following types:

(a) United States government obligations,

(b) United States government agency obligations; or

(c) Obligations of the state of New Hampshire in value at least equal to the amount of the deposit in each case.

II. The amount of collected funds on deposit in any one bank shall not at any time exceed the sum of its paid-up capital and surplus.

III. The treasurer shall keep in suitable books provided for the purpose a fair and correct account of all sums received into and paid from the district treasury, and of all notes given by the district, with the particulars thereof. At the close of each fiscal year, the treasurer shall make a report to the district,

giving a particular account of all of the treasurer's financial transactions during the year. The treasurer shall furnish to the school board statements from the books, and submit the books and vouchers to them and to the auditors for examination, whenever so requested.

IV. Whenever the treasurer has in custody an excess of funds which are not immediately needed for the purpose of expenditure, the treasurer shall, with the approval of the school board, invest the same in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in deposits, including money market accounts, or certificates of deposit, or repurchase agreements, and all other types of interest bearing accounts, of federally insured banks incorporated under the laws of the state of New Hampshire or the federal government with a branch within the state and in obligations fully guaranteed as to principal and interest by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U.S.C. section 80a–1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations. Any person who directly or indirectly receives any such funds for deposit or for investment in securities of any kind shall, prior to acceptance of such funds, make available at the time of such deposit or investment an option to have such funds secured by collateral having a value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the district. Only securities defined by the bank commissioner as provided by rules adopted pursuant to RSA 383–B:3–301(e) shall be eligible to be pledged as collateral. At least yearly, the school board shall review and adopt an investment policy for the investment of public funds in conformance with the provisions of applicable statutes.

V. As an alternative to the option of collateralization for excess funds provided in paragraph IV, the treasurer may also invest public funds in interest-bearing deposits which meet all of the following conditions:

(a) The funds are initially invested through a federally insured bank chartered under the laws of New Hampshire or the federal government with a branch within the state selected by the treasurer.

(b) The selected bank arranges for the redeposit of funds which exceed the federal deposit insurance limitation of the selected bank in deposits in one or more federally insured financial institutions located in the United States, for the account of the treasurer.

(c) The full amount of principal and any accrued interest of each such deposit is covered by federal deposit insurance.

(d) The selected bank acts as custodian with respect to each such deposit for the account of the treasurer.

(e) On the same date that the funds are redeposited by the selected bank, the selected bank receives an amount of deposits from customers of other federally insured financial institutions equal to or greater than the amount of the funds initially invested through the selected bank by the treasurer.

Source. 1887, 105:8. PS 90:21. 1921, 85, V:22. PL 120:20. RL 139:22. RSA 197:23. 1963, 87:1. 1973, 490:4. 1979, 161:1. 1991, 268:12; 383:7. 1996, 209:12. 1997, 208:13; 319:10. 1998, 40:4. 2007, 347:4, eff. Sept. 14, 2007. 2008, 120:21, eff. Aug. 2, 2008. 2010, 7:5, eff. July 3, 2010. 2013, 97:5, eff. Aug. 19, 2013. 2015, 272:45, eff. Oct. 1, 2015.

197:24 Acting Treasurer. If any person holding the office of treasurer shall, by reason of illness, accident, absence from the state, or other cause, become temporarily incapacitated and unable to perform the duties of such office, the school board may, unless the district has a deputy treasurer appointed in accordance with RSA 197:24–a who is not similarly unavailable to perform the requisite duties, declare a temporary vacancy and appoint an acting district treasurer to perform the duties of the office for a limited period of time and fix the appointee's compensation and the amount of bond. The appointee shall be subject to the requirements and liabilities of such office during the appointee's term.

Source. 1939, 160:2. RL 130:23. RSA 197:24. 1979, 136:1. 1997, 319:6, eff. Aug. 22, 1997.

197:24–a Deputy Treasurer. The school district treasurer may appoint a deputy treasurer, subject to approval by the school board, who shall be qualified in the same manner as the treasurer and who shall perform the duties of the treasurer in the case of the treasurer's absence by sickness, resignation, or otherwise. The deputy shall be sworn, shall have the powers of the treasurer, may be removed at the pleasure of the treasurer and shall, before entering upon the duties of such office, give bond as provided in RSA 197:22.

Source. 1979, 136:2. 1997, 319:7, eff. Aug. 22, 1997. 2010, 23:1, eff. July 6, 2010.

197:25 Auditors. If a district has not hired an auditor under RSA 21–J:19, the locally elected audi-

tors shall carefully examine the accounts of the treasurer and school board at the close of each fiscal year by following the procedures in RSA 41:31–a through 41:31–d.

Source. PS 90:22. 1921, 85, V:23. PL 120:23. RL 139:24. 2010, 262:4, eff. Sept. 4, 2010.

197:26 Vacancies. The school board shall fill vacancies occurring on the board, and in other district offices, except that of moderator, until the next annual meeting of the district. In case of vacancy of the entire membership of the board, or the remaining members are unable to agree upon an appointment, the selectmen, upon application of one or more voters in the district, shall fill the vacancies so existing until the next annual meeting of the district.

Source. RS 70:9. CS 74:11. GS 79:13. GL 87:13. PS 90:23. 1921, 85, V:24. PL 120:24. RL 139:25.

197:27 Report to State Board.

[Repealed 1979, 321:2, XXII, eff. Aug. 21, 1979.]

History

Former RSA 197:27, which was derived from PS 43:3; 1921, 85, V:25; PL 120:25; RL 139:26; RSA 197:27; and 1961, 134:3, related to report by the clerk to the state board of names and addresses of local school board.

CHAPTER 198

SCHOOL MONEY

District Taxes

198:1 to 198:3 Repealed.

[Repealed 1999, 17:58, VII, eff. April 29, 1999.]

History

Former RSA 198:1, which was derived from RS 72:1; CS 76:1; 1867, 3:1; GS 77:1; 1870, 35:1; GL 85:1; PS 88:1; 1893, 57:1; 1895, 83:1; PS 88:1; 1901, 92:1; 1905, 48:1; 1919, 106:21; 1921, 85, VI:1; PL 121:1; and RL 140:1, related to assessment of annual tax.

Former RSA 198:2, which was derived from RS 72:3; CS 76:3; GS 77:3; GL 85:3; PS 88:3; 1921, 85, VI:2; PL 121:2; and RL 140:2, related to expenditure of annual tax.

Former RSA 198:3, which was derived from RS 72:6; CS 76:7; GS 77:7; 1878, 31:1; GL 85:7; PS 88:7; 1921, 85, VI:3; PL 121:3; and RL 140:3, related to penalty.

198:4 Estimates.

The school board of each district in its annual report shall state in detail the additional sums of money, if any, which will be required during the ensuing fiscal year for the support of the public schools, for the purchase of textbooks, scholars' supplies, flags and appurtenances, for the payment of the tuition of the pupils in the district in high schools, academies, and any nonsectarian private school approved as a school tuition program by the school board in accordance with law, and for the payment of all other statutory obligations of the district.

Source. RS 72:2. CS 76:2. GS 77:2. GL 85:2. PS 88:2. 1909, 52:1. 1915, 68:1. 1919, 106:21. 1921, 85, VI:4. PL 121:4. RL 140:4. 2017, 182:6, eff. Aug. 28, 2017.

198:4–a Report of Appropriations Voted.

I. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541–A, relative to blanks for certifying appropriations by the school board and the information which they must contain.

II. The school board shall, annually within 20 days of the close of the meeting as required in RSA 21–J:34, II, certify to the commissioner of revenue administration, the state department of education and the board of selectmen upon said blanks provided by the commissioner, a certificate of the several appropriations voted by the district and estimated revenues, so far as known.

III. The commissioner of revenue administration shall examine such certificates and delete any appropriation which is not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest.

IV. The commissioner of revenue administration shall compute the rate percent of taxation for school district purposes from such certificate.

Source. 1963, 120:6. 1973, 544:8. 1981, 128:28. 1994, 147:7, eff. July 22, 1994.

198:4–b Contingency Fund.

I. A school district annually by an article separate from the budget and all other articles in the warrant, or the governing body of a city upon recommendation of the school board, when the operation of the schools is by a department of the city, may establish a contingency fund to meet the cost of unanticipated expenses that may arise during the year. A detailed report of all expenditures from the contingency fund shall be made annually by the school board and published with their report.

II. Notwithstanding any other provision of law, a school district by a vote of the legislative body may authorize, indefinitely until specific rescission, the school district to retain year-end unassigned general funds in an amount not to exceed, in any fiscal year, 2.5 percent of the current fiscal year's net assessment pursuant to RSA 198:5, for the purpose of having funds on hand to use as a revenue source for emergency expenditures and overexpenditures under RSA 32:11, or to be used as a revenue source to reduce the tax rate.

III. The legislative body of the city of Manchester, upon recommendation of the school committee, may authorize, indefinitely until specific rescission, the school district to retain year-end unassigned general funds.

Source. 1965, 123:4. 1998, 389:12, eff. Oct. 1, 1998. 2012, 221:1, eff. Aug. 12, 2012. 2014, 190:6, eff. Sept. 9, 2014.

198:4–c Building Trades Fund. Any school district may appropriate money to establish a revolving fund to aid instruction in the building construction trades. The fund shall be used to pay necessary costs of construction projects which are carried out as part of the instructional program, including the purchase of real estate. No project shall be undertaken unless the fund contains enough money to cover the proposed budget. When the building is completed it shall be sold and the money received put into the fund for use in another construction project.

Source. 1981, 164:1, eff. June 2, 1981.

198:4–d Reports Required; Cities and School Districts. The governing body of each city and school district shall submit to the commissioner of the department of education the following reports pursuant to rules adopted under RSA 541–A by the commissioner of revenue administration which establish the form and content of such reports:

I. A report filed by the governing body of each city and school district shall certify the appropriations voted by the meeting of the appropriate legislative body, whether city council, mayor and council, or mayor and board of aldermen, or by each annual or special school district meeting, along with estimated revenues. This report shall be filed within 20 days of the close of the meeting.

II. A report filed by the governing body of each city and school district shall revise all the estimated revenues for the year. This report shall be filed by September 1 of each year. The revised estimates by school districts for the adequate education grants calculated under RSA 198:41 shall be considered the most accurate within 5 percent of the amount estimated pursuant to RSA 198:40–a.

III. A financial report for each city and school district shall be filed showing the summary of receipts and expenditures, according to uniform classifications, during the preceding fiscal year, and a balance sheet showing assets and liabilities at the close of the year. This report shall be submitted on or before September 1 of each year. Each statistical report submitted under this section shall include a certification signed by the chairperson of the school district's governing body or the chairperson of the board of trustees of approved public academies that states: "I certify, under the pains and penalties of perjury, to the best of my knowledge and belief, that all of the information contained in this document is true, accurate and complete."

III–a. The department of education and the department of revenue administration together shall develop and recommend school accounting standards. The departments shall report to the speaker of the house, the senate president, and the governor concerning such accounting standards on or before December 1, 1999.

IV. The budget committee in school districts operating under the municipal budget law shall file the budget within 20 days of the close of the annual or special meeting.

V. If a city or school district is audited by an independent public accountant, it shall submit a copy of the audited financial statements in accordance with RSA 21–J:19, III.

VI. If a city or school district is audited under RSA 671:5, the procedures in RSA 41:31–a through 41:31–d shall be followed.

Source. 1989, 357:4. 1998, 389:3, 4, eff. Oct. 1, 1998. 2010, 262:3, eff. Sept. 4, 2010. 2012, 198:7, eff. July 1, 2012. 2016, 8:12, eff. Mar. 16, 2016.

198:4–e Annual Report Required; Towns. The governing body of each town shall submit to the commissioner of the department of education, within 20 days of the close of the annual town meeting, a copy of the annual town report.

Source. 1989, 357:4, eff. Aug. 1, 1989.

198:4–f Penalty for Failure to File Report. A school district, city, or public academy shall file the report due under RSA 198:4–d, III no later than September 1 of each year. For just cause, the commissioner of the department of education may grant a school district, city, or public academy up to a 30-day extension to this reporting deadline. The commissioner may further extend the deadline when

unusual or unforeseen circumstances prevent a school district, city, or public academy from submitting the required report before the expiration of the extension provided in this section. The commissioner shall notify the governing body of the school district, city, or public academy that all state aid to education shall be withheld until complete and accurate information is submitted.

Source. 1989, 357:4. 2003, 314:4, eff. July 22, 2003.

198:5 Assessment. The selectmen of the town, in their next annual assessment, shall assess upon the taxable property of the district a sum sufficient to meet the obligations above enumerated, with such alterations thereof as may be voted by the district, and shall pay the same over to the district treasurer as the school board shall require for the maintenance of schools.

Source. RS 72:2. CS 76:2. GS 77:2. GL 85:2. PS 88:2. 1909, 52:1. 1915, 68:1. 1919, 106:21. 1921, 85, VI:4. PL 121:5. 1927, 20:1. RL 140:5.

198:6 Assessment on Ward's Property. When a guardian and ward reside in the same town the selectmen shall assign the tax assessed upon the ward's personal property to the school district in which the ward lives and has a home.

Source. 1852, 1308:1. CS 76:5. GS 77:5. GL 85:5. PS 88:5. 1921, 85, VI:8. PL 121:6. RL 140:6. 1996, 195:4, eff. Aug. 2, 1996.

198:7 Neglect to Assess, Etc. If the selectmen neglect to assess, assign or pay over the school money as aforesaid they shall pay for each neglect a sum equal to that so neglected to be assessed, assigned or paid over, to be recovered by action of debt, in the name and for the use of the district by the school board.

Source. RS 72:5. CS 76:6. GS 77:6. GL 85:6. PS 88:6. 1921, 85, VI:8. PL 121:7. RL 140:7.

State Aid

198:8 Declaration of Policy.

[Repealed 1985, 244:15, I, eff. July 1, 1985.]

History

Former RSA 198:8, which was derived from 1947, 198:2, par. 8; 1951, 148:1, par. 8; RSA 198:8; 1955, 331:1, par. 8; and 1969, 104:10, related to policy of sharing costs of public schools.

198:9 Amount.

[Repealed 1985, 244:15, II, eff. July 1, 1985.]

History

Former RSA 198:9, which was derived from 1947, 198:2, par. 9; 1951, 148:1, par. 9; RSA 198:9; and 1955, 331:1, par. 9, related to annual payments to needy school districts.

198:10 Foundation Aid.

[Repealed 1985, 244:15, III, eff. July 1, 1985.]

History

Former RSA 198:10, which was derived from 1951, 148:1, par. 9–a; 1953, 116:1; RSA 198:10; and 1955, 331:1, par. 10–a, related to calculation of foundation aid.

198:10–a Time of Computation.

[Repealed 1985, 244:15, IV, eff. July 1, 1985.]

History

Former RSA 198:10–a, which was derived from 1955, 331:1, pars. 10–a, 10–b; RSA 198:10–a; 1963, 242:1; 1969, 104:11; 1973, 544:8; and 1981, 318:3, related to time for computation of foundation aid.

198:10–b To Whom Paid.

[Repealed 1985, 244:15, V, eff. July 1, 1985.]

History

Former RSA 198:10–b, which was derived from 1955, 331:1, par. 10–c; 1982, 42:62; and 1983, 469:150, related to time for and manner of payment of foundation aid.

198:11 Adjustment of Required Programs.

[Repealed 1985, 244:15, VI, eff. July 1, 1985.]

History

Former RSA 198:11, which was derived from 1919, 106:22; 1921, 125:7; 1923, 88:1; PL 121:10; RL 140:10; 1947, 198:2, par. 10; 1951, 148:1, par. 10; RSA 198:11; and 1957, 302:1, related to adjustments by the board of education.

198:12 Unexpended Appropriation.

[Repealed 1985, 244:15, VII, eff. July 1, 1985.]

History

Former RSA 198:12, which was derived from 1951, 148:1, par. 11; RSA 198:12; 1955, 331:1, par. 12; and 1957, 302:2, related to amounts not distributed in the first year of a biennium.

198:13 Effective Date of Certain Provisions.

[Repealed 1955, 331:1, eff. July 1, 1955.]

History

Former RSA 198:13, which was derived from 1951, 148:2, related to the effective dates of RSA 198:9-12.

198:14 Valuations.

[Repealed 1985, 244:15, VIII, eff. July 1, 1985.]

History

Former RSA 198:14, which was derived from 1919, 106:22; 1921, 125:7; 1923, 88:1; PL 121:12; RL 140:12; RSA 198:14; 1955, 331:1; and 1973, 544:8, related to equalized valuation of a school district.

198:14–a When Withholdable.

[Repealed 1967, 362:3, eff. July 3, 1967.]

History

Former RSA 198:14–a, which was derived from 1955, 331:1, par. 13–a, related to grounds for withholding of funds from districts.

198:15 Administration.

[Repealed 1985, 244:15, IX, eff. July 1, 1985.]

198:15
Repealed

History

Former RSA 198:15, which was derived from 1919, 106:22; 1921, 85, VI:5; PL 121:14; and RL 140:14, related to administration of moneys raised by the district and moneys furnished by the state.

School Building Aid

198:15–a Grant for School Construction.

I. To aid local school districts in meeting the costs of school buildings, the department of education shall, from funds appropriated by the general court to carry out the provisions of this subdivision, pay to the school districts of the state, sums in accordance with the provisions of this subdivision or the alternative school building aid provisions under RSA 198:15–u through RSA 198:15–w.

II. Beginning with construction authorized by a local school district on or after July 1, 2013, office facilities for school administrative units and the purchase or lease-purchase of temporary space for any purpose, including but not limited to modulars, trailers, or other similar structures to be used as classroom, office, or storage space shall not be eligible for school building aid grants.

III. Facilities constructed using school building aid grants shall be used as instructional facilities for kindergarten through grade 12 for at least 20 years. A school district that discontinues the use of the facilities within 20 years shall be required to repay the state 100 percent of the state grant received. Upon a showing of good cause by the school district, the commissioner of the department of education may waive this penalty in whole or part on a case by case basis.

IV. Beginning July 1, 2013, and every fiscal year thereafter, school building aid grants for construction or renovation projects approved by the department of education shall not exceed $50,000,000 per fiscal year less any debt service payments owed in the fiscal year, unless otherwise provided by an act of the general court. School building aid grants shall be funded from appropriations in the state operating budget and no state bonds shall be authorized or issued for the purpose of funding such school building aid grants.

Source. 1955, 335:9, par. 14–a. 1967, 449:2. 2003, 296:1; 306:1. 2005, 180:1, eff. Aug. 29, 2005. 2009, 144:12, eff. July 1, 2009. 2012, 275:1, eff. Aug. 18, 2012.

198:15–b Amount of Grant.

I. (a)(1) For construction authorized by a school district on or before July 1, 2013, the amount of the annual grant to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, any receiving district operating an area school as defined in RSA 195–A:1, or any receiving district providing an education to pupils from one or more sending districts under a contract entered into pursuant to RSA 194:21–a or RSA 194:22, shall be a sum equal to 30 percent of the amount of the annual payment of principal on all outstanding borrowings of the school district, city, cooperative school district, joint maintenance agreement, or receiving district, heretofore or hereafter incurred, for the cost of construction or purchase of school buildings and school administrative unit facilities, or for the cost of acquiring, developing, or renovating any municipally-owned land, buildings, or facilities to be used for school district purposes, to the extent approved by the department of education, provided that any school district may receive an annual grant in the amount of 40 percent for the construction of an educational administration building for a school administrative unit, and provided that the amount of the annual grant in the case of a cooperative school district, a joint maintenance agreement, a receiving district operating an area school, or any receiving district providing an education to pupils from one or more sending districts under a contract entered into pursuant to RSA 194:21–a or RSA 194:22, shall be 40 percent plus 5 percent for each pre-existing district in excess of 2 and each sending district in excess of one, and provided further that no cooperative school district, joint maintenance agreement, or receiving district operating an area school, shall receive an annual grant in excess of 55 percent.

(2)(A) For construction authorized by a school district after July 1, 2013, school building aid grants for new construction shall not exceed the state appropriation for school building aid for the fiscal year, less any debt service payments due and owing in the fiscal year for construction or renovation projects approved in a prior fiscal year, less the amount owed for construction or renovation projects approved prior to July 1, 2013 in accordance with subparagraph (a)(1), unless otherwise provided by an act of the general court. School building aid grants approved pursuant to RSA 198:15–u through RSA 198:15–w, shall be disbursed to school districts pursuant to this subparagraph and no state bonds shall be authorized or issued for the purpose of funding school building aid grants. The amount of the grant to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school

district as defined in RSA 195:1, any receiving district operating an area school as defined in RSA 195–A:1, or any receiving district providing an education to pupils from one or more sending districts under a contract entered into pursuant to RSA 194:21–a or RSA 194:22, shall be calculated based on the criteria set forth in RSA 198:15–v.

(B) The state board of education shall approve the disbursement of 80 percent of the eligible grant amount upon approval of the application for school building aid grants by the state board of education, and shall disburse the balance of the grant amount upon completion of the construction and verification of the final cost of construction by the department of education.

(C) The amount of the grant to any chartered public school established in accordance with RSA 194–B:3–a shall be 30 percent of the eligible cost of construction.

(D) Any state aid for leased space pursuant to RSA 198:15–hh shall require a separate appropriation, and shall not be included in the state appropriation for school building aid.

(E) Funds received from charitable trusts, bequests, gifts, insurance policies, federal grants, or grants from other state programs shall be subtracted from total project costs when computing grants under this paragraph.

(b) For any municipally-owned land, buildings, or facilities for which a school building aid grant is granted under this subdivision, the following shall apply:

(1) A school district, a city maintaining a school department within its corporate organization, a cooperative school district as defined in RSA 195:1, a receiving district operating an area school as defined in RSA 195–A:1, or a receiving district providing an education to pupils from one or more sending districts under a contract entered into pursuant to RSA 194:21–a or RSA 194:22, shall have first priority in the use of such land, buildings, or facilities for 10 years or the life of any bond or note issued to provide funds for such land, buildings, or facilities, whichever is greater.

(2) A school district, a city maintaining a school department within its corporate organization, a cooperative school district as defined in RSA 195:1, a receiving district operating an area school as defined in RSA 195–A:1, or a receiving district providing an education to pupils from one or more sending districts under a contract entered into pursuant to RSA 194:21–a or RSA 194:22, shall submit, when applying for aid under this chapter, the least costly building plan based on a 20-year life cycle cost analysis that meets minimum state building standards in this chapter along with any alternative plans that may be proposed.

(3) In the absence of a bond or note or upon the expiration of any bond or note issued to provide funds for land, buildings, or facilities, the principal parties shall enter into an agreement on how such land, buildings, or facilities are to be used.

I–a. (a) In addition to the requirements of paragraph I, each school district, prior to receipt of any grant moneys, shall submit for review and approval a written maintenance plan describing in detail how the school district intends to maintain the new facilities to be constructed with state aid grant moneys. The required maintenance plan shall include, but not be limited to, the following information:

(b) A description of the procedures to be used, and the method of staffing in which, the following building services are or will be provided. For work performed by in-house staff, an indication of the staffing level shall be provided, expressed as full-time equivalent positions:

(1) Daily facility cleaning.

(2) Grounds maintenance.

(3) Refuse removal.

(4) Snow removal.

(5) Minor maintenance and repair.

(6) Pest management.

(7) Periodic equipment servicing and preventive maintenance.

(8) Plan for 12 month operations, if applicable.

(c) The average amount of space, in square feet, assigned to each custodian for daily cleaning.

(d) The process for reporting, recording, verifying, and prioritizing building problems and fire safety issues.

(e) The process for assigning corrective work.

(f) The process for determining that corrective work has solved the problem.

(g) The process for tracking and analyzing recurring problems.

(h) The process for scheduling and completing preventive maintenance services and inspections on installed equipment and major building systems including, but not limited to heating, ventilation, air

conditioning, life safety, elevators, plumbing, roofs, windows, doors, and kitchen appliances.

(i) Custodial or maintenance staff increases or reductions that result from the project.

(j) The training program for employees on new equipment to be installed by the project.

(k) A statement of assurance, signed by the chair of the school board, which indicates that the district intends to maintain and service all installed equipment according to the manufacturer's instructions.

(*l*) A 20-year maintenance plan that identifies and defines the program and activities necessary to achieve the design life expectancy of the building. Such program shall include activities having to do with scheduled repairs, upkeep, minor alterations, and enhancements of the building. The maintenance plan shall also consider preventive maintenance supporting building systems and components.

II. For the purposes of this subdivision, "construction" shall include any one or more of the following for the construction of instructional facilities only:

(a) The acquisition and development of a site.

(b) Planning, construction, or both, of a new building.

(c) Planning, construction, or both, of additions to existing buildings.

(d) Architectural and engineering fees.

(e) Purchase of equipment and any other costs necessary for the completion of a building as approved by the department of education.

(f) Substantial renovations approved by the commissioner of education.

(g) Purchase or lease-purchase of mechanical, structural, or electrical equipment, including the cost of installation of such equipment, which is designed to improve energy efficiency or indoor air quality in school buildings. All grant amounts awarded under this subparagraph shall be returned to the state if such equipment is removed from the school building by the vendor due to the school district's failure to comply with the terms of the lease-purchase agreement. Lease-purchase agreements shall be subject to the requirements of RSA 33:7–e.

III. Purchase of school buildings shall include the acquisition and improvement of land in connection therewith and the remodeling, altering, repairing, equipping and furnishing of such buildings as approved by the department of education.

IV. In this paragraph, "new construction" means additional square footage but shall not mean the renovation of school buildings. The provisions of this paragraph shall apply to any school building aid grants made pursuant to RSA 198:15–a through RSA 198:15–w.

(a) The department of education shall issue annually maximum eligible cost standards for the construction of new school buildings, less site acquisition costs, qualifying for a school building aid grant. These standards shall take into account the type, size, and location of the school and shall be based on an appropriate construction cost index developed or adopted by the department which shall reflect cost differences in the several regions of the state. Maximum cost standards shall be computed and published annually and expressed as a maximum cost per square foot.

(b) Maximum size standards for new construction shall be as follows:

(1) Maximum gross square footage per pupil:

	Student Population	
	under 250	250 and over
Elementary school	144	120
Middle or junior high school	168	140
Senior high school (excluding vocational-technical centers)	192	160

(2) Maximum usable site size for new schools:

Elementary School	20 acres plus 1 acre for each 100 pupils
Middle or junior high school	25 acres plus 1 acre for each 100 pupils
Senior high school	30 acres plus 1 acre for each 100 pupils

(3) In addition to the provisions of subparagraphs (1) and (2), the department of education shall require architectural designs for new space in order to make efficient use of space. Space determined by the department to be excessive or unnecessary to fulfill educational needs shall not be eligible for state building aid grants.

(c) For the purpose of calculating the total school building aid grants made under RSA 198:15–a through RSA 198:15–w, the final approved cost for school construction or school project shall not exceed the cost that would result if the project conformed to the maximum cost and size standards. The provisions of this section shall not preclude an eligible applicant from exceeding the maximum standards provided, however, the cost of

the portion of the facilities which exceed the maximum standards shall not be eligible for school building aid grants. The maximum cost and size standards in effect at the time general contract work begins shall be used for the purposes of determining school building aid grants.

(d) The commissioner of the department of education shall have the authority to waive eligible cost and size standards for new construction for good reason shown.

V. For the purpose of receiving grants under this section, acquisition of additional land as part of any school renovation project shall not be required unless such additional land is necessary to ensure the safe flow of traffic for school buses or other vehicles entering or exiting school grounds, or the safe boarding or discharge of children using school buses or other vehicles.

Source. 1955, 335:9, par. 14–b. 1957, 301:1. 1963, 277:3. 1965, 150:2. 1967, 362:4; 399:1; 449:3. 1969, 347:4. 1971, 452:1. 1975, 447:1. 1979, 208:1; 459:4. 1981, 568:84. 1983, 469:63, 148, 149. 1998, 214:1. 2000, 215:2, 3. 2003, 296:3, 4; 306:1. 2004, 124:1. 2005, 180:2; 208:1, 2; 228:1. 2006, 131:1, eff. May 19, 2006. 2010, 327:2, eff. Sept. 18, 2010. 2012, 275:2, eff. Aug. 18, 2012. 2013, 226:2, eff. Sept. 13, 2013 at 12:01 a.m.; 239:1, eff. Sept. 13, 2013.

198:15–c Approval of Plans, Specifications, and Costs of Construction or Purchase.

I. A school district maintaining approved schools, desiring to avail itself of the grants herein provided shall have the plans, specifications, and cost estimates for school plant construction or proposals for the purchase of school buildings, or both, and the costs for them approved by the department of education prior to the start of construction. For this purpose the district shall submit its plans, specifications, cost, and purchase estimates in writing to the department of education on such forms as the department prescribes. A school district shall also submit a copy of any application for energy efficiency reimbursement under RSA 374–F. The department of education shall coordinate with the public utilities commission to ensure that eligible school districts have submitted applications for funding reimbursement and technical assistance as available from energy utility companies to promote indoor air quality and energy efficiency in public schools. Applications for school building aid grants shall be submitted before September 1 of each year in order to be eligible for school building aid grants in the fiscal year following the year of submittal.

II. (a) The commissioner shall accept school building aid grant applications based upon completeness and submit a preliminary school building aid grant list to the school building authority established pursuant to RSA 195–C. By January 15 of the fiscal year prior to the biennium in which school building aid grants are to be disbursed, the school building authority shall develop a rank ordered list of all school building construction and renovation proposals submitted by school districts and shall categorize each proposal based on school building and site criteria in descending order. The school building authority shall recommend prioritized proposals to be funded in descending rank order to the state board of education for approval. School districts which have projects approved for funding shall be notified by the department of education of the projected amount to be funded within 10 days of approval. The project rating system and criteria used to rate project applications which shall include an administrative review process for appeal of a school district's project point rating, shall be developed by the department of education and approved by the state board of education. The department of education, after review by the house finance committee, the house special committee on education funding reform, and any senate committee designated by the senate president, shall propose interim rules pursuant to RSA 541–A no later than November 1, 2012, and final rules pursuant to RSA 541–A no later than April 30, 2013, relative to the criteria set forth in this paragraph and the procedures necessary to implement this paragraph.

(b) The commissioner of the department of education shall accept school building construction proposals based upon completeness. The department of education shall consider and score each proposal based on the following criteria:

(1) Unsafe conditions.

(2) Facilities not in compliance with the Americans With Disabilities Act, or obsolete, inefficient, or unsuitable facilities or mechanical and building systems.

(3) Overcrowding and associated influences to instructional areas and programming.

(4) Enrollment projections and population shifts.

(5) Whether a school district has made a reasonable attempt to accommodate maintenance activities including scheduled and unscheduled repairs, upkeep, minor alterations, enhancements to buildings, and preventive maintenance necessary to achieve the design life expectancy of building systems and components.

(6) A school district's fiscal capacity based on measurable criteria such as the percentage of pupils eligible for free and reduced price meals.

(7) School security design and integration of security systems.

(8) A school district which initiated and completed a locally funded school renovation project to remedy a safety condition identified by the state fire marshal on or before June 30, 2017 shall be eligible to include any corrected safety condition in a subsequent application for school building aid submitted by the school district after June 30, 2017. This subparagraph shall not apply to a school district or a school that received state emergency funding or other state aid to remedy the safety condition on or before June 30, 2017.

(9) The project contributes to operational cost efficiencies, consolidation, or reduced property taxes.

(10) Any other criteria that the state board of education may determine are necessary.

(c) The school building authority shall recommend those proposals to be funded in descending rank order to the state board of education for approval. The state board of education shall publish the list by January 15 of each year. Those proposals not approved shall be considered for approval in the next biennial budget. Project proposals shall be funded to the extent of available appropriations in the fiscal year.

(d) A school district, a city maintaining a school department within its corporate organization, a cooperative school district as defined in RSA 195:1, a receiving district operating an area school as defined in RSA 195–A:1, or a receiving district providing an education to pupils from one or more sending districts under a contract entered into pursuant to RSA 194:21–a or RSA 194:22, with projects for which there is insufficient state grant funding may resubmit those projects to the department pursuant to the provisions of this section.

III. Necessary costs of the purchase of school buildings may be determined by any recognized method of real estate appraisal with appropriate adjustments for remodeling or other expenditures. Upon approval of the construction or purchase, or both, by the department of education, the school district shall be entitled to receive a grant as provided herein.

Source. 1955, 335:9, par. 14–c. 1967, 362:5; 399:2. 1989, 357:3. 2003, 306:1. 2005, 228:2, eff. Sept. 9, 2005. 2010, 327:3, eff. Sept. 18, 2010. 2012, 275:3, eff. Aug. 18, 2012. 2013, 239:2, eff. Sept. 13, 2013. 2016, 72:1, eff. July 18, 2016.

198:15–d Time of Computation of Grant. As of January 1 in each year, the department of education shall cause to be computed the amount of the annual grants for school building aid to be paid to eligible school districts in the succeeding fiscal year. The computation shall be based upon the total of eligible costs of construction of school buildings approved by the legislative body of the school district and the department of education for which loans are outstanding in each school district for the fiscal year in which the computations are made.

Source. 1955, 335:9, par. 14–d. 1957, 301:2. 1991, 169:4. 2003, 306:1, eff. Sept. 16, 2003. 2008, 289:3, eff. Aug. 26, 2008.

198:15–e Proration and Unexpended Funds. In any fiscal year, the amount appropriated for distribution as school building grants in accordance with the version of RSA 198:15–b in effect prior to July 1, 2012 shall first be awarded to a school district for an eligible project funded before July 1, 2012. If the amount appropriated is insufficient the appropriation shall be prorated proportionally among the districts entitled to a grant. If the amount appropriated exceeds the amount necessary to fully fund grants to a school district for eligible construction projects funded before July 1, 2012, the remaining amount of the appropriation shall be awarded to a school district for an eligible new proposal in the ranked order developed pursuant to RSA 198:15–c, II(a) and II(b). Such a district shall receive a grant equal to 100 percent of the eligible amount of the request until the amount appropriated has been exhausted. A partial grant may be awarded to the extent that funds are available. If a school district declines a full or partial grant, a grant shall be made to the next ranked school district until the amount appropriated has been exhausted. Any amounts not distributed in the first year of any biennium may be distributed in the second year if required to distribute the maximum amount permissible under RSA 198:15–a.

Source. 1955, 335:9, par. 14–e. 2008, 289:4, eff. Aug. 26, 2008. 2012, 275:4, eff. Aug. 18, 2012.

198:15–f Additional Grant.

[Repealed 1963, 277:4, eff. July 1, 1964.]

History

Former RSA 198:15–f, which was derived from 1955, 335:10; 1957, 301:4; and 1961, 265:1, related to additional grants to school districts other than cooperative districts.

198:15–g Federal School Building Aid. The department of education is hereby designated as the agency of the state of New Hampshire for the receipt and distribution of federal funds in aid of school building construction and is hereby given such authority in connection therewith as it may be required to possess by any federal act relating thereto in order to receive and distribute such funds, and it is hereby

authorized to cooperate with the federal government or any agency thereof in the development of plans for the distribution of federal funds in aid of the construction of school buildings and to receive and expend in accordance with such plans all funds made available to it or the state of New Hampshire by the federal government or any of its agencies; provided, however, to the extent permitted by any federal act relating thereto, the department of education, in formulating plans for the distribution of federal funds, may give consideration to the effort made by any local school district in providing school buildings, its financial ability to pay for school buildings, the encouragement of cooperative school districts and the amounts received or to be received by school districts as state aid to school buildings under the provisions of this chapter as now or hereafter amended.

Source. 1957, 301:3. 1986, 41:23, eff. April 3, 1988.

198:15–h Use of Existing Buildings. The building aid provided in RSA 198:15–b for a receiving district operating an area school as defined in RSA 195–A:1, or some proportionate part of that building aid, may be made available to assist in defraying the cost of construction of a new school building or an addition to existing buildings of the receiving district which is not to be used as an area school, but which is to be constructed so that the receiving district may make available as an area school building the full or partial capacity of an existing school building. The department of education may extend the building aid in the circumstances set forth in this section when it finds that (a) such arrangement will result in savings in overall building cost to the state, and that (b) the existing building thus made available by the receiving district as an area school is satisfactory for the purpose. In all other respects the provisions of RSA 198:15–b apply to the alternate building aid, as if the new building were an area school for the number of sending districts in the area plan.

Source. 1965, 150:1. 2003, 306:1, eff. Sept. 16, 2003.

198:15–hh Annual Grant for Leased Space.

I. The amount of the annual grant for a lease to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, or any receiving district operating an area school as defined in RSA 195–A:1, shall be a sum equal to 30 percent of the amount of the annual payment of the lease incurred, for the cost of leasing permanent space in a building or buildings not owned by the school district or school administrative unit which is used for the operation of a high school vocational technical education program, to the extent approved by the state board of education. For the purposes of this section, the amount of the annual grant for a lease to a vocational technical education center shall be calculated in the same manner as a cooperative school district. The amount of the annual grant for a chartered public school authorized under RSA 194–B:3–a shall be a sum equal to 30 percent of the annual lease payment incurred for the cost of leasing space. The total amount of grants to schools pursuant to this section shall not exceed the state appropriation for leased space. If the amount appropriated is insufficient therefor, the appropriation shall be prorated proportionally among the schools eligible for a grant. Such lease agreements shall be eligible for grants under this section, provided all of the following conditions apply:

(a) A school district, city, cooperative school district, joint maintenance agreement, receiving district operating an area school as defined in RSA 195–A:1, or chartered public school authorized under RSA 194–B:3–a, which receives grants under this section shall remain eligible to apply for, receive, and expend moneys from other state or federal sources made available for the purpose of purchasing new equipment, materials, or supplies necessary for the operation of the program. Moneys received from such other state or federal sources shall not be used to make permanent upgrades or renovations to the leased space.

(b) A lease agreement for permanent space shall be adopted in the same manner as required by law for the passage of construction bonds in the school district, city, cooperative school district, joint maintenance agreement, or receiving district operating an area school as defined in RSA 195–A:1. A lease agreement for a chartered public school shall be approved by the chartered public school board of trustees pursuant to RSA 194–B:5, III(c).

(c) An initial lease agreement for a term of 10 years or less shall be eligible to receive grants under this section. Upon renewal, a lease agreement may remain eligible to receive grants, provided the commissioner of the department of education determines that the lease agreement represents an efficient use of state and local resources.

(d) In any fiscal year where the state pays a pro rata share of school building aid grants, the state shall pay the same pro rata share for lease agreements approved under this section.

II. Lease agreements for the use of portable or modular classroom space shall not be eligible for grants.

III. A school district, city, cooperative school district, joint maintenance agreement, receiving district operating an area school as defined in RSA 195–A:1, or chartered public school authorized under RSA 194–B:3–a shall submit details of the lease arrangement, including a copy of the proposed lease agreement, in writing to the state board of education on such forms as the state board may prescribe. Grant applications for leased space shall be submitted before January 1 of each year in order to be eligible for grants in the fiscal year following the year of submittal. The state board of education shall, no later than March 1, 2004, adopt rules pursuant to RSA 541–A, relative to procedures for grant applications for leased space.

Source. 2003, 296:5, eff. July 1, 2003. 2011, 193:1, 2, eff. Aug. 13, 2011. 2012, 275:9, eff. Aug. 18, 2012.

Kindergarten Incentive Program

198:15–i to 198:15–k Repealed.

[Repealed 1999, 17:58, VIII, eff. April 29, 1999.]

History

Former RSA 198:15–i, which was derived from 1994, 277:1 and 1997, 348:12, related to the establishment of a kindergarten incentive program.

Former RSA 198:15–j, which was derived from 1994, 277:1, related to eligibility for kindergarten incentive aid, and was previously repealed by 1997, 348:12, II, eff. July 1, 1997.

Former RSA 198:15–k, which was derived from 1994, 277:1, related to rulemaking authority of the department of education regarding the kindergarten incentive program, and was previously repealed by 1997, 348:12, III, eff. July 1, 1997.

Kindergarten Aid; Alternative Kindergarten Programs

198:15–*l* to 198:15–q Repealed.

[Repealed 1999, 17:58, VIII, eff. April 29, 1999.]

History

Former RSA 198:15–*l*, which was derived from 1996, 300:2 and 1997, 348:2, related to kindergarten aid.

Former RSA 198:15–m, which was derived from 1996, 300:2 and 1997, 348:3, related to eligibility criteria and administration.

Former RSA 198:15–n, which was derived from 1996, 300:2 and 1997, 348:3, related to alternative kindergarten programs.

Former RSA 198:15–*o*, which was derived from 1996, 300:2 and 1997, 348:3, related to the commissioner's report on kindergarten aid and incentive program.

Former RSA 198:15–p, which was derived from 1996, 300:2 and 1997, 348:3, related to rulemaking.

Former RSA 198:15–q, which was derived from 1997, 348:4, related to special school district meetings for kindergarten implementation, and was previously repealed by 1997, 348:12, V, eff. Dec. 31, 1997.

Kindergarten Construction Program

198:15–r Kindergarten Construction Program Established.

I. There is established in the department of education a kindergarten construction program to provide certain construction grants which shall be available to eligible school districts that currently do not operate a public kindergarten program. These grants shall be available until all school districts in the state operate a kindergarten program within an approved public school. Such eligible districts shall receive, at their election, either:

(a) A construction grant to cover 75 percent of the actual cost of construction of kindergarten facilities, exclusive of site acquisition and core facilities; or

(b) A construction grant to cover 100 percent of the actual cost of the design and construction of a basic code compliant kindergarten facility, but shall not include site acquisition and core facilities. In this subparagraph, "basic code compliant kindergarten facility" means a new building or an addition to an existing building that the commissioner of the department of education determines satisfies the minimum standards for school approval for a kindergarten program and all applicable building code standards. The commissioner shall establish specifications pursuant RSA 198:15–s, IV for such a basic code compliant facility.

II. A school district that displaces pupils from an existing classroom space in order to use such space to provide a kindergarten program shall be eligible for a construction grant under subparagraphs I(a) or (b) to cover the costs incurred in constructing or renovating new classroom space for the displaced pupils.

III. Grants under subparagraphs I(a) or (b) shall also cover the cost of initial furniture, fixtures, and equipment needed to operate a kindergarten program.

IV. [Repealed.]

V. A school district may contract with another school district to provide a public kindergarten program that meets or exceeds the minimum standards for school approval as adopted by the department of education.

VI. The provisions of RSA 32:8 and RSA 32:11 shall not apply to costs incurred by a school district under this section.

VII. Nothing in this subdivision shall prohibit the inclusion of the site and related facilities that are not

eligible for funding by the state under this subdivision as part of kindergarten construction costs from being included in a regular building aid funding request as provided in RSA 198:15–b. However, no school district which receives any funding under this subdivision shall be eligible to receive school building aid under RSA 198:15–b for the same project.

VIII. Kindergarten facilities constructed under this subdivision shall be the property of the school district or the city maintaining a school department.

IX. A district shall not be deemed ineligible from receiving the full amount of a construction or transition grant for which it is otherwise eligible as a result of the district already expending funds for construction or transition costs related to providing a kindergarten program beginning in the 2008–2009 or 2009–2010 school years.

Source. 1997, 348:5. 2001, 287:1, 2. 2003, 319:136. 2005, 164:3. 2006, 198:1, eff. July 1, 2006. 2008, 384:1, eff. July 11, 2008; 384:6, II, eff. July 1, 2013.

198:15–s Eligibility; Administration.

I. [Repealed.]

II. [Repealed.]

III. A kindergarten construction grant request shall contain, at a minimum, the following information:

(a) A set of educational specifications, prepared by district staff.

(b) Construction plans and cost estimates, prepared by a licensed architect. Construction plans and cost estimates shall comply with the following:

(1) To be eligible for reimbursement pursuant to RSA 198:15–r, kindergarten construction shall be approved by the school district's legislative body on or before June 30, 2013.

(2) The number of classrooms shall be based upon the largest projected kindergarten enrollment in the first 5 years following construction, based on a minimum of 20 students per half-day kindergarten class.

(3) Classrooms shall be no larger than 1,000 square feet in size including restrooms and storage space.

(4) Costs shall be limited to the annual maximum eligible cost standards in accordance with RSA 198:15–b, unless waived by the commissioner of the department of education for good cause.

(5) Classroom furniture and equipment purchased for temporary classrooms pursuant to RSA 198:15–r, IV shall be relocated to permanent classrooms or replaced at district expense.

(c) An assurance signed by the superintendent and the chair of the school board that facilities constructed under this subdivision will be used for a public kindergarten program.

IV. The department of education shall administer the kindergarten construction program and shall be responsible for the following:

(a) Providing technical assistance relative to kindergarten construction to school districts.

(b) Developing and maintaining a kindergarten construction guide, including a list of recommended furnishings and equipment for kindergarten classrooms.

(c) Establishing forms and procedures for school districts to use for the development and submission to the department of education of kindergarten construction grant requests.

(d) Reviewing grant requests, including educational specifications, kindergarten construction plans, and cost estimates, and forwarding them to the commissioner of education with recommendations relative to their adequacy, educational appropriateness, and cost effectiveness.

(e) Distributing kindergarten construction grant payments to eligible districts in accordance with the payment schedule specified by the commissioner of education in the district's grant approval notification.

(f) Assuring that the facilities are used as specified in the grant request.

Source. 1997, 348:5. 2001, 287:6, I, eff. July 1, 2001. 2008, 384:6, III, eff. July 11, 2008. 2011, 224:331, eff. July 1, 2011. 2012, 275:5, eff. Aug. 18, 2012.

198:15–t Penalty. If, within 20 years of the completion of kindergarten facilities constructed under this subdivision, a school district or city maintaining a school department discontinues the kindergarten program or uses these classrooms for other than kindergarten, it shall be required to pay back to the state 100 percent of the kindergarten construction grant payments received under RSA 198:15–s, IV(e). Upon a showing of good cause by the school district, the commissioner of education may waive this penalty in whole or part on a case by case basis.

Source. 1997, 348:5, eff. July 1, 1997.

Alternative School Building Aid

198:15–u Definitions. As used in this subdivision:

I. "Median family income" means that income for each municipality using the most recent data available from the United States Bureau of the Census.

II. "Equalized valuation per pupil" means the average equalized valuation within the school district over the most recent 5 years divided by the current number of pupils within the school district expressed as an average from the most recent 5 years of available data collected by the department of education.

Source. 2003, 296:2, eff. July 1, 2005.

198:15–v Alternative School Building Aid Grants.

I. The amount of the annual grant to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, or any receiving district operating an area school as defined in RSA 195–A:1, shall be determined as follows:

(a) Determine each municipality's equalized valuation per pupil by dividing the municipality's equalized valuation by the average daily membership in residence within each municipality. Assign each municipality a rank beginning with the municipality having the lowest equalized valuation per pupil ranked as number one, and continuing therefrom.

(b) Determine each municipality's median family income, and assign each municipality a rank beginning with the municipality having the lowest median family income ranked as number one and continuing therefrom.

(c) Add the rankings assigned in subparagraphs I(a) and I(b) and divide the sum by 2 to yield the building aid factor.

II. (a) The amount of the annual grant in this subdivision shall be a sum equal to a percentage of the amount of the annual payment of principal on all outstanding borrowings of the school district, city, cooperative school district, joint maintenance agreement, or receiving district, for all approved costs of construction or purchase of school buildings and school administrative unit facilities, for grants approved on or before July 1, 2013 according to the following table:

Building Aid Factor	Single District	Preexisting District in a Cooperative School District, Area School, or Joint Maintenance Agreement
0–59	60 percent	60 percent
60–69	55 percent	60 percent
70–89	45 percent	55 percent
90–114	40 percent	50 percent
115 or greater	30 percent	40 percent

(b) For projects approved after July 1, 2013, the amount of the grant to any school district, city, cooperative school district, joint maintenance agreement, or receiving district shall be a sum equal to the percentage of all approved costs for construction or purchase of school buildings according to the following table:

Building Aid Factor	Building Aid Grant
0–59	60 percent
60–69	55 percent
70–89	45 percent
90–114	40 percent
115 or greater	30 percent

III. A cooperative school district, receiving district operating an area school, or joint maintenance agreement grant amount shall be determined by calculating the percentage of the average daily membership in residence represented by each municipality which has entered into the agreement and multiplying this percentage by each municipality's percentage of annual building aid eligibility under paragraph II of this section. This product shall be multiplied by the projected cost of the building project. The sum of the resulting products shall be the annual building aid grant for the cooperative school district, area school, or joint maintenance agreement.

Source. 2003, 296:2, eff. July 1, 2005. 2012, 275:6, eff. Aug. 18, 2012.

198:15–w Alternative School Building Aid Grants; Procedures. The provisions of RSA 198:15–c through 198:15–h shall apply to any grant made under this subdivision.

Source. 2003, 296:2, eff. July 1, 2005.

198:15–x Youth Camp Regulation Study Commission.

[Repealed 2012, 47:2, eff. Dec. 2, 2012.]

History

Former RSA 198:15–x, which was derived from 2012, 47:1, related to the establishment of a commission to study regulation and licensing of youth camps.

Public School Infrastructure Fund and Public School Infrastructure Commission

198:15–y Public School Infrastructure Fund.

[RSA 198:15–y repealed by 2017, 156:72, II, effective July 1, 2019.]

I. The general court recognizes that there is a need to provide funding for infrastructure projects for public elementary and secondary schools. Therefore, it is the intent of this chapter to designate certain surplus funds in the 2016–2017 biennial budget to provide grants to fund select school infrastructure projects in accordance with this chapter.

II. There is hereby established in the office of the state treasurer the public school infrastructure fund which shall be kept distinct and separate from all other funds and which shall be administered by the department of education. After transferring sufficient funds to the revenue stabilization reserve account to bring the balance of that account to $100,000,000, the state treasurer shall transfer the remainder of the general fund surplus for fiscal year 2017, as determined by the official audit performed pursuant to RSA 21–I:8, II(a), to the fund. Any earnings on fund moneys shall be added to the fund. All moneys in the fund shall be continually appropriated for the biennium ending June 30, 2019 and any unexpended or unencumbered balance as of June 30, 2019 shall be transferred to the general fund.

III. The governor, in consultation with the public school infrastructure commission, may authorize fund expenditures with approval of the fiscal committee of the general court and the executive council. Funds may be expended for the following purposes:

(a) A school building or infrastructure proposal in which the condition of such school building or portion thereof constitutes a clear and imminent danger to the life or safety of occupants or other persons and requires remediation as soon as practicable.

(b) A school building or infrastructure proposal in which a structural deficiency in the function or operation of a school building or portion thereof presents a substantial risk to the life or safety of the occupants or other persons and is more than a technical violation of the fire code, and requires remediation as soon as practicable.

(c) Support of fiber optic connections for schools to enhance and improve reliance on Internet technology tools, provided matching funds are available.

(d) Funding for the department of safety, division of homeland security and emergency management's school emergency readiness program to improve security in public schools, after the completion of a security assessment, and in consultation with municipal officials.

(e) Other school building or infrastructure needs the governor, in consultation with the public school infrastructure commission, may identify, except for school building aid projects that are otherwise prohibited by law.

Source. 2017, 156:67, eff. June 30, 2017.

198:15–z Public School Infrastructure Commission Established.

[RSA 198:15–z repealed by 2017, 156:72, III, effective July 1, 2019.]

I. There is hereby established the public school infrastructure commission, which shall advise the governor on proposals for expenditures from the public school infrastructure fund established in RSA 198:15–y. The commission shall consist of the following members:

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

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

(c) The director of the division of homeland security and emergency management, department of safety, or designee.

(d) The commissioner of the department of education, or designee.

(e) The chairperson of the New Hampshire school building authority, or designee.

(f) The chairperson of the state board of education, or designee.

II. Members of the commission shall serve at the pleasure of their appointing authority.

III. Members of the commission shall serve without compensation, except that legislative members shall receive mileage at the legislative rate when attending to the duties of the commission.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. The commission shall meet at least monthly. The commission shall provide a report on or before November 1, 2018 to the general

court with information on fund expenditures for the year, projects begun or completed during the previous year, the balance in the public school infrastructure fund, and any other information the commission deems appropriate.

V. The commission shall review the work and projects funded by the public school infrastructure fund during the previous year.

Source. 2017, 156:67, eff. June 30, 2017.

Miscellaneous Provisions

198:16 Unincorporated Towns and Unorganized Places.

I. By August 1, 1989, the department of education shall certify to county commissioners of each county responsible for unincorporated towns, unorganized places, and towns where by act of the legislature the school districts have been abolished, the amount of money deemed necessary to be raised by taxation to pay the costs of education for school children from such towns and places.

II. The certified amount shall be assessed under RSA 81 on the taxpayers of each unincorporated town, unorganized place, and town where by act of the legislature the school district has been abolished on a pro rata basis based upon the actual number of school children who reside in each town or place.

III. The county commissioners shall, following receipt of the taxes collected under this section, pay them to the county treasurer. From time to time, as deemed advisable by the department of education, it shall submit to the county commissioners bills for payment for the costs of education of the children from such unincorporated towns, unorganized places, and towns where by act of the legislature the school districts have been abolished and the education of the children made the responsibility of the state.

IV. The unexpended proceeds of any balance in the fund created under RSA 198:16 prior to October 1, 1989, shall be transferred to the county treasurers of counties with unincorporated towns, unorganized places, and towns where by act of the legislature the school districts have been abolished on a pro rata basis according to the number of school children who reside in each county. The pro rata distribution shall be based on the number of school children who resided in each unincorporated town and unorganized place, or town where by act of the legislature the school districts have been abolished at the close of the 1988-89 school year. The distribution shall be made prior to December 1, 1989.

Source. 1919, 106:23. 1921, 85, VI:6. PL 121:15. RL 140:15. RSA 198:16. 1955, 224:2. 1963, 147:2. 1973, 544:8. 1989, 262:1, eff. May 26, 1989; 266:33, eff. July 1, 1989.

198:16–a Certification of School Expenses.

[Repealed 1989, 266:36, III, eff. July 1, 1989.]

History

Former RSA 198:16–a was derived from 1963, 147:3 and 1973, 544:8.

198:17 Literary Fund.

[Repealed 1961, 249:2, eff. March 31, 1962.]

History

Former RSA 198:17, which was derived from RS 75:1; CS 85:1; 1866, 4270; GS 85:4; GL 94:4; 1889, 55:1; PS 88:9; 1921, 85, VI:9; PL 121:16; 1933, 51:1; and RL 140:16, related to establishment of literary fund from taxes collected upon deposits of persons residing outside state or whose residence was unknown.

198:18 Cooperative School District Aid.

I. As an incentive to the pre-existing districts which, heretofore or hereafter, undertake the obligations of a cooperative school district, the state board shall, from funds appropriated by the general court to carry out the provisions hereof, pay annually to each cooperative school district sums in accordance with the following schedule: For each pupil from a pre-existing district who attends a cooperative school located in another pre-existing district in average daily membership in the preceding school year, in a cooperative elementary school, $45; in a cooperative junior high school or equivalent program, $60; and in a cooperative high school, $75.

II. As of June 30 in each year the state board shall cause to be computed the amount of annual grants to be paid to cooperative school districts in the succeeding fiscal year based upon average daily memberships in the preceding fiscal year. If in any year the amount appropriated for distribution hereunder is insufficient therefor, the available appropriation shall be apportioned proportionately among the several cooperative school districts. Any available appropriation not fully distributed in the first year of any biennium may be distributed in the second year if required to meet the formula established in paragraph I.

Source. 1963, 277:2, eff. July 1, 1964.

198:19 Area School Aid.

I. As an incentive to receiving and sending districts which undertake the obligations of an area school, the state board shall, from funds appropriated by the general court to carry out the provisions of this chapter, pay annually to each receiving district sums in accordance with the following schedule: For

each pupil from a sending district in average daily membership in the preceding school year; in an area elementary school, $ 45; in an area junior high school or equivalent program, $ 60; and in an area high school, $ 75.

II. As of June 30 in each year, the state board shall cause to be computed the amount of annual grants to be paid to eligible receiving districts for use as provided in area plans approved hereunder, in the succeeding fiscal year, based upon average daily membership from sending districts in the preceding fiscal year. If, in any year, the amount appropriated for distribution hereunder is insufficient therefor, the available appropriation shall be distributed proportionately among the receiving districts entitled to such grant. Any available appropriations not fully distributed in the first year of any biennium may be distributed in the second year if required to meet the formula established in paragraph I.

Source. 1969, 104:12, eff. June 24, 1969.

198:20 Closing of Nonpublic Schools. Whenever a nonpublic school, or a portion thereof, closes and any of its pupils become enrolled in the public schools, the state board in determining eligibility for any form of state aid computed wholly or in part on the basis of average daily membership of pupils may count these newly enrolled pupils as though they had been in average daily membership at the public schools of the district during the preceding school year.

Source. 1969, 104:14. 1971, 211:1, eff. Aug. 17, 1971.

198:20–a Payment of Governmental Moneys Prohibited in Nonpublic School Without Program Approval by the Board of Education for Disabled Children. No state moneys or moneys raised and appropriated by any political subdivision of the state or any federal moneys administered by the state or any political subdivision thereof shall be paid or granted to a nonpublic school for the education and training of disabled children as defined by RSA 186–C:2, I which has not been approved by the state board of education pursuant to those policies adopted under the provisions of RSA 186:11, XXIX.

Source. 1974, 28:2. 1990, 140:2, X, eff. June 18, 1990.

198:20–b Appropriation for Unanticipated Funds Made Available During Year.

I. Notwithstanding any other provision of law to the contrary, any school district at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the school board to apply for, accept and expend, without further action by the school district, unanticipated money from a state, federal or other governmental unit or a private source which becomes available during the fiscal year. The following shall apply:

(a) Such warrant article to be voted on shall read: "Shall the school district accept the provisions of RSA 198:20–b providing that any school district at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the school board to apply for, accept and expend, without further action by the school district, unanticipated money from a state, federal or other governmental unit or a private source which becomes available during the fiscal year?"

(b) If a majority of voters voting on the question vote in the affirmative, the proposed warrant article shall be in effect in accordance with the terms of the article until such time as the school district votes to rescind its vote.

II. Such money shall be used only for legal purposes for which a school district may appropriate money. No funds disbursed from the education trust fund pursuant to RSA 198:42 shall, under any circumstances, emergency or otherwise, be deemed to be unanticipated money under the provisions of this section.

III. (a) For unanticipated funds in the amount of $5,000 or more, the school board shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the meeting is held.

(b) A school board may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than $5,000. For unanticipated funds in an amount less than $5,000, the school board shall post notice of the funds in the agenda and shall include notice in the minutes of the school board meeting in which such funds are discussed. The acceptance of unanticipated funds under this subparagraph shall be made in public session of any regular school board meeting.

IV. Action to be taken under this section shall:

(a) Not require the expenditure of other school district funds except those funds lawfully appropriated for the same purpose; and

(b) Be exempt from all provisions of RSA 32 relative to limitation and expenditure of school district moneys.

Source. 1981, 167:1. 1991, 329:1. 1993, 176:12, 13. 2000, 201:1. 2005, 188:1, eff. Aug. 29, 2005.

198:20–c Trust Funds Created for Specific Purposes; Expenditures; Administration.

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

II. School district trust funds created pursuant to this section shall be held in custody by the trustee named pursuant to RSA 31:22 of trust funds of the town wherein the school district lies, or in the case of school districts embracing 2 or more towns, by the trustees of trust funds of that town which the voters of the school district may elect at the annual school district meeting. In order to expend such funds, the school board shall hold a public hearing prior to the expenditure to be made. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the meeting is held.

III. A trust fund created under the provisions of this section that is established for the purpose of maintaining health insurance funds for the benefit of employees and retired employees of any school district, including an OPEB trust established pursuant to paragraph VII, shall be exempt from the provisions of paragraph II, and when so established, the school district may name its own trustees who may expend any funds in the trust for the payment of health claims or health insurance premiums for the benefit of any employees or retired employees of the school district. An annual accounting and report of the activities of the trust shall be presented to the school board of the district and published in the annual report.

IV. Trust funds created pursuant to this section shall be revocable by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be irrevocable, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such funds to the school treasurer.

V. Notwithstanding any other provision of law, any trust fund created under this section shall be subject to the same provisions concerning custody, investment, expenditure, change of purpose and audit as are reserve funds established under RSA 35:1 or 35:1–c. The legal validity of such a fund properly established shall not be affected by its designation as a "trust," "reserve," "capital reserve," or any other designation. A trust fund established for maintaining health insurance funds as set forth in paragraph III shall be exempt from the provisions of RSA 35:8.

VI. The district may authorize the acceptance of privately-donated gifts, legacies and devises to be utilized for the same purpose as a trust fund created under this section; provided, however, that such gifts, legacies or devises shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:31.

VII. (a) A school district that created, on or before January 1, 2012, an actuarial liability to pay other post-employment benefits (OPEB) to employees or officers after their termination of service may establish an irrevocable trust to pay those benefits. In this paragraph, the term "other post-employment benefits" means employee benefits other than pensions that are received after employment ends, and may include such medical, disability, or other health benefits, as are covered by Statement No. 45 of the Governmental Accounting Standards Board (GASB). The term "trust" means a trust qualified under GASB Statement No. 43.

(b) Deposits to any fund under such a trust and any earnings on those deposits shall be irrevocable and shall be held in trust for the exclusive benefit of retirees and their beneficiaries in accordance with the terms of the plans or programs providing other post-employment benefits, except that funds governed by the trust may be withdrawn for other purposes only when an employer's liability owed to former officers or employees for other post-employment benefits has been satisfied or otherwise eliminated pursuant to subparagraph (d)(2). The assets of any trust created pursuant to this paragraph or in which a school district participates pursuant to this paragraph shall be exempt from taxation and execution, attachment, garnishment, or any other process. No public officer, employee, or agency shall divert, use, or authorize the use of such funds for any purpose other than as provided

in law for other post-employment benefits covered by the trust and administrative expenses.

(c) The trustees of any trust created pursuant to this paragraph shall have the full power to invest, reinvest, and manage the assets of the trust. The trustees shall invest the assets of the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The trustees shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. The trustees may engage a trust administrator, investment consultants, or other qualified professionals to assist with management and investment of the funds of the trust and may pay for these services out of the funds of the trust.

(d) The school district may withdraw money from the funds of a trust created pursuant to this paragraph only:

(1) As needed to pay other post-employment benefits owed to former officers and employees; or

(2) When all other post-employment benefits liability owed to former officers or employees of the employing entity has been satisfied or otherwise defeased.

Source. 1991, 329:2. 1993, 176:14, 15. 1995, 20:8, eff. June 11, 1995. 2012, 219:2, 3, eff. July 1, 2012.

198:20–d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district or a city with a dependent school district may incur debt in anticipation of reimbursement under RSA 186–C:18 and under RSA 198:42. The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

Source. 1992, 238:4. 1994, 337:3. 1998, 243:2. 1999, 17:43, eff. April 29, 1999; 17:44, eff. at 12:01 a.m., July 1, 1999; 303:9, eff. at 12:02 a.m., July 1, 1999.

Dual Enrollment Grants

198:21 Grants.

I. Any school district which has in operation an approved dual enrollment agreement under the provisions of RSA 193:1–a shall be granted for the first school year that such agreement is in operation the full operational costs of implementing such agreement, exclusive of any part of the cost and carrying charges of any capital improvements; and for the next succeeding school year, if such operation is then continued, ½ of such costs.

II. Application for any such grant shall be submitted by a district to the state board of education no later than the July 1 preceding the start of the school year for which it shall be applicable, provided that the board may, for good cause shown, accept any such application up to but no later than the start of the applicable school year.

III. The board shall determine what costs shall be allowed in computing the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such grants so that all such districts receive the same proportion.

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be counted for the purposes of grants pursuant to RSA 198:22.

Source. 1970, 51:2. 1999, 17:48, eff. April 29, 1999.

Child Benefit Service Grants

198:22 Grants.

I. Any school district which is providing any child benefit service pursuant to the authority of RSA 189:49 and 50 shall be granted the following proportion of the costs, exclusive of any part of the cost and carrying charges of any capital improvements, of providing such service to any student who regularly attends a nonpublic school within the district for more than ½ each school day:

(a) Not more than 70 percent of such cost of any such service.

II. Application for any such grant shall be submitted by a district to the state board of education no later than the July 1 preceding the start of the school year for which it shall be applicable, provided that the board may, for good cause shown, accept any such application up to but no later than the start of the applicable school year. Payment of said grant

shall be made upon submission of certified expenses prior to the end of the applicable fiscal year.

III. The board shall determine what costs shall be allowed in computing and the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such grants so that all such districts receive the same proportion thereof.

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be counted for the purpose of grants pursuant to RSA 198:21.

Source. 1970, 51:4. 1973, 501:2. 1999, 17:49, eff. April 29, 1999.

Tuition for Foster Children

198:23 Tuition Paid to School District. When a child has been placed in a home by the children and youth services division of the department of health and human services or by a licensed child-placing agency, the school district in which said home is located shall be entitled to the funds provided under the provisions of this subdivision.

Source. 1973, 277:1. 1983, 291:1, I, eff. July 1, 1985.

198:24 Amount of Payment.

I. Each school district shall be entitled to receive an amount not to exceed $200 per year for each foster child who attends a school in such district. If more than one school district is involved during any school year, the amount of payment to any one district will be distributed in accordance with RSA 198:26.

II. If the sums appropriated to the foster children tuition fund established by 1975, 505:1.06, 03, 03, 01, 21 is not totally expended for the purpose of paragraph I, then any amount remaining unexpended shall be divided equally between the following 2 categories: foster children placed in a program or school for persons with disabilities and foster children placed in a group home or nonprofit institution which averages 6 or more foster children annually. Each category shall be entitled to receive an equal share of this division; and, within each category, the amount so appropriated shall be distributed on a per capita basis based upon the number of children within the category.

Source. 1973, 277:1. 1977, 340:1. 1990, 140:2, III, eff. June 18, 1990.

198:25 Proration. If, in any year, the number of children entitled to receive benefits in accordance with RSA 198:24 shall exceed the amount appropriated for such purpose, the amount shall be prorated proportionally among the districts entitled to the tuition payments. In carrying out the proration, all sums appropriated to the foster children tuition fund established by 1975, 505:1.06, 03, 03, 01, 21 which have not been expended or encumbered on August 30, 1977, shall be divided equally between foster children placed in a program or school for persons with disabilities and foster children placed in a group home or nonprofit institution which averages 6 or more foster children annually. After this division between foster home groups and disabled foster children programs, said sums shall be disbursed on a pro rata basis for each disabled foster child up to 100 percent of actual costs and on a pro rata basis for each foster child in group foster homes. In subsequent years, this same pro rata distribution shall be made of these foster children tuition funds.

Source. 1973, 277:1. 1977, 340:2. 1990, 140:2, III, X, eff. June 18, 1990.

198:26 Time of Computation. As of June 30 in each year, the state board shall cause to be computed the amount of annual grants to be paid eligible districts in the succeeding fiscal year as provided herein. If the foster home is located in a pre-existing district within a cooperative district, any aid paid under this subdivision shall be credited to said pre-existing district. Any available appropriation not fully distributed among the districts in the first year of any biennium may be distributed in the second year if required to meet the formula established.

Source. 1973, 277:1. 1977, 340:3, eff. Aug. 30, 1977.

Foundation Aid

198:27 to 198:33 Repealed.

[Repealed 1999, 17:58, IX, eff. April 29, 1999.]

History

Former RSA 198:27 to 198:33, which were derived from 1985, 244:5; 1986, 16:1, 2; 1989, 414:1; 1990, 140:2, X; and 1991, 321:4, related to foundation aid.

Alternative Foundation Aid

198:34 to 198:37 Repealed.

[Repealed 1999, 17:58, IX, eff. April 29, 1999.]

History

Former RSA 198:34 to 198:37, which was derived from 1995, 308:119 and 1998, 389:13, 14, related to alternative foundation aid.

Adequate Education; Education Trust Fund

198:38 Definitions. In this subdivision:

I. (a) "Average daily membership in attendance" or "ADMA" means the average daily membership in attendance, as defined in RSA 189:1–d, III, of pupils in kindergarten through grade 12, in the determination year, provided that no kindergarten pupil shall count as more than ½ day attendance per school year. ADMA shall only include pupils who are legal residents of New Hampshire pursuant to RSA 193:12 and educated at school district expense which may include public academies or out-of-district placements. For the purpose of calculating funding for municipalities, the ADMA shall not include pupils attending chartered public schools, but shall include pupils attending a charter conversion school approved by the school district in which the pupil resides.

(b) For the purpose of calculating ADMA, each pupil who is home educated in compliance with RSA 193–A and who is enrolled in a school board approved public high school academic course shall count as an additional 0.15 pupil for each such academic course taken in a public high school. The department of education shall only make grant payments for such pupils to the extent of available appropriations. In this subparagraph, "public high school" shall have the same meaning as "high school" as defined in RSA 194:23.

II. "Commissioner" means the commissioner of the department of education.

III. "Department" means the department of education.

IV. "Determination year" means the school year immediately preceding the school year for which aid is determined. Unless otherwise indicated, determination year data shall be used to calculate aid.

V. "Pupil receiving special education services" means the ADMA of a child with a disability as defined in RSA 186–C:2, I.

VI. "English language learner" means the ADMA of a pupil who has a predominant language other than English or who is educationally disadvantaged by a limited English proficiency, and who participated in the annual assessment of English language proficiency required of such pupils by the Elementary and Secondary Education Act, 20 U.S.C. section 6311 (b)(7).

VI–a. "Municipality" means a city, town, or unincorporated place.

VII. "Pupils eligible for a free or reduced-price meal" means the ADMA of pupils in kindergarten through grade 12 who are eligible for the federal free or reduced-price meal program. No pupil or school shall be required to participate in the federal free or reduced price meal program.

VIII. "School district" means school district as defined in RSA 194:1 and shall include cooperative school districts as defined in RSA 195:1, I.

Source. 1999, 17:41; 65:1; 281:12. 2002, 260:1. 2003, 241:3, 6. 2004, 200:3. 2005, 257:5. 2006, 191:3, eff. July 29, 2006. 2008, 173:4, eff. July 1, 2009. 2011, 258:10, eff. July 1, 2011. 2012, 198:1, 2, eff. July 1, 2012. 2015, 251:1, eff. Sept. 11, 2015. 2016, 8:1, eff. Mar. 16, 2016.

198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts and to approved charter schools pursuant to RSA 198:42, to provide low and moderate income homeowners property tax relief under RSA 198:56–198:61, and to fund kindergarten programs as may be determined by the general court. The state treasurer shall deposit into this fund immediately upon receipt:

(a) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 77–A:20–a, relative to business profits taxes.

(b) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 77–E:14, relative to business enterprise tax.

(c) Funds collected and paid over to the state treasurer by the commissioner of revenue administration pursuant to RSA 78–A:26, III relative to the tax on motor vehicle rentals.

(d) Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 78:32, relative to tobacco taxes.

(e) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 78–B:13, relative to real estate transfer taxes.

(f) Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 83–F:7, I, relative to the utility property tax.

(g) [Repealed.]

(h) All moneys due the fund in accordance with RSA 284:21–j, relative to sweepstakes and the lottery.

(i) Tobacco settlement funds in the amount of $40,000,000 annually.

(j) The school portion of any revenue sharing funds distributed pursuant to RSA 31–A:4 which were apportioned to school districts in the property tax rate calculations in 1998.

(k) Funds collected and paid over to the state treasurer by the lottery commission pursuant to RSA 284:44 and RSA 284:47.

(*l*) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

Source. 1999, 17:41; 338:8. 2004, 97:3; 200:4. 2005, 257:4, 15. 2006, 301:2. 2007, 272:2, eff. July 3, 2007. 2011, 258:9, IV, eff. July 1, 2011. 2017, 229:3, eff. July 1, 2017.

198:40 Determination of Average Per Pupil Adequacy Cost.

[Repealed 2005, 257:22, II, eff. July 1, 2005 at 12:02 a.m.]

History

Former RSA 198:40, which was derived from 1999, 17:41, 65:2, 303:10; 2003, 241:5; and 2004, 200:5 to 7, 24, related to determination of average adequacy cost per pupil.

198:40–a Cost of an Opportunity for an Adequate Education.

I. For the biennium beginning July 1, 2015, the annual cost of providing the opportunity for an adequate education as defined in RSA 193–E:2–a shall be as specified in paragraph II. The department shall adjust the rates specified in this paragraph in accordance with RSA 198:40–d.

II. (a) A cost of $3,561.27 per pupil in the ADMA, plus differentiated aid as follows:

(b) An additional $1,780.63 for each pupil in the ADMA who is eligible for a free or reduced price meal; plus

(c) An additional $697.77 for each pupil in the ADMA who is an English language learner; plus

(d) An additional $1,915.86 for each pupil in the ADMA who is receiving special education services; plus

(e) An additional $697.77 for each third grade pupil in the ADMA with a score below the proficient level on the reading component of the state assessment administered pursuant to RSA 193–C:6 or the authorized, locally-administered assessment as provided in RSA 193–C:3, IV(i), provided the pupil is not eligible to receive differentiated aid pursuant to subparagraphs (b)–(d). A school district receiving aid under this subparagraph shall annually provide to the department of education documentation demonstrating that the district has implemented an instructional program to improve non-proficient pupil reading.

III. The sum total calculated under paragraph II shall be the cost of an adequate education. The department shall determine the cost of an adequate education for each municipality based on the ADMA of pupils who reside in that municipality.

Source. 2005, 257:6, eff. July 1, 2005 at 12:02 a.m. 2008, 173:5, eff. July 1, 2009. 2011, 258:2, eff. July 1, 2011. 2012, 198:4–6, eff. July 1, 2012. 2016, 8:2, eff. Mar. 16, 2016. 2017, 100:2, eff. Aug. 7, 2017.

198:40–b Use of Differentiated Aid.

[Repealed 2016, 8:13, I, eff. Mar. 16, 2016.]

History

Former RSA 198:40–b, which was derived from 2005, 257:6 and 2008, 173:6, 274:31, related to use of differentiated aid by a school district.

198:40–c Fiscal Capacity Disparity Aid.

[Repealed 2011, 258:9, I, eff. July 1, 2011.]

History

Former RSA 198:40–c, which was derived from 2005, 257:6 and 2008, 354:6, related to fiscal capacity disparity aid.

198:40–d Consumer Price Index Adjustment. Beginning July 1, 2017 and every biennium thereafter, the department of education shall adjust the cost of an adequate education under RSA 198:40–a based on the average change in the Consumer Price Index for All Urban Consumers, Northeast Region, using the "services less medical care services" special aggregate index, as published by the Bureau of Labor Statistics, United States Department of Labor. The average change shall be calculated using the 3 calendar years ending 18 months before the beginning of the biennium for which the calculation is to be performed.

Source. 2008, 173:8, eff. July 1, 2011. 2011, 258:8, eff. July 1, 2011 at 12:01 a.m. 2016, 8:3, eff. Mar. 16, 2016.

198:41 Determination of Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the total education grant for the municipality as follows:

(a) Add the per pupil cost of providing the opportunity for an adequate education for which each

pupil is eligible pursuant to RSA 198:40–a, I–III, and from such amount;

(b) Subtract the amount of the education tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:8 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the total education grant for each municipality as the lesser of the 2 following calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:8 for the next tax year.

III. (a) For the biennium ending June 30, 2013, the department of education shall not distribute a total education grant on behalf of all pupils who reside in a municipality that exceeds that municipality's total education grant in the second year of the previous biennium.

(b) [Repealed.]

IV. (a) For fiscal year 2012, the department of education shall identify all municipalities in which the fiscal year 2012 total education grant will be less than the fiscal year 2011 total education grant. The department shall distribute a stabilization grant to each of those municipalities equal to 100 percent of the decrease.

(b) For fiscal year 2013, the department of education shall identify all municipalities in which the fiscal year 2013 total education grant, including any stabilization grant distributed pursuant to subparagraph (a), will be less than the fiscal year 2011 total education grant. The department shall distribute funds to each of those municipalities equal to 100 percent of the decrease.

(c) For fiscal year 2014 through fiscal year 2016, the department of education shall distribute a total education grant to each municipality in an amount equal to the total education grant for the fiscal year in which the grant is calculated plus the amount of the fiscal year 2012 stabilization grant, if any, distributed to the municipality.

(d) For fiscal year 2017 and each fiscal year thereafter, the department of education shall distribute a total education grant to each municipality in an amount equal to the total education grant for the fiscal year in which the grant is calculated plus a percentage of the municipality's fiscal year 2012 stabilization grant, if any, distributed to the municipality; the percentage shall be 96 percent for fiscal year 2017, and shall be reduced by 4 percent of the amount of the 2012 education grant for each fiscal year thereafter. No stabilization grant shall be distributed to any municipality for any fiscal year in which the municipality's education property tax revenue collected pursuant to RSA 76 exceeds the total cost of an adequate education or to any municipality for any fiscal year in which the municipality's ADMA is zero.

V. The department shall use the best available data and methods to estimate ADMA and education grants by November 15 of the year preceding the school year for which aid is determined.

VI. The department shall produce a revised estimate of grants using actual determination year data for the purpose of settling municipal tax rates. A municipality's grant estimate shall not be less than 95 percent of the estimate reported pursuant to paragraph V. The commissioner of the department of education shall provide the estimate for the current fiscal year to the commissioner of the department of revenue administration no later than October 1 of each year.

VII. When final determination year data is available, but not later than April 1, the department shall make a final determination of grant amounts. A municipality's grant estimate shall not be less than 95 percent of the estimate reported pursuant to paragraph V. The department shall adjust the April grant disbursement required pursuant to RSA 198:42 so that the total amount disbursed for the fiscal year shall match the final grant determination.

VIII. Reports of grant determinations for municipalities required pursuant to paragraphs V–VII shall be available to the public by the date specified in paragraphs V–VII, and the department shall make available a report for multi-town school districts. The department of education shall provide the department of revenue administration the information needed to set tax rates.

Source. 1999, 17:41; 338:10. 2003, 241:7. 2004, 200:8; 244:4. 2005, 257:7, 8. 2006, 6:1, 2. 2007, 270:3, eff. June 29, 2007. 2008, 173:9, eff. July 1, 2009; 173:17, I, eff. June 30, 2009; 173:17, III, eff. July 1, 2011. 2011, 258:3, eff. July 1, 2011. 2013, 4:1, eff. Mar. 18, 2013; 144:120, eff. July 1, 2013. 2015, 276:139, eff. July 1, 2015;

276:140, eff. July 1, 2017. 2016, 8:4, 5, eff. Mar. 16, 2016; 85:9, eff. July 18, 2016.

198:42 Distribution Schedule of Adequate Education Grants; Appropriation.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on September 1, 20 percent on November 1, 30 percent on January 1, and 30 percent on April 1 of each school year; provided that for a dependent school district, the grant determined in RSA 198:41 shall be distributed to the municipality, which shall appropriate and transfer the grant funds to its dependent school department.

II. For the fiscal year beginning July 1, 2005, and every fiscal year thereafter, the amount necessary to fund the grants under RSA 198:41 is hereby appropriated to the department from the education trust fund created under RSA 198:39. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the comptroller shall transfer sufficient funds from the general fund to eliminate such deficit. The commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of adequate education grants.

III. The department of education shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district or municipality.

Source. 1999, 17:41; 65:3; 303:11. 2003, 319:159. 2004, 200:9. 2005, 257:9. 2006, 301:5. 2007, 270:3, eff. June 29, 2007. 2008, 274:31, eff. July 1, 2008; 354:1, eff. Sept. 5, 2008. 2011, 224:153, eff. July 1, 2011. 2012, 198:3, eff. July 1, 2012. 2013, 144:61, eff. July 1, 2013. 2016, 8:6, eff. Mar. 16, 2016. 2017, 156:153, eff. July 1, 2017.

198:43 Additional Education Expenditures. School districts are authorized to develop educational programs beyond those required for an adequate education and to raise and appropriate amounts necessary for such programs.

Source. 1999, 17:41. 2005, 257:15. 2007, 270:3, eff. June 29, 2007.

198:43–a Severability. If any provision of RSA 198:38 through RSA 198:43 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of RSA 198:38 through RSA 198:43 which can be given effect without the invalid provision or application, and to this end, such provisions are declared to be severable.

Source. 2011, 258:4, eff. July 1, 2011.

198:44 Duties of the Department of Education and the Board of Education.

[Repealed 2016, 8:13, II, eff. Mar. 16, 2016.]

History

Former RSA 198:44, which was derived from 1999, 17:41; 2004, 200:13; and 2005, 189:3, related to duties of the department of education and the board of education.

198:45 Submission of Data. The governing body of every school district, city, joint maintenance agreement, chartered public school, or approved public academy shall submit all records, data, or other information required under this subdivision in accordance with the provisions of RSA 189:28.

Source. 1999, 17:41. 2003, 314:3. 2005, 189:3, eff. Aug. 29, 2005. 2008, 354:1, eff. Sept. 5, 2008. 2014, 247:1, eff. Sept. 19, 2014. 2016, 8:7, eff. Mar. 16, 2016.

198:45–a Targeted Education Grants.

[Repealed 2003, 241:34, eff. July 1, 2004.]

History

Former RSA 198:45–a, which was derived from 2003, 241:8, related to targeted education grants.

Local Control and Alternative Kindergarten Programs

198:46 Excess Education Tax Payment.

[Repealed 2011, 258:9, II, eff. July 1, 2011.]

History

Former RSA 198:46, which was derived from 1999, 17:41, 162:2, 338:11; 2000, 239:8; 2001, 71:8; 2005, 257:10; 2006, 6:3; and 2008, 173:15, 384:5, related to excess education tax payments.

198:47 Forms.

[Repealed 2011, 258:9, III, eff. July 1, 2011.]

History

Former RSA 198:47, which was derived from 1999, 17:41, 338:11; 2005, 257:11; and 2008, 173:15, related to the forms used for the reporting and remitting of excess education tax payments.

198:48 Maintenance of Local Control. Distributions under RSA 198:42 are based on adequate education costs determined in RSA 198:41 and are independent of how the municipalities decide to spend the distributions or other funds they may raise for education. Notwithstanding any other provision of law, nothing in this subdivision is intended in any way to limit or control how school districts operate or spend their budgets except that adequate education grants must be expended for educational purposes.

Adequate education grants shall not be considered unanticipated funds under RSA 198:20–b.

Source. 1999, 17:41; 338:11. 2000, 201:2. 2004, 200:12. 2005, 257:19. 2007, 270:3, eff. June 29, 2007.

198:48–a Alternative Kindergarten Programs.

I. A school district that currently does not operate a kindergarten program within an approved public school maintained by the local district or currently does not contract with another established public kindergarten program for the education of its resident kindergarten pupils, may submit to the commissioner of the department of education a local plan for an alternative kindergarten program based upon contractual arrangements with one or more nonpublic, non-sectarian schools or facilities. An alternative kindergarten program shall be:

(a) Offered immediately preceding the other elementary grades.

(b) Designed primarily for 5-year-olds.

(c) Available at district expense to all kindergarten-aged children who reside in the district.

II. An alternative kindergarten program shall satisfy the same criteria established for public kindergarten programs in the New Hampshire standards for school approval.

III. A local plan for an alternative kindergarten program shall be approved by the school board. A local plan for an alternative kindergarten program shall be submitted to the commissioner of the department of education at times established by the commissioner.

IV. A local plan shall contain the following information:

(a) A description of the alternative kindergarten program.

(b) A list of the nonpublic, non-sectarian schools or facilities to be utilized.

(c) Evidence that the alternative kindergarten program satisfies the same criteria established for public kindergarten programs in the New Hampshire minimum standards for the approval of schools.

(d) Procedures for coordinating and articulating curriculum, instruction, and support services provided under the alternative kindergarten program with curriculum, instruction, and support services provided in the other elementary grades.

(e) An explanation of how students will be transported to and from the schools or facilities to be utilized.

V. The plan shall be reviewed by the department of education for compliance with statutory requirements.

VI. If an approved alternative kindergarten program utilizes more than one school or facility, the school board or the superintendent or other administrative officer designated by the school board may take into consideration parental preference when assigning students to schools or facilities.

VII. (a) Upon the effective date of this paragraph, and for each fiscal year through June 30, 2003, an adequate education grant of $1,200 per pupil shall be distributed to school districts, from the education trust fund created in RSA 198:39, for the education of its resident kindergarten pupils enrolled in an approved alternative kindergarten program established under this section.

(b) Once pupils enrolled in an approved alternative kindergarten program have been counted in the average daily membership in residence, school districts shall receive, for each such pupil, an adequate education grant calculated in accordance with RSA 198:41 through RSA 198:42.

VIII. Notwithstanding the provisions of this section, alternative kindergarten programs which were approved and in effect prior to April 29, 1999 may continue to operate and shall continue to receive per pupil adequate education grant amounts in accordance with RSA 198:41 through RSA 198:42.

Source. 2000, 289:1. 2001, 158:36. 2005, 257:20. 2007, 270:3, eff. June 29, 2007. 2008, 384:4, eff. July 11, 2008. 2017, 63:8, eff. Aug. 1, 2017.

198:48–b Kindergarten Adequate Education Grants. Notwithstanding any provision of law to the contrary:

I. A school district which operates kindergarten in any school year in which the adequate education grant provided pursuant to RSA 198:42 does not include a count of kindergarten students, shall receive an additional adequate education grant based on the number of pupils attending kindergarten in the district as of the beginning of the school year.

II. The per pupil amount of the additional education grant provided in this section shall be $1,200 for the 2008 school year. Starting in the school year that commences in the fall of 2009, a school district which operates kindergarten in any school year in which the adequate education grant provided pursuant to RSA 198:42 does not include a count of kindergarten students, shall receive an additional adequate education grant calculated pursuant to the adequate education grant formula provided in RSA 198 based

on the number of pupils attending kindergarten in the district as of the beginning of the school year. Once pupils enrolled in an approved kindergarten program have been counted in the average daily membership, school districts shall receive, for each such pupil, an adequate education grant calculated in accordance with RSA 198:41 and RSA 198:42. School districts that receive kindergarten adequate education grants under this section shall not be eligible to receive any other per pupil adequate education grant.

Source. 2008, 384:2, eff. July 11, 2008.

198:48–c Kindergarten Grants.

I. (a) For fiscal year 2019, in addition to any funds received pursuant to RSA 198:40–a, in the first year that a school district or chartered public school that operates an approved full-day kindergarten program, the commissioner of the department of education shall calculate and distribute a grant of $1,100 per kindergarten pupil based on the enrollment number of eligible full-day kindergarten pupils on the first day of the school year. The superintendent, or designee, shall certify the enrollment number of kindergarten pupils to the commissioner.

(b) For fiscal year 2019, once pupils enrolled in an approved full-day kindergarten program have been counted in the school district's average daily membership in attendance as defined in RSA 198:38, I, a school district, or a chartered public school based on its kindergarten average daily membership enrollment number, shall receive, in addition to any funds received pursuant to RSA 198:40–a, an additional grant of $1,100 per kindergarten pupil attending a full-day kindergarten program. The commissioner shall certify the amount of the grant to the state treasurer and direct the payment thereof from the education trust fund established in RSA 198:39 to the school district or chartered public school.

(c) Grants shall be disbursed to a school district pursuant to the distribution schedule in RSA 198:42 and to a chartered public school pursuant to the distribution schedule in RSA 194–B:11, I(c).

(d) The amount necessary to fund the grants under this section is hereby appropriated to the department from the education trust fund. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section.

II. A school district or chartered public school that operates an approved full-day kindergarten program for which it receives funding under this section shall permit a pupil to attend kindergarten for a half-day.

III. (a) For fiscal year 2020 and each fiscal year thereafter, in addition to any funds received pursuant to RSA 198:40–a, the department of education shall distribute a total kindergarten grant, pursuant to RSA 198:40–a, for the remaining ½ of each average daily membership not counted under RSA 198:40–a to each school district or chartered public school that operates an approved full-day kindergarten program. If the amount of revenue raised through keno is insufficient to fully fund the distribution of grants under this section, the revenue shall be prorated proportionally based on entitlement among the districts entitled to a grant. The prorated portion of this grant shall not be less than the per pupil amount disbursed under paragraph I(b).

(b) Grants shall be disbursed to a school district pursuant to the distribution schedule in RSA 198:42 and to a chartered public school pursuant to the distribution schedule in RSA 194–B:11, I(c).

(c) The amount necessary to fund the grants under this paragraph is hereby appropriated to the department from the education trust fund. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section.

Source. 2017, 229:4, eff. July 1, 2017.

198:49 Adequate Education and Education Financing Commission.

[Repealed 2005, 257:22, I, eff. July 1, 2005 at 12:02 a.m.]

History

Former RSA 198:49, which was derived from 1999, 17:41, 65:4, and 281:13, related to an adequate education financing commission.

Education Property Tax Hardship Relief

198:50 to 198:55 Repealed.

[Repealed 1999, 338:22, eff. July 1, 2002, and 2001, 158:82, eff. July 1, 2002.]

History

Former RSA 198:50, which was derived from 1999, 338:12 and 2000, 136:1, related to definitions.

Former RSA 198:51, which was derived from 1999, 338:12; 2000, 136:2, 3; and 2001, 210:1, 2, related to education property tax hardship relief.

Former RSA 198:52, which was derived from 1999, 338:12, related to rulemaking, forms, and notice.

Former RSA 198:53, which was derived from 1999, 338:12, related to penalties and assessment of erroneous claims.

Former RSA 198:54, which was derived from 1999, 338:12, related to appeals.

Former RSA 198:55, which was derived from 1999, 338:12, related to refund of tax claims.

Low and Moderate Income Homeowners Property Tax Relief

198:56 Definitions. In this subdivision:

I. "Commissioner" means the commissioner of the department of revenue administration.

II. "Homestead" means the dwelling owned by a claimant or, in the case of a multi-unit dwelling, the portion of the dwelling which is owned and used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1. "Homestead" shall not include land and buildings taxed under RSA 79–A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, the term "owned" includes:

(a) A vendee in possession under a land contract;

(b) One or more joint tenants or tenants in common; or

(c) A person who has equitable title, or the beneficial interest for life in the homestead.

III. "Household income" means the sum of the adjusted gross income for federal income tax purposes of the claimant and any adult member of the claimant's household who resides in the homestead for which a claim is made. "Household income" shall also include all income of any trust through which the claimant holds equitable title, or the beneficial interest for life, in the homestead.

IV. "Tax relief" means the low and moderate income homeowners property tax relief provided in this subdivision.

V. "New Hampshire household" means any person filing a federal income tax return as head of household or 2 or more adults who jointly share the benefit of the homestead. "New Hampshire household" shall not include those adults who share the homestead under a landlord-tenant relationship.

VI. "Dependent" means a person residing in a homestead who is claimed as a dependent for federal income tax purposes.

Source. 2001, 158:80, eff. July 1, 2002.

198:57 Low and Moderate Income Homeowners Property Tax Relief.

I. Pursuant to the provisions of this subdivision, eligible claimants shall be granted tax relief following the effective date of this subdivision.

II. Residents shall apply to the department of revenue administration for such tax relief.

III. An eligible tax relief claimant is a person who:

(a) Owns a homestead or interest in a homestead subject to the education tax;

(b) Resided in such homestead on April 1 of the year for which the claim is made, except such persons as are on active duty in the United States armed forces or are temporarily away from such homestead but maintain the homestead as a primary domicile; and

(c) Realizes total household income of:

(1) $20,000 or less if a single person;

(2) $40,000 or less if a married person or head of a New Hampshire household.

IV. All or a portion of an eligible tax relief claimant's state education property taxes, RSA 76:3, shall be rebated as follows:

(a) Multiply the total local assessed value of the claimant's property by the percentage of such property that qualifies as the claimant's homestead;

(b) Multiply $100,000 by the most current local equalization ratio as determined by the department of revenue administration;

(c) Multiply the lesser of the amount determined in subparagraph (a) or (b) by the education tax rate as shown on the tax bill under RSA 76:11–a;

(d) Multiply the product of the calculation in subparagraph (c) by the following percentage as applicable to determine the amount of tax relief available to the claimant:

(1) If a single person and total household income is:

(A) less than $12,500, 100 percent;

(B) $12,500 but less than $15,000, 60 percent;

(C) $15,000 but less than $17,500, 40 percent; or

(D) $17,500 but less than or equal to $20,000, 20 percent.

(2) If a head of a New Hampshire household or a married person and total household income is:

(A) less than $25,000, 100 percent;

(B) $25,000 but less than $30,000, 60 percent;

(C) $30,000 but less than $35,000, 40 percent; or

(D) $35,000 but less than or equal to $40,000, 20 percent.

(e) The amount determined by subparagraph (d) is the allowable tax relief in any year.

V. If a homestead is owned by 2 or more persons as joint tenants or tenants in common, and one or more of such joint owners do not principally reside at such homestead, tax relief applies to the proportionate share of the homestead value that reflects the ownership percentage of the claimant. Only one claim may be filed for a single homestead.

VI. (a) Complete applications for state tax relief shall be filed with the department of revenue administration between May 1 and June 30 following the due date of the final tax bill as defined in RSA 76:1–a for state education property taxes.

(b) The commissioner may accept late filed, but complete, applications filed on or before November 1, under the following circumstances:

(1) The claimant satisfies the commissioner that the claimant was prevented from timely filing the application due to accident, mistake or misfortune.

(2) The claimant or other adult member of the household requested an extension of time to file his or her federal income tax return.

VII. Each claimant shall provide a copy of his or her federal income tax return and a copy of the federal income tax return for each adult member of the claimant's household for the corresponding tax period. Claimants and adult household members who were not required to file a federal tax return for the immediately prior tax period may submit an affidavit to such effect in lieu of a tax return which document shall include the affiant's social security number. A claimant or any other adult member of the household, who requested an extension to file his or federal income tax return, shall attach a copy of the federal extension to the claim. A claimant who asserts ownership in a homestead because he or she holds equitable title, or the beneficial interest for life, in the homestead shall also submit a copy of the document creating such interest and a copy of the federal tax return, if any, for the immediately prior tax period, of the trust holding legal title to the homestead. Any documents submitted shall be considered confidential, and protected under RSA 21–J:14.

VIII. The provisions of RSA 359–C shall not apply to the documents required to be submitted under this section.

Source. 2001, 158:80. 2004, 238:6. 2005, 257:12, 13, eff. July 1, 2005 at 12:02 a.m. 2008, 173:15, eff. July 1, 2009.

198:58 Rulemaking; Forms; Notice.

I. The commissioner shall adopt rules, under RSA 541–A, relative to the administration of the tax relief provisions of this subdivision.

II. The commissioner shall approve and provide forms relative to the administration of this subdivision.

III. Claim forms shall include the following:

(a) Instructions on completing and filing the form;

(b) Sections for information concerning the claimant, the claimant's household, the property for which tax relief is sought, and such other information as is reasonably necessary to determine the accuracy of the claim;

(c) Instructions on appeal procedure and time limits relative to such appeals; and

(d) A place for the claimant's signature with a certification by the claimant that the claim is made in good faith and that the facts contained in the claim are true.

IV. The commissioner shall publicize notice of the tax relief provisions in a suitable manner.

Source. 2001, 158:80, eff. July 1, 2002.

198:59 Penalties; Assessment of Erroneous Claims.

I. Any person who files a claim for tax relief under this subdivision with fraudulent intent and any person who assisted in the preparation or filing of the claim or supplied information upon which the claim was prepared shall be guilty of a misdemeanor.

I–a. The commissioner shall have the authority to audit any claim for relief filed under this subdivision to determine whether the claim has been granted erroneously. Any such audit shall commence within 3 years after the claim has been granted. Any assessment made by the commissioner shall be subject to appeal in accordance with RSA 198:60, I.

II. The commissioner may assess and collect the amount of any sums granted for property tax relief relative to a fraudulent or erroneously paid claim for tax relief including interest provided under RSA 21–J:28 and an additional penalty of 25 percent for the erroneous amount of such claim or an additional penalty of the greater of 25 percent or $1,000 for a fraudulent claim.

Source. 2001, 158:80. 2004, 238:7, eff. June 15, 2004.

198:60 Appeals.

I. Whenever the commissioner refuses to grant a claimant tax relief, or after an audit, assesses an amount against the claimant for property tax relief granted including interest and applicable penalties for an erroneously paid claim, the claimant may appeal in writing within 30 days of notice of such refusal or assessment to the board of tax and land appeals.

II. The board of tax and land appeals may reverse or affirm, in whole or in part, or modify the decision appealed from when there is an error of law or when the board finds the commissioner's action to be arbitrary or unreasonable.

Source. 2001, 158:80. 2004, 238:8, eff. June 15, 2004.

198:61 Refund of Tax Claims. The department of revenue administration shall review a claim for tax relief filed with it and, if such claim is determined to be valid, shall certify such amount to the state treasurer within 120 days who shall pay such claims from funds in the education trust fund. Such sums are hereby appropriated and the governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the commissioner of the department of revenue administration shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the payment of valid claims. The department shall notify a claimant whose claim is rejected in whole or in part of such determination within 90 days of the department's receipt of the claim and all required documentation.

Source. 2001, 158:80. 2004, 238:11, eff. June 15, 2004.

Commission to Study Fiscal Disparities Between Public School Districts

198:62 Commission to Study Fiscal Disparities Between Public School Districts.

[Repealed 2014, 309:2, eff. Nov. 2, 2014.]

History

Former RSA 198:62, which was derived from 2014, 309:1, related to a commission to study fiscal disparities between public school districts.

CHAPTER 199

SCHOOLHOUSES

Location and Building

Use and Manner of Construction

Location and Building

199:1 Location and Construction by District. The district may decide upon the location of its schoolhouses by vote or by a committee appointed for the purpose, provided, however, that all plans, specifications, and the selection of site for any new school buildings for any school district within the state shall be approved by the school board of the district in which it is proposed to construct such a building. The provisions of this section shall apply to all new construction and substantial renovation of public school buildings, including those constructed by grant or loans of funds from state, the federal government, or other sources. The district shall investigate feasible options in the course of deciding to renovate or replace an existing school building. In considering such options, the district shall hold at least one public hearing and shall seek input from municipal boards and departments. The district shall also review the municipality's zoning regulations and master plan in order to maximize best planning practices. For the purposes of this chapter, in addition to their usual meanings, the words "schoolhouse" and "school building" also mean educational administration building, including school administrative unit facilities.

Source. 1845, 224:1. RS 71:1. CS 75:1. GS 80:2. GL 88:2. PS 91:1. 1921, 85, VII:1. PL 122:1. RL 141:1. 1945, 127:1. 1947, 156:10. RSA 199:1. 1967, 449:4. 1979, 459:4, eff. Aug. 24, 1979. 2008, 289:5, eff. Aug. 26, 2008. 2010, 327:1, eff. Sept. 18, 2010.

199:2 Location in Cities. The school board of cities shall have sole power to select and purchase land for schoolhouse lots. When said board has secured, by vote of the city councils, an adequate appropriation for the purchase of a specified lot at a specific price, said board may make the purchase.

Source. 1897, 65:1. 1921, 85, VII:2. PL 122:2. RL 141:2.

199:3 Construction in Cities; Joint Building Committees.

I. No schoolhouse shall be erected, altered, remodeled or changed in any city school district unless the plans have been previously submitted to the school board of that district and received its approval.

II. (a) All construction relating to schoolhouses in any city school district shall be done under the direction of a joint building committee which shall be established and chosen in equal numbers by the city council and the school board.

(b) The chairperson of a joint building committee shall be chosen by a majority vote of the committee members.

(c) Any vacancy in the committee membership shall be filled by the respective appointing authority on or before the close of the next regularly scheduled meeting of the appointing authority following the creation of the vacancy.

(d) The joint building committee shall meet monthly and at other times as the chairman deems necessary.

III. The joint building committee shall have the following duties:

(a) Oversee and decide all matters relating to any construction on schoolhouse buildings.

(b) Prepare and submit monthly status reports relating to construction progress to the city council and the school board.

(c) Prepare and submit monthly financial reports relating to the total authorized construction budget and expenditures to date to both the city council and the school board.

IV. All funds appropriated by the city council for construction of a new schoolhouse shall be administered by the appropriate joint building committee, and those funds shall be disbursed upon authorization of the committee until final acceptance of the schoolhouse by the city council.

Source. 1897, 65:2. 1921, 85, VII:3. PL 122:3. RL 141:3. RSA 199:3. 1993, 185:1, eff. Aug. 8, 1993.

199:4 Transfer of Building.

I. Upon final completion of the new schoolhouse as determined by the joint building committee, the committee shall vote to accept the building and transfer it to the care and control of the school board.

II. Whenever a schoolhouse shall no longer be needed for public school purposes, the school board shall transfer its care and control to the city.

Source. 1897, 65:3. 1921, 85, VII:4. PL 122:4. RL 141:4. RSA 199:4. 1993, 185:2, eff. Aug. 8, 1993.

199:4–a Final Report; Dissolution of Joint Building Committee. Upon vote of the joint building committee to accept the new schoolhouse and to transfer it to the school board, the joint building committee shall remain in existence for the sole purpose of preparing and submitting a final report relating to the schoolhouse construction and related financial matters to the city council and the school board. Any funds appropriated for the schoolhouse construction which have not been expended shall be returned to the control of the municipality, subject to RSA 33:3–a. The joint building committee shall be dissolved upon the return of unexpended funds and submission of the final report.

Source. 1993, 185:3, eff. Aug. 8, 1993.

199:5 Exception. The provisions of RSA 199:2–199:4–a shall not apply to the Union School District of Concord and to the school districts of Keene, Lebanon, and Claremont.

Source. 1897, 65:4. 1921, 85, VII:5. PL 122:5. RL 141:5. RSA 199:5. 1993, 185:4, eff. Aug. 8, 1993.

199:6 Power of Committees. No committee shall have power to bind the district beyond the amount of money voted by it, and the district shall not be bound by any act, as a ratification of the doings of such committee, beyond their authority, unless by express vote of the district.

Source. GS 80:3. GL 88:3. PS 91:2. 1921, 85, VII:6. PL 122:6. RL 141:6.

199:7 Location by Board. If the district does not agree upon a location for a schoolhouse, or upon a committee to locate the same, or if the same is not located by such committee within 30 days after its appointment, the school board, upon petition of 10 percent or more of the voters, shall determine the location.

Source. RS 71:5. CS 75:5. GS 80:5. GL 88:5. PS 91:4. 1921, 85, VII:8. 1921, 88:1. PL 122:7. RL 141:7.

199:8 Relocation by Board. If 10 percent or more of the voters of a district are aggrieved by the location of a schoolhouse by the district or its committee, they may apply by petition to the school board,

who shall hear the parties interested and determine the location.

Source. RS 71:2. CS 75:2. GS 80:4. GL 88:4. 1887, 105:7. PS 91:3. 1921, 85, VII:7. 1921, 88:1. PL 122:8. RL 141:8.

199:9 Relocation by State Board of Education. If 10 percent or more of the voters of a school district are aggrieved by the location of a schoolhouse by the district or its committee, or by the school board, they may, within 10 days after the making of the location, apply by petition to the state board of education, who shall hear the parties interested and determine the location.

Source. 1871, 4:1. GL 88:6. 1887, 105:7. PS 91:5. 1921, 85, VII:9. 1921, 88:1. PL 122:9. RL 141:9. 2008, 289:6, eff. Aug. 26, 2008.

199:10 Notice of Hearing Upon Question of Location. The chairman of the state board of education shall appoint a time and place within the district for a hearing upon every such petition, and shall give notice thereof by causing attested copies of the petition and order of notice to be posted at 2 or more public places within the district and to be given in hand to, or left at the abode of, the clerk of the district and of one of the school board, 14 days before the day of hearing.

Source. 1871, 4:2. GL 88:7. PS 91:6. 1921, 85, VII:10. PL 122:10. RL 141:10. 2008, 289:7, eff. Aug. 26, 2008.

199:11 Vacancies in Board of Commissioners.

[Repealed 2008, 289:9, I, eff. Aug. 26, 2008.]

History

Former RSA 199:11, which was derived from 1872, 13:5; and 1921, 85, VII:11, related to vacancies in the board of commissioners.

199:12 Hearing. The hearing shall be closed within 60 days. The state board of education shall hear all parties interested who desire to be heard, and shall make a decision in writing and file it with the clerk of the district.

Source. 1871, 4:2. GL 88:7. PS 91:8. 1921, 85, VII:12. PL 122:12. RL 141:12. 2008, 289:8, eff. Aug. 26, 2008.

199:13 Fees of Commissioners.

[Repealed 2008, 289:9, II, eff. Aug. 26, 2008.]

History

Former 199:13, which was derived from 1872, 13:4; and 1921, 85, VII:14, related to fees of commissioners.

199:14 Proceedings Pending. The district shall take no steps to carry into effect a former location while any subsequent proceedings authorized by law for a change thereof are pending.

Source. 1871, 4:2. GL 88:7. PS 91:9. 1921, 85, VII:13. PL 122:14. RL 141:14.

199:15 New Proceedings. The location of schoolhouses, however made, shall be conclusive for the term of 5 years, unless an appeal therefrom shall be prosecuted as provided in this chapter.

Source. GS 233:6. GL 43:6. PS 91:11. 1921, 85, VII:15. PL 122:15. RL 141:15.

199:16 Enlargement of Lot. The school board may enlarge any existing lot used for school purposes upon such petition to it and proceedings thereon as are required to authorize it to determine the location for a schoolhouse.

Source. 1872, 13:3. GL 88:10. 1877, 106:1. PS 91:12. 1921, 85, VII:16. PL 122:16. RL 141:16. 1949, 146:1, eff. April 21, 1949.

199:17 Taking Land. If any school district shall neglect or refuse to procure the lot of land selected for the location of a schoolhouse, or for the enlargement of an existing schoolhouse lot, as provided in this chapter, or if the owner of the land shall refuse to sell the same to the district for a reasonable price, the selectmen, upon petition to them by the school board, or by 3 or more voters of the district, shall appraise the damages occasioned to the landowner by the taking of his land. The appraisal shall be made in writing, and be filed with the clerk of the district.

Source. 1871, 41:1. 1872, 13:1. GL 88:11, 12. PS 91:13. 1921, 85, VII:17. PL 122:17. RL 141:17.

199:18 Appeal From Appraisal. Any landowner aggrieved by such appraisal of his damages may appeal therefrom to the superior court by petition within 60 days after the appraisal is filed with the clerk of the district; and the procedure and remedies upon such appeal shall be the same as in appeals from the assessment of damages by selectmen in highway cases, except that service of papers shall be made upon the clerk of the district and one of the school board, instead of the town clerk and one of the selectmen, and except as provided in RSA 199:19.

Source. 1872, 13:1. GL 88:11. PS 91:14. 1921, 85, VII:18. PL 122:18. RL 141:18.

199:19 Payment of Damages. Upon payment or tender of the damages awarded, the land shall vest in the district, and it may take possession of it. Such payment or tender may be made in accordance with the award of the selectmen before an appeal is taken, or while an appeal is pending, and shall have like effect. In such case if the damages are increased upon appeal the landowner shall have judgment for the excess; if decreased, the district shall have judgment for the amount of the decrease. If the result of the appeal is to change the award of damages in favor of the landowner he shall recover costs; otherwise he shall pay costs.

Source. RS 71:8. CS 75:8. GS 80:7. 1871, 41:2. 1872, 13:2. GL 88:11, 13. PS 91:15. 1921, 85, VII:19. PL 122:19. RL 141:19.

199:19–a Record. Whenever a school district shall take land for the location of a schoolhouse or for the enlargement of an existing schoolhouse lot as provided by RSA 199:17 the school district clerk shall forward to the registry of deeds for the county for filing where said land is located a copy of the petition of the school board to the selectmen containing a description of said land, together with the name of the owner from whom the land is taken.

Source. 1965, 234:1, eff. Aug. 30, 1965.

199:20 Neglect to Build, Etc. If a district shall refuse or neglect to build, repair, remove or fit up a schoolhouse, or shall refuse or neglect to build a schoolhouse upon or to remove it to the lot designated as aforesaid, the selectmen, upon petition of 3 or more voters of the district, after hearing the parties, may assess upon the district and collect such sums of money as may be necessary, and therewith cause such schoolhouse to be built, removed, repaired or fitted up.

Source. RS 71:6. CS 75:6. GS 80:8. GL 88:14. PS 91:16. 1921, 85, VII:20. PL 122:20. RL 141:20.

Use and Manner of Construction

199:21 Accommodations. The schools of a district shall be kept in its schoolhouses, if it has suitable houses that will accommodate the scholars; if not, the school board shall provide suitable accommodations for the schools at the expense of the district.

Source. RS 72:7. CS 76:8. GS 80:9. GL 88:15. PS 91:17. 1921, 85, VII:21. PL 122:21. RL 141:21.

199:22 Other Uses.

[Repealed 2008, 289:9, III, eff. Aug. 26, 2008.]

History

Former RSA 199:22, which was derived from 1876, 41:1; and 1921, 85, VII: 22, related to other uses.

199:22–a Use to Feed Elderly.

I. Any school board may operate or allow to be operated for the benefit of persons age 60 or over a meal program on school property including the use of school equipment. Such program may be operated on a profit basis and any surplus funds may be used to defray expenses or otherwise as the school board shall direct. Provided that such program shall be operated at no expense to the district and shall not interfere with the education of the students. The price charged for any meal may be based on the recipient's ability to pay as determined by the school board.

II. The use in such program of food service equipment, food, and other items which are restricted in use to the benefit of the students is not authorized by this section unless such program is granted the permission upon such conditions as the restricting federal or state authority deems necessary. In addition to any such conditions, the school board shall maintain such records as will accurately reflect the percentage of use of school property, school food service equipment, food, and other such restricted items between the geriatric program and the child nutrition program. Further, insofar as practicable, grants in aid for replacement and original equipment shall be requested on the basis of the percentage of use from both available child nutrition funds and from available geriatric program grants.

Source. 1973, 513:1, eff. Aug. 31, 1973.

199:23 to 199:26 Repealed.

[Repealed 2008, 289:9, IV–VII, eff. Aug. 26, 2008.]

History

Former RSA 199:23, which was derived from 1923, 90:1, 2; and 1927, 73:1, related to locking devices.

Former RSA 199:24, which was derived from 1923, 90:2; and 1927, 73:2, related to exits.

Former RSA 199:25, which was derived from 1923, 90:5, related to condemnation.

Former RSA 199:26, which was derived from 1915, 123:3; 1921, 85, VII:26; and 1973, 528:109, related to penalty.

CHAPTER 200

HEALTH AND SANITATION

200:1 to 200:10 Repealed.

[Repealed 1971, 499:3, I, eff. Sept. 4, 1971.]

History

Former RSA 200:1, which was derived from 1861, 2495:1; 1863, 2720:1; GS 83:2; GL 91:2; PS 93:2; 1901, 19:1; 1909, 90:1; 1921, 85, VIII:1; PL 123:1; 1929, 139:1; RL 142:1; and 1951, 194:1, related to vaccination of children attending public or private schools. See now RSA 200:38.

Former RSA 200:2, which was derived from 1901, 16:7; 1921, 85, VIII:2; PL 123:2; and RL 142:2, related to communicable diseases. See now RSA 200:38, 200:39.

Former RSA 200:3, which was derived from 1901, 16:9; 1921, 85, VIII:3; PL 123:3; and RL 142:3, related to penalties for violating RSA 200:1 or RSA 200:2. See now RSA 200:38, 200:39.

Former RSA 200:4, which was derived from 1917, 101:1; 1921, 85, VIII:4; PL 123:4; and RL 142:4, related to employment of persons infected with communicable diseases. See now RSA 200:36, 200:37.

Former RSA 200:5, which was derived from 1917, 101:2; 1921, 85, VIII:5; PL 123:5; and RL 142:5, related to complaints concerning and suspension of employees infected with communicable diseases.

Former RSA 200:6, which was derived from 1917, 101:3; 1921, 85, VIII:6; PL 123:6; and RL 142:6, related to appeal following failure of health officer to take action as provided in RSA 200:5.

Former RSA 200:7, which was derived from 1913, 17:2; 1921, 85, VIII:8; PL 123:7; and RL 142:7, related to bulletins on tuberculosis.

Former RSA 200:8, which was derived from 1913, 17:3; 1921, 85, VIII:9; PL 123:8; and RL 142:8, related to the number of copies of tuberculosis bulletin required.

Former RSA 200:9, which was derived from 1885, 55:1; PS 143:31; 1921, 85, VIII:11; PL 123:9; and RL 142:9, related to barbed wire fences adjoining school property.

Former RSA 200:10, which was derived from 1885, 55:2; PS 143:32; 1921, 85, VIII:12; PL 123:10; and RL 142:10, related to prosecution of violations of RSA 200:9.

200:11 Investigation of Sanitary Conditions.

The department of health and human services shall, upon complaint of any responsible person, investigate the sanitary conditions of any schoolhouse or building used for school purposes.

Source. 1915, 35:1. 1921, 85, VIII:14. PL 123:11. RL 142:11. RSA 200:11. 1983, 291:1, I. 1995, 310:181, eff. Nov. 1, 1995.

200:11–a Investigation of Air Quality.

I. The school principal, or designee shall annually investigate the air quality of any schoolhouse or building used for school purposes using a checklist provided by the department of education. The checklist shall be established in rules adopted by the state board of education pursuant to RSA 541–A. The purpose of the review shall be to consider physical factors that can influence the air quality within the schoolhouse or building. The review shall require a physical assessment of the facilities, not a measurement of the air quality. The checklist shall allow an evaluation of the following physical conditions that can impact air quality: general cleanliness, ventilation, moisture control, and chemical use and storage. The completed checklist shall be filed after the annual inspection with the department of education, the local school board, and the local health officer. Checklists shall remain on file for 5 years. Checklists shall be reviewed during the 5 year school approval process and shall be a factor in the approval process for a public school.

II. The department of education shall ensure that every public school in New Hampshire possesses a copy of the United States Environmental Protection Agency Tools for Schools program and shall encourage public schools to implement the program to help provide and maintain good indoor air quality in public school buildings.

III. Any school principal or designee who has conducted a good faith report under RSA 200:11–a shall be immune from civil liability.

Source. 2010, 319:1, eff. Jan. 1, 2011; 295:12, eff. Jan. 1, 2011 at 12:01 a.m.

200:12 Requiring Changes; Condemnation. If the department of health and human services shall find that such schoolhouse or building is in any respect a menace, or likely to become a menace, to the health or bodily welfare of the pupils or teachers, the department shall call the attention of the local board of health to the facts; and, if after a reasonable length of time the complaint has not been attended to in a satisfactory way, the department shall either order such changes as will in their judgment make the building safe and sanitary for school purposes or condemn the same and forbid its further use.

Source. 1915, 35:2. 1921, 85, VIII:15. PL 123:12. RL 142:12. RSA 200:12. 1995, 310:175, 181, eff. Nov. 1, 1995.

200:13 Cost of Changes. It shall be the duty of the school board of the district forthwith to make the changes ordered, and the cost of the same shall be a charge upon the district.

Source. 1915, 35:3. 1921, 85, VIII:16. PL 123:13. RL 142:13.

200:14 Assessment of Cost. The selectmen shall assess the cost upon the ratable estate of the district in addition to money voted by the district or required by law for the support of schools. In anticipation of such assessment the school board may borrow money on the credit of the district to meet the charges incurred.

Source. 1915, 35:3. 1921, 85, VIII:16. PL 123:14. RL 142:14.

Optional Provisions

200:15 to 200:25 Repealed.

[Repealed 1971, 499:3, II, eff. Sept. 4, 1971.]

History

Former RSA 200:15 to 200:25, which were derived from 1913, 83:1 to 9; 1921, 85, VIII:17 to 25; PL 123:15 to 25; and RL 142:15 to 25, related to physical examinations of school children. See now RSA 200:26 et seq.

School Health Services

200:26 Definition. As used in this subdivision the word "child" shall mean any child who attends, or who should attend an elementary, junior high, or senior high school, and shall include any child who attends a public kindergarten or special class for disabled children which is an integral part of the local school district.

Source. 1971, 499:1. 1990, 140:2, X, eff. June 18, 1990.

200:27 School Health Services. The local board in each school district may provide school health services to include school nurse services and school physician services to every child of school age in the district as hereinafter provided.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:28 School Physician. Each school board may appoint one or more school physicians, legally qualified to practice medicine and currently licensed to practice in New Hampshire or immediately adjacent states, and may assign one to the schools in the district and may provide them with all proper facilities for the performance of their duties as relate to the school health program.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:29 School Nurse; Certification.

I. Each school board may appoint a school nurse to function in the school health program, and provide said nurse with proper facilities and equipment. A school nurse shall be a registered professional nurse currently licensed in New Hampshire and certified by the state board of education.

II. (a) An individual shall have the following entry level requirements to be certified as a school nurse:

(1) Have completed a board of nursing approved registered nursing program at the bachelor's degree level or higher under RSA 326–B; and

(2) Have 3 years current experience in pediatric nursing or other related nursing areas.

(b) An applicant for certification as a school nurse shall have the skills, competencies, and knowledge in the following areas:

(1) In the area of delivery of the school nursing services, the skills and abilities to:

(A) Assess student's health or situation through analysis of data collected and synthesize comprehensive data.

(B) Identify outcomes and develop plans for individual students or situations including strategies and alternatives.

(C) Implement interventions identified in the plan of care/action, coordinating care with school employees and evaluate outcome.

(D) Consult with administration to provide health education and employ strategies to promote health, wellness, and a safe environment.

(E) Systematically evaluate the progress for the quality of practice and effectiveness toward attainment of outcomes for promoting health and a safe environment.

(2) In the area of school nursing, the applicant shall demonstrate the knowledge and ability to:

(A) Provide quality nursing practice in a school setting.

(B) Evaluate his or her nursing practices and continue professional development as required by a school district's professional development master plan.

(C) Collaborate with students, families, school staff, and others in the conduct of school nursing practices.

(D) Integrate ethical provisions and research findings into practice as a school nurse.

(3) In the area of accountability, knowledge, skills, and application in:

(A) Planning and delivering school nursing services factoring in safety, effectiveness, cost, and impact on nursing practice.

(B) Providing leadership in the profession and professional nursing practice setting.

(C) Managing school health services.

(D) Complying with professional nursing practice standards, guidelines, relevant statutes, rules, and regulations.

III. The state board of education shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The application process for certification under paragraph II.

(b) Form and content of any forms required under paragraph II.

(c) Application fees for certification under paragraph II.

(d) Further rulemaking necessary for the proper administration of certification under paragraph II.

Source. 1971, 499:1, eff. Sept. 4, 1971. 2016, 285:2, eff. Aug. 20, 2016.

200:30 School Dental Hygienist. Any school board may employ for their district a dental hygienist who is a graduate of an accredited school of dental hygiene and is licensed by the state dental board. Said hygienist shall be under the supervision of a qualified dentist licensed to practice in New Hampshire.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:31 School Health Personnel. Any school board may employ or contract for its district a licensed practical nurse (LPN) or licensed nursing assistant (LNA) who shall hold an unencumbered current license in New Hampshire, to work under the supervision of the school registered nurse in accordance with rules adopted under RSA 541–A, by the board of nursing.

Source. 1971, 499:1. 1997, 326:1. 2007, 41:1, eff. July 20, 2007.

200:32 Physical Examination of Pupils. There shall be a complete physical examination by a licensed physician, physician assistant, or advanced practice registered nurse of each child prior to or upon first entry into the public school system and thereafter as often as deemed necessary by the local school authority. The result of the child's physical examination shall be presented to the local school officials on a form provided by the local school authorities. No physical examination shall be required of a child whose parent or guardian objects thereto in writing on the grounds that such physical examination is contrary to the child's religious tenets and teachings.

Source. 1971, 499:1. 1996, 277:1, eff. Aug. 9, 1996. 2009, 54:5, eff. July 21, 2009.

200:33 Examination by Family Doctor.

[Repealed 1996, 277:5, eff. August 9, 1996.]

History

Former RSA 200:33, which was derived from 1971, 499:1, related to examinations by family doctors for school entry.

200:34 Special Examination. Every child with a presenting problem and found to need further evaluation, after due consideration and evaluation by the appropriate school authority, shall be referred by the school physician or school administrator to the parents or guardian of said child for examination, and evaluation by an appropriate practitioner and if said parents fail or neglect to have said child so examined and fail to present the recommendations from said examiner within a reasonable period after the referral by the school to said parents, then said child may be examined by the school physician, or other qualified personnel.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:35 Reporting of Defects or Disabilities. The parent or guardian of the child shall be informed or counseled concerning any defects or disabilities discovered and identified through observation, screening procedures or physical examinations. The school nurse may make home visits, arrange parent conferences at school or send written notices as determined pursuant to local school policy.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:36 Medical Examination of School Personnel. All school personnel, to include but not limited to administrative, secretarial, maintenance, cafeteria and transportation personnel in each school district shall be required to have a pre-employment medical examination by a licensed physician qualified to practice medicine in at least one of the states of the United States of America. Any person who objects to all or part of any medical examination because of religious beliefs shall be exempt from said examina-

tion, except that no such exemption shall be granted if state or local authorities determine that such exemption would constitute a hazard to the health of persons exposed to the unexamined individual. The local school board shall further require additional medical examinations at specific intervals or upon the request of the local superintendent of schools during the period of employment. A written recommendation from the examining physician shall indicate that the employee is medically capable of performing his designated assignment.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:37 Medical Examination of School Bus Operators. Notwithstanding the provisions of RSA 200:36, before employing any person as a school bus operator, the town or city governing body which pays for such transportation shall require that such person submit a certificate signed by a licensed physician setting forth the physician's findings as a result of the examination to determine the physical condition of drivers in accordance with the requirements of 49 CFR 391.41-391.49. Such certificate shall be submitted to the local governing body prior to the commencement of such employment, which shall retain a copy of such certification. Every 2 years thereafter, either prior to the commencement of the school year or prior to the reemployment of such person as a school bus operator, such governing body shall require submission of a like certificate, except that school bus operators attaining the age of 70 shall be required to undergo an annual examination and to submit a certificate annually.

Source. 1971, 499:1. 1992, 69:1, eff. June 19, 1992.

200:38 Control and Prevention of Communicable Diseases; Duties of School Nurse.

I. Each school nurse shall ensure that:

(a) All children shall be immunized prior to school entrance in accordance with RSA 141–C:20–a.

(b) [Repealed.]

(c) All children shall have a complete physical examination prior to school entrance in accordance with RSA 200:32.

II. If the provisions of paragraph I are not met, each school nurse shall be responsible for informing school administrators of the noncompliance and for assisting with meeting such requirements, unless the child is exempted under RSA 141–C:20–c.

Source. 1971, 499:1. 1987, 193:8. 1996, 277:2. 2001, 83:2, II, eff. Aug. 18, 2001.

200:39 Exclusion From School. Whenever any student exhibits symptoms of contagion or is a hazard to himself or others, he shall be excluded from the classroom and his parents or guardians shall be notified as soon as possible.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:40 Emergency Care. Written policies shall be adopted by the local school board for the purpose of providing immediate and adequate emergency care for students and school personnel who sustain injury or illness during school hours, or during scheduled school activities.

Source. 1971, 499:1, eff. Sept. 4, 1971.

200:40–a Administration of Oxygen by School Nurse. A school nurse shall be permitted to administer oxygen to a pupil in a medical emergency without parental permission or a physician's order.

Source. 2001, 83:1, eff. Aug. 18, 2001.

200:40–b Glucagon Injections.

I. (a) The state board of education, after consultation with the department of health and human services, shall adopt rules pursuant to RSA 541–A for addressing incidents of hypoglycemia resulting in unconsciousness, seizure, and/or the inability to swallow in order to provide for the health and safety of children who have been medically identified as having diabetes. The rules shall provide that:

(1) A parent or legal guardian of any child may authorize a school employee, or person employed on behalf of the school in cases where there is no school nurse immediately available, to administer glucagon to a child in case of an emergency, while at school or a school sponsored activity;

(2) The glucagon shall be kept in a conspicuous place, readily available; and

(3) Glucagon administration training may be provided by a licensed physician, physician assistant, advanced practiced registered nurse, or registered nurse, however in no case shall school nurses be required to provide training; and the school administration shall allow school employees to voluntarily assist with the emergency administration of glucagon when authorized by a parent or legal guardian.

(b) No school employee shall be subject to penalty or disciplinary action for refusing to be trained in glucagon administration.

(c) A parent or legal guardian shall provide a diabetes management plan or physician's order, signed by the student's health care provider, that

prescribes the care and assistance needed by the student including glucagon administration.

II. The state board of education, in conjunction with the American Diabetes Association, and the New Hampshire chapter of American Academy of Pediatrics, shall develop standards and guidelines for the training and supervision of personnel, other than the school nurse, who provide emergency medical assistance to students under this section. Such personnel shall only be authorized to provide such assistance upon successful completion of glucagon administration training.

III. No school teacher, school administrator, school health care personnel, person employed on behalf of the school, any other school personnel, nor any local educational authority shall be liable for civil damages which may result from acts or omissions in use of glucagon which may constitute ordinary negligence. This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton conduct.

IV. Training on the administration of glucagon for school personnel, or those employed on behalf of the school, shall not be considered the delegation of nursing practice.

V. The administration of glucagon by school personnel, or those employed on behalf of the school, shall not be considered the practice of nursing.

Source. 2015, 20:1, eff. July 4, 2015.

200:41 Appropriation. A district may raise money to carry the provisions of this subdivision into effect.

Source. 1971, 499:1, eff. Sept. 4, 1971.

Pupil Use of Epinephrine Auto-Injectors

200:42 Possession and Use of Epinephrine Auto-Injectors Permitted. A pupil with severe, potentially life-threatening allergies may possess and self-administer an epinephrine auto-injector if the following conditions are satisfied:

I. The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil's physician:

(a) The pupil's name.

(b) The name and signature of the licensed prescriber and business and emergency numbers.

(c) The name, route, and dosage of medication.

(d) The frequency and time of medication administration or assistance.

(e) The date of the order.

(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

(g) Specific recommendations for administration.

(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) The name of each required medication.

(j) Any severe adverse reactions that may occur to another pupil, for whom the epinephrine auto-injector is not prescribed, should such a pupil receive a dose of the medication.

II. The school principal or, if a school nurse is assigned to the pupil's school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil's parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an epinephrine auto-injector in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the epinephrine auto-injector at school or at any school-sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

Source. 2003, 50:1, eff. Aug. 15, 2003.

200:43 Use of Epinephrine Auto-Injector. Immediately after using the epinephrine auto-injector during the school day, the pupil shall report to the nurse's office or principal's office to enable the nurse or another school employee to provide appropriate follow-up care.

Source. 2003, 50:1, eff. Aug. 15, 2003.

200:44 Availability of Epinephrine Auto-Injector. The school nurse or, if a school nurse is not assigned to the school building, the school principal shall maintain for a pupil's use at least one epinephrine auto-injector, provided by the pupil, in the nurse's office or in a similarly accessible location.

Source. 2003, 50:1, eff. Aug. 15, 2003.

200:44–a Anaphylaxis Training Required.

I. (a) Designated assistive personnel shall complete an anaphylaxis training program prior to providing or administering an epinephrine auto-injector at least every 2 years following completion of the initial anaphylaxis training program. Such training

shall be conducted based on resources provided by the National Association of School Nurses, the Food and Allergy Anaphylaxis Network, or the New Hampshire School Nurses' Association. Training shall be conducted online or in person and, at a minimum, shall cover:

(1) Techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis.

(2) Standards and procedures for the storage and administration of an epinephrine auto-injector.

(3) Emergency follow-up procedures.

(b) The school nurse conducting the anaphylaxis training shall maintain a list of individuals who have successfully completed the anaphylaxis training program.

II. Not later than January 1, 2017, the department of education, in consultation with the New Hampshire School Nurses' Association, shall develop and make available to all schools guidelines for the management of students with life-threatening allergies. The guidelines shall include, but not be limited to implementation of the following by a school nurse: education and training for designated unlicensed assistive personnel on the management of students with life-threatening allergies, including training related to the administration of an epinephrine auto-injector; procedures for responding to life-threatening allergic reactions; the development of individualized health care plans and allergy action plans for every student with a known life-threatening allergy; and protocols to prevent exposure to allergens. Not later than September 1, 2017, each school district, under the direction of a school nurse, shall implement a plan based on the guidelines developed pursuant to this section for the management of students with life-threatening allergies enrolled in the schools under its jurisdiction, and make such plan available to the public.

Source. 2016, 39:2, eff. July 2, 2016.

200:45 Immunity.

I. No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil's use of an epinephrine auto-injector pursuant to RSA 200:43, if the provisions of RSA 200:42 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector by a pupil.

II. No school that possesses and makes available epinephrine auto-injectors, member of its school board, school nurse, school district employee, agents or volunteers, no health care practitioner that prescribes epinephrine auto-injectors to a school, and no person that conducts the training described in RSA 200:44–a shall be liable for damages as a result of the administration or self-administration of an epinephrine auto-injector, the failure to administer an epinephrine auto-injector, or any other act or omission related to the possession or use of an epinephrine auto-injector, unless the damages were caused by willful or wanton misconduct.

III. The administration of an epinephrine auto-injector by designated school personnel pursuant to the provisions of this subdivision shall not require licensure.

IV. This section shall not be construed to eliminate, limit, or reduce any other immunity or defense that may be available under state law.

Source. 2003, 50:1, eff. Aug. 15, 2003. 2016, 39:3, eff. July 2, 2016.

Use of Asthma Medications by Pupils

200:46 Possession and Self-Administration of Asthma Inhalers Permitted. A pupil may possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:

I. The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil's physician:

(a) The pupil's name.

(b) The name and signature of the licensed prescriber and business and emergency numbers.

(c) The name, route, and dosage of medication.

(d) The frequency and time of medication administration or assistance.

(e) The date of the order.

(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

(g) Specific recommendations for administration.

(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) At least one emergency telephone number for contacting the parent or guardian.

(j) The name of each required medication.

II. The school principal or, if a school nurse is assigned to the pupil's school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil's parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an asthma inhaler in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the inhaler at school or at any school sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

Source. 2003, 51:3, eff. Aug. 15, 2003.

200:47 Immunity. No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil's use of an inhaler if the provisions of RSA 200:46 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a pupil.

Source. 2003, 51:3, eff. Aug. 15, 2003.

Air Quality in Schools

200:48 Air Quality in Schools. The school board of each school district shall develop and implement a policy governing air quality issues in schools. The policy shall address methods of minimizing or eliminating emissions from buses, cars, delivery vehicles, maintenance vehicles, and other motorized vehicles used for transportation on school property taking into account the state anti-idling and clean air zone policies established by the department of environmental services.

Source. 2010, 100:1, eff. Jan. 1, 2011.

Head Injury Policies for Student Sports

200:49 Head Injury Policies for Student Sports. Education is the key to identification and appropriate management of all concussions. The school board of each school district shall develop guidelines and other pertinent information and forms for student sports to inform and educate coaches, student-athletes, and student-athletes' parents or guardians of the nature and risk of concussion and head injury including continuing to play after concussion or head injury. On an annual basis, a school district or school shall distribute a concussion and head injury information sheet to all student-athletes. The Brain Injury Association of New Hampshire is available to educate and assist the public with implementing and/or updating concussion management protocols.

Source. 2012, 234:2, eff. Aug. 17, 2012. 2014, 42:1, eff. July 26, 2014.

200:50 Removal of Student-Athlete.

I. A school employee coach, official, licensed athletic trainer, or health care provider who suspects that a student-athlete has sustained a concussion or head injury in a practice or game shall remove the student-athlete from play immediately.

II. A student-athlete who has been removed from play shall not return to play on the same day or until he or she is evaluated by a health care provider and receives medical clearance and written authorization from that health care provider to return to play. The student-athlete shall also present written permission from a parent or guardian to return to play.

III. No person who authorizes a student-athlete to return to play shall be liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

Source. 2012, 234:2, eff. Aug. 17, 2012.

200:51 School Districts; Limitation of Liability. An employee of a school administrative unit, school, or chartered public school, or a school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the injury or death of a student-athlete provided the action or inaction was in compliance with this subdivision and local school board policies relative to the management of concussions and head injuries. This limitation of liability shall extend to school-sponsored athletic activities. A school district or school may provide concussion guidelines to other organizations sponsoring athletic activities on school property, however the school district or school shall not be required to enforce compliance with such guidelines.

Source. 2012, 234:2, eff. Aug. 17, 2012.

200:52 Definitions. As used in this subdivision:

I. "Health care provider" means a person who is licensed, certified, or otherwise statutorily authorized by the state to provide medical treatment and is trained in the evaluation and management of concussions.

II. "School property" means school property as defined in RSA 193–D:1, V.

III. "Student-athlete" means a student involved in any intramural sports program conducted outside the regular teaching day or competitive student sports program between schools in grades 4–12.

IV. "Student sports" means intramural sports programs conducted outside the regular teaching day for students in grades 4–12 or competitive athletic programs between schools for students in grades 4–12.

V. "Head injury" means injuries to the scalp, skull, or brain caused by trauma, and shall include a concussion which is the most common type of sports-related brain injury.

Source. 2012, 234:2, eff. Aug. 17, 2012. 2013, 19:1, eff. July 15, 2013. 2014, 42:2, eff. July 26, 2014.

Bronchodilators, Spacers, and Nebulizers in Schools

200:53 Definitions. In this subdivision:

I. "Administer" means the direct provision of a bronchodilator, spacer, or nebulizer to an individual.

II. "Asthma" means a chronic lung disease that inflames and narrows the airways. It causes recurring periods of wheezing, chest tightness, shortness of breath, and coughing. For the purpose of this subdivision, "asthma" also includes "reactive airway disease," commonly referred to as RAD.

III. "Bronchodilator" means any medication used for the quick relief of asthma symptoms that dilates the airways and is recommended by the National Heart, Lung, and Blood Institute's national asthma education and prevention program guidelines for the treatment of asthma, such bronchodilators may include an orally inhaled medication that contains a premeasured single dose of albuterol or albuterol sulfate delivered by a nebulizer (compressor device), or by a pressured metered dose inhaler used to treat respiratory distress, including, but not limited to, wheezing, shortness of breath, and difficulty breathing, or another dosage of a bronchodilator recommended in the guidelines for the treatment of asthma.

IV. "Designated unlicensed assistive personnel" means a school employee or agent of a school designated by the school nurse, who has completed the New Hampshire School Nurses' Association approved training required to provide or administer bronchodilators, spacers, or nebulizers. Designated unlicensed assistive personnel shall complete an asthma training program prior to providing or administering a bronchodilator, spacer, or nebulizer made available by the school nurse and at least annually following completion of the initial asthma training program. Such training shall be conducted by the school nurse based on resources provided by the New Hampshire School Nurses' Association, the National Association of School Nurses, and the American Lung Association. Training shall be conducted in person and at a minimum shall address techniques on how to recognize symptoms of severe respiratory distress or asthma, and standards and procedures for the storage and administration of a bronchodilator with a spacer or nebulizer. The school nurse shall maintain a current list of those individuals who have successfully completed the asthma training program.

V. "Health care practitioner" means a person who is licensed to prescribe, administer, or distribute controlled drugs.

VI. "Provide" means to supply a bronchodilator to an individual.

VII. "School" means any public or private elementary, middle, junior high, or senior high school.

VIII. "School nurse" means a registered nurse (RN) licensed by the New Hampshire board of nursing employed by a school district or a school.

IX. "Self-administration" means a student or other person's discretionary use of a bronchodilator, spacer, or nebulizer, whether provided by the student or by a school nurse or designated school personnel pursuant to this subdivision.

Source. 2016, 45:1, eff. July 2, 2016.

200:54 Supply of Bronchodilators, Spacers, or Nebulizers.

I. A school board may authorize a school nurse who is employed by the school district and for whom the board is responsible to maintain a supply of asthma-related rescue medications at the school. The nurse shall determine the quantity of medication the school should maintain.

II. To obtain asthma rescue medications for a school district, a health care practitioner may prescribe bronchodilators, spacers, or nebulizers in the name of a school district for use in asthma emergency situations.

III. A pharmacist may dispense bronchodilators, spacers, or nebulizers pursuant to a prescription issued in the name of a school. A school, under the direction of the school nurse, may maintain a supply of bronchodilators, spacers, or nebulizers for use in accordance with this subdivision.

IV. A school may enter into an agreement with a manufacturer of bronchodilators, spacers, or nebulizers, third-party suppliers of bronchodilators, spacers, or nebulizers, or health care offices to obtain bronchodilators, spacers, or nebulizers at no charge or at fair-market prices or at reduced prices. A school district may accept gifts, grants or donations from foundations, organizations, or private parties to purchase bronchodilators, spacers, or nebulizers.

V. A school that possesses and makes available a supply of bronchodilators, spacers, or nebulizers pursuant to this subdivision shall maintain an annual report summarizing the use of the bronchodilators, spacers, or nebulizers.

Source. 2016, 45:1, eff. July 2, 2016.

200:55 Administration of Bronchodilator, Spacer, or Nebulizer.

I. A school nurse and designated unlicensed assistive personnel may administer or make available to self-administer a bronchodilator, spacer, or nebulizer to a student who has been diagnosed with asthma for use in emergency or other situations as determined by the school nurse provided that:

(a) The school has on file an asthma action plan for the student which shall be filed annually and updated as necessary with the school and includes an order from the student's health care provider to provide the student with an asthma rescue inhaler, including dosage information and permission for the student to use the school's stock in the event of an emergency; and

(b) The student's parent/guardian has provided written permission to the school nurse to administer a bronchodilator, spacer, or nebulizer from the school's supply.

II. The school nurse shall notify the student's parent or legal guardian whenever a bronchodilator, spacer, or nebulizer from the emergency stockpile is administered to a student. The school nurse shall make the notification as soon as practicable in accordance with the contact information on file at the school.

Source. 2016, 45:1, eff. July 2, 2016.

200:56 Department of Education Guidance Provided to Schools. No later than 90 days following the effective date of this section, the department of education, in consultation with the New Hampshire School Nurses' Association and the American Lung Association, shall provide guidelines to all schools for the management of students with asthma. The guidelines shall include, but not be limited to, implementation of education and training for designated unlicensed assistive personnel on the management of students with asthma, including training related to the administration of a bronchodilator with a spacer or nebulizer, and procedures for responding to life-threatening respiratory distress.

Source. 2016, 45:1, eff. July 2, 2016.

200:57 Immunity.

I. No school district, school district employee, member of a school board, school nurse, designated unlicensed assistive personnel, or agent or volunteer of a school district shall be liable in a suit for damages as a result of any act or omission related to a student's use of a bronchodilator, spacer, or nebulizer pursuant to this subdivision, except for damages caused by willful or wanton conduct or disregard of the requirements established in this subdivision.

II. The administration of a bronchodilator, spacer, or nebulizer in accordance with this subdivision shall be considered to be the administration of emergency medication in school. If delegated the task of administering a bronchodilator, spacer, or nebulizer by a school nurse, the designated unlicensed assistive personnel shall not require licensure as a health care provider.

III. This section shall not be construed to eliminate, limit, or reduce any other immunity or defense that may be available under state law.

Source. 2016, 45:1, eff. July 2, 2016.

Screening and Intervention for Dyslexia and Related Disorders

200:58 Definitions. In this subdivision:

I. "Dyslexia" means a specific learning disability that is:

(a) Neurobiological in origin;

(b) Characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities that typically result from a deficit in the phonological component of language; and

(c) Often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction, and may include secondary consequences such as reading comprehension problems and reduced reading experience that can impede growth of vocabulary and background knowledge.

II. "Potential indicators or risk factors of dyslexia and related disorders" means indicators that include, but shall not be limited to, difficulty in acquiring language skills, inability to comprehend oral or written language, difficulty in rhyming words, difficulty in

naming letters, recognizing letters, matching letters to sounds, and blending sounds when speaking and reading words, difficulty recognizing and remembering sight words, consistent transposition of number sequences, letter reversals, inversions, and substitutions, and trouble in replication of content.

III. "Related disorders" include disorders similar to or related to dyslexia, such as a phonological processing disorder, reading fluency disorder, and dysphasia.

Source. 2016, 262:1, eff. Aug. 14, 2016.

200:59 Screening and Intervention for Dyslexia and Related Disorders.

I. School districts shall screen all public school students, including English learners, using the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) or an equivalent cost effective screener for the identification of potential indicators or risk factors of dyslexia and related disorders upon enrollment in public school kindergarten or first grade, and at appropriate times thereafter, to monitor progress. Beginning in 2017, such screening shall be completed no later than November 30 of each school year.

II. The student's school district shall provide age-appropriate, evidence-based, intervention strategies for any student who is identified as having characteristics that are associated with potential indicators or risk factors of dyslexia and related disorders beginning no later than January 1, 2018.

III. The parent or legal guardian of any student who is identified by the public school as having characteristics that are associated with potential indicators or risk factors of dyslexia and related disorders shall be notified and provided with all screening information and findings, in addition to periodic formal screening results based on individual written intervention and support plans developed with the student's parents or legal guardian.

IV. A parent or legal guardian of any student who is identified as having characteristics that are associated with potential indicators or risk factors of dyslexia and related disorders has the right to submit the results of an independent evaluation from a licensed reading or intervention specialist highly trained in dyslexia and related disorders for consideration by the student's school district. A parent or legal guardian who submits an independent evaluation shall assume all fiscal responsibility for that independent evaluation.

Source. 2016, 262:1, eff. Aug. 14, 2016.

200:60 Reading Specialist.

I. The commissioner of the department of education shall issue a request for proposals pursuant to RSA 21–G to secure the contract services of a reading specialist to enable the department to provide school districts with the support and resources necessary to assist students with dyslexia and related disorders and their families. The reading specialist shall be qualified by education and experience in accordance with paragraph II and shall provide technical assistance for dyslexia and related disorders to school districts.

II. The reading specialist shall:

(a) Be trained and certified in best practice interventions and treatment models for dyslexia, with expertise in related disorders, and dysgraphia.

(b) Have a minimum of 3 years of field experience in screening, identifying, and treating dyslexia and related disorders.

(c) Be responsible for the implementation of professional awareness.

(d) Serve as the primary source of information and support for school districts to address the needs of students with dyslexia and related disorders, and dysgraphia.

III. The commissioner shall submit a report assessing the effectiveness of the reading specialist in complying with the requirements of this section, to the speaker of the house of representatives, the senate president, the chairpersons of the house and senate education committees, and the governor no later than November 1, 2018, and annually thereafter.

Source. 2016, 262:1, eff. Aug. 14, 2016. 2017, 156:152, eff. July 1, 2017.

200:61 Teacher Professional Development and Training.

I. No later than June 30, 2017, the reading specialist shall develop and make available a program to ensure all New Hampshire teachers and school administrators have access to materials to support professional awareness of best practices on:

(a) Recognition of the characteristics of dyslexia and related disorders, and dysgraphia.

(b) Evidence-based interventions and accommodations for dyslexia and related disorders, and dysgraphia.

II. The reading specialist and the council for teacher education established in RSA 190 shall collaborate to ensure that all teacher education programs offered at New Hampshire's public institutions of

higher education provide explicit professional awareness of best practices on:

(a) Recognition of characteristics of dyslexia and related disorders, and dysgraphia.

(b) Evidence-based interventions and accommodations for dyslexia and related disorders, and dysgraphia.

Source. 2016, 262:1, eff. Aug. 14, 2016.

200:62 Dyslexia Resource Guide. No later than June 30, 2017, the reading specialist shall develop and publish on the department of education's Internet website, a reading support resource guide to be used by school districts as a resource. The reading specialist shall solicit the advice of experts in the fields of dyslexia and related disorders, and dysgraphia in the development of the guide. The reading specialist shall update the guide as necessary.

Source. 2016, 262:1, eff. Aug. 14, 2016.

CHAPTER 200–A

THE NEW ENGLAND HIGHER EDUCATION COMPACT

200–A:1 New England Higher Education Compact. The governor on behalf of the State of New Hampshire is hereby authorized to execute a compact, in substantially the following form, with any one or more of the states of Connecticut, Maine, Massachusetts, Rhode Island and Providence Plantations and Vermont, and the legislature hereby signifies in advance its approval and ratification of such compact.

NEW ENGLAND HIGHER EDUCATION COMPACT

Article I

The purpose of the New England higher education compact shall be to provide greater educational opportunities and services through the establishment and maintenance of a coordinated educational program for the persons residing in the several states of New England parties to this compact with the aim of furthering higher education in the fields of medicine, dentistry, veterinary medicine, public health and in professional technical, scientific, literary and other fields.

Article II

There is hereby created and established a New England Board of Higher Education hereinafter known as the board which shall be an agency of each state party to the compact. The board shall be a body corporate and politic, having the powers, duties and jurisdiction herein enumerated and such other and additional powers as shall be conferred upon it by the concurrent act or acts of the compacting states. The board shall consist of 8 resident members from each compacting state, chosen in the manner and for the terms provided by law of the several states parties to this compact.

Article III

This compact shall become operative immediately as to those states executing it whenever any 2 or more of the states of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island and Connecticut have executed it in the form which is in accordance with the laws of the respective compacting states.

Article IV

The board shall annually elect from its members a chairman and vice-chairman and shall appoint and at its pleasure remove or discharge said officers. It may appoint and employ an executive secretary and may employ such stenographic, clerical, technical or legal personnel as shall be necessary, and at its pleasure remove or discharge such personnel. It shall adopt a seal and suitable bylaws and shall promulgate any and all rules and regulations which may be necessary for the conduct of its business. It may maintain an office or offices within the territory of the compacting states and may meet at any time or place. Meetings shall be held at least twice each year. A majority of the members shall constitute a quorum for the transaction of business, but no action of the board imposing any obligation on any compacting state shall be binding unless a majority of the members from such compacting state shall have voted in favor thereof. Where meetings are planned to discuss matters relevant to problems of education affecting only certain of the compacting states, the board may vote to authorize special meetings of the board members of such states. The board shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the governor and

the legislature of each compacting state setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the compacting states which may be necessary to carry out the intent and purpose of this compact. The board shall not pledge the credit of any compacting state without the consent of the legislature thereof given pursuant to the constitutional processes of said state. The board may meet any of its obligations in whole or in part with funds available to it under article VII of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under article VII hereof, the board shall not incur any obligations for salaries, office, administrative, traveling or other expenses prior to the allotment of funds by the compacting states adequate to meet the same. Each compacting state reserves the right to provide hereafter by law for the examination and audit of the accounts of the board. The board shall appoint a treasurer who may be a member of the board, and disbursements by the board shall be valid only when authorized by the board and when vouchers therefor have been signed by the executive secretary and countersigned by the treasurer. The executive secretary shall be custodian of the records of the board with authority to attest to and certify such records or copies thereof.

Article V

The board shall have the power to: (1) Collect, correlate, and evaluate data in the fields of its interest under this compact; to publish reports, bulletins, and other documents making available the results of its research; and, in its discretion to charge fees for said reports, bulletins, and documents; (2) Enter into such contractual agreements or arrangements with any of the compacting states or agencies thereof and with educational institutions and agencies as may be required in the judgment of the board to provide adequate services and facilities in educational fields covered by this compact; provided that it shall be the policy of the board in negotiation of its agreements to serve increased numbers of students from the compacting states through arrangements with then existing institutions, whenever in the judgment of the board adequate service can be so secured in the New England region. Each of the compacting states shall contribute funds to carry out the contracts of the board on the basis of the number of students from such state for whom the board may contract. Contributions shall be at the rate determined by the board in each educational field. Except in those instances where the board by specific action allocates funds available to it under article VII hereof, it shall be the policy of the board to enter into such contracts only upon appropriation of funds by the compacting states. Any contract entered into shall be in accordance with rules and regulations promulgated by the board and in accordance with the laws of the compacting states.

Article VI

Each state agrees that, when authorized by the legislature pursuant to its constitutional processes, it will from time to time make available to the board such funds as may be required for the expenses of the board as authorized under the terms of this compact. The contribution of each state for this purpose shall be in the proportion that its population bears to the total combined population of the states who are parties hereto as shown from time to time by the most recent official published report of the bureau of the census of the United States of America; unless the board shall adopt another basis in making its recommendation for appropriation to the compacting states.

Article VII

The board for the purposes of this compact is hereby empowered to receive grants, devises, gifts and bequests which the board may agree to accept and administer. The board shall administer property held in accordance with special trusts, grants and bequests and shall also administer grants and devises of land and gifts or bequests of personal property made to the board for special uses and shall execute said trusts, investing the proceeds thereof in notes or bonds secured by sufficient mortgages or other securities.

Article VIII

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby; provided, that if this compact is held to be contrary to the constitution of any compacting state the compact shall remain in full force and effect as to all other compacting states.

Article IX

This compact shall continue in force and remain binding upon a compacting state until the legislature or the governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until 2 years after notice thereof has been sent by the governor of the state desiring to withdraw to the governors of all other states then parties to the compact. Such withdrawal shall not relieve the withdrawing state from its obligations accruing hereunder prior to the effective date of withdrawal. Any state so withdrawing, unless reinstated, shall cease to have any claim to or ownership of any of the property held by or vested in the board or to any of the funds of the board held under the terms of the compact. Thereafter, the withdrawing state may be reinstated by application after appropriate legislation is enacted by such state, upon approval by a majority vote of the board.

Article X

If any compacting state shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights and privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the board. Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state by affirmative vote of ¾ of the other member states. Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and approval by a majority vote of the board.

Source. 1955, 232:1. 1981, 368:1, eff. June 23, 1981.

200–A:2 Effective Date. When the governor shall have executed said compact on behalf of this state and shall have caused a verified copy to be filed with the secretary of state, and when said compact shall have been ratified by one or more of the states named in RSA 200–A:1, then said compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying said compact, and to take such steps as may be necessary to secure the consent of the congress of the United States to said compact.

Source. 1955, 232:2, eff. June 30, 1955.

200–A:3 Membership of Board. There shall be 8 resident members from New Hampshire on the New England Board of Higher Education as provided in article II of the compact. One of such resident members shall always be the chancellor of the university system. The second resident member shall be the director of the division of higher education, department of education. The third resident member shall be the chancellor of the community college system of New Hampshire. The fourth and fifth resident members shall be citizens of the state appointed by the governor and council. The sixth resident member shall be a member of the house of representatives appointed by the speaker of the house. The seventh member shall be a member of the senate appointed by the president of the senate. The eighth resident member shall be a representative of a private college in New Hampshire appointed by the governor and council. The term of office for each of the first 3 resident members shall be concurrent with his or her term as chancellor or director. The term of office for each of the latter 5 resident members shall be for 4 years and until a successor is appointed and qualified, except that the term of any member of the general court shall terminate if such member shall cease to be a state legislator. In that case, another member shall be appointed in a like manner for the unexpired term. The term of the member representing a private college shall end if the member's association with the private college terminates. Each member of the board shall receive his or her expenses actually and necessarily incurred by the member in the performance of his or her duties as a member. In addition to their expenses, the fourth, fifth, sixth, seventh, and eighth members shall receive $15 per day compensation for time actually spent in the work as a member of the New England Board of Higher Education, provided that the total for expenses and per diem compensation for any of such 5 members shall not exceed the sum of $500 during any one fiscal year. All expenses and per diem compensation shall be audited by the commissioner of administrative services as expenses of other employees are audited and shall be a charge against any appropriation provided for this purpose.

Source. 1955, 232:3. 1981, 368:2. 1985, 233:4; 399:3, I. 2003, 38:1. 2007, 361:28, eff. July 17, 2007. 2011, 224:134, eff. July 1, 2011.

Payment to Outside Schools

200–A:4 Appropriations. The state of New Hampshire may biennially appropriate funds for the purpose of contributing to the operational costs at colleges and universities of qualified and accepted New Hampshire residents, pursuant to regional

and/or reciprocal agreements and arrangements in the educational field as executed and approved by the New England Board of Higher Education.

Source. 1959, 214:1, eff. July 1, 1961.

200–A:5 Certification to Department of Education. The New England Board of Higher Education shall certify to the department of education, division of higher education on or before October 1 of the year preceding each legislative session the amounts needed to carry out the purposes of RSA 200–A:4 for the coming biennium. Upon such certification, the division shall include such amounts in the budget request for its division. The sums appropriated by the legislature in accordance with the provisions of this subdivision shall be a continuing appropriation and shall not lapse.

Source. 1959, 214:1. 1977, 600:22, I, eff. July 1, 1977. 2011, 224:135, eff. July 1, 2011.

200–A:6 Payments From Funds. The amount that may be or may become due to any college, university, or institution shall be payable by the state treasurer to such institution from funds appropriated for carrying out the purposes hereof upon certification by the New England Board of Higher Education. Said board, before approving such vouchers, shall satisfy itself that such student would be unable to receive the course of instruction at any institution of public education in New Hampshire, and shall satisfy itself that the charge made by said institution is in accordance with the terms and conditions of the regional and/or reciprocal agreement in effect between the New England Board of Higher Education and the charging institution. The department of education, division of higher education shall examine and audit the accounts showing the payments made by the board under the authority of this section. In submitting the budget request made by it pursuant to the certification of the board as provided in RSA 200–A:5, the division shall forward with such request a report of such examination and audit, showing the details of such payments for the 2 fiscal years next preceding the time of said budget requests.

Source. 1959, 214:1. 1977, 600:22, II, eff. July 1, 1977. 2011, 224:135, eff. July 1, 2011.

200–A:7 Qualification Requirements. Financial assistance under this chapter shall be granted only to those New Hampshire residents who agree to repay the state for such sums as are expended in their behalf. An interest free note for repayment hereunder shall be signed and be enforceable in an action for debt. It shall not be a defense to such action that the recipient was a minor when the note was executed.

Source. 1972, 60:75, eff. March 27, 1972.

200–A:8 Enforcement. The department of education, division of higher education is authorized to enforce the collection of accounts that become due under the loan provisions of this chapter.

Source. 1972, 60:75. 1977, 600:22, III, eff. July 1, 1977. 2011, 224:136, eff. July 1, 2011.

200–A:9 Repayment of Funds by Medical Students. The department of education, division of higher education shall prepare a note for signature of any medical student who is a recipient hereunder. The note shall be in an amount that equals the amount paid by the state treasurer for their respective enrollment. Repayment of the note shall be made in equal annual installments beginning on the anniversary date of the recipient's graduation date or termination of enrollment, whichever shall first occur, provided, however, that if the recipient continues without interruption of his or her medical education and/or his or her intern requirements said anniversary date shall be the anniversary of the date on which said continued education or internship terminates. Within a period equal to twice the number of school years of his or her respective enrollment, plus one year, all installments shall be paid in full to the division. The division shall reduce any annual installment by ½, providing the recipient has practiced medicine on a full time basis in New Hampshire during 8 of the preceding 12 months.

Source. 1972, 60:75. 1977, 600:22, IV, eff. July 1, 1977. 2011, 224:136, eff. July 1, 2011.

200–A:10 Prospective Application of Repayment Provisions. The provisions of RSA 200–A:7 and 8 shall apply only to recipients whose enrollment in medical school commenced in 1972 or any year thereafter. Any recipient under the provisions of this chapter whose enrollment in medical school commenced prior to 1972 may voluntarily make repayment to the state of all or any part of the funds paid by the state in his behalf.

Source. 1972, 60:75, eff. March 27, 1972.

CHAPTER 200–B

NEW HAMPSHIRE-VERMONT INTERSTATE SCHOOL COMPACT

200–B:1 Compact. The state of New Hampshire enters into the following compact with the state of Vermont subject to the terms and conditions therein stated.

NEW HAMPSHIRE-VERMONT INTERSTATE SCHOOL COMPACT

ARTICLE I

General Provisions

A. STATEMENT OF POLICY. It is the purpose of this compact to increase the educational opportunities within the states of New Hampshire and Vermont by encouraging the formation of interstate school districts which will each be a natural social and economic region with adequate financial resources and a number of pupils sufficient to permit the efficient use of school facilities within the interstate district and to provide improved instruction. The state boards of education of New Hampshire and Vermont may formulate and adopt additional standards consistent with this purpose and with these standards; and the formation of any interstate school district and the adoption of its articles of agreement shall be subject to the approval of both state boards as hereinafter set forth.

B. REQUIREMENT OF CONGRESSIONAL APPROVAL. This compact shall not become effective until approved by the United States Congress.

C. DEFINITIONS. The terms used in this compact shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

a. "Interstate school district" and "interstate district" shall mean a school district composed of one or more school districts located in the state of New Hampshire associated under this compact with one or more school districts located in the state of Vermont, and may include either the elementary schools, the secondary schools, or both.

b. "Member school district" and "member district" shall mean a school district located either in New Hampshire or Vermont which is included within the boundaries of a proposed or established interstate school district. In the case of districts located in Vermont, it shall include city school districts, town school districts and incorporated school districts. Where appropriate, the term "member district clerk" shall refer to the clerk of the city in which a Vermont school district is located, the clerk of the town in which a Vermont town school district is located, or the clerk of an incorporated school district.

c. "Elementary school" shall mean a school which includes all grades from kindergarten or grade one through not less than grade 6 nor more than grade 8.

d. "Secondary school" shall mean a school which includes all grades beginning no lower than grade 7 and no higher than grade 12.

e. "Interstate board" shall refer to the board serving an interstate school district.

f. "New Hampshire board" shall refer to the New Hampshire state board of education.

g. "Vermont board" shall refer to the Vermont state board of education.

h. "Commissioner" shall refer to commissioner of education.

i. Where joint action by both state boards is required, each state board shall deliberate and vote by its own majority, but shall separately reach the same result to take the same action as the other state board.

j. The terms "professional staff personnel" and "instructional staff personnel" shall include superintendents, assistant superintendents, administrative assistants, principals, guidance counselors, special education personnel, school nurses, therapists, teachers, and other certificated personnel.

k. The term "warrant" or "warning" to mean the same for both states.

ARTICLE II

Procedure for Formation of an Interstate School District

A. CREATION OF PLANNING COMMITTEE. The New Hampshire and Vermont commissioners of education shall have the power, acting jointly to constitute and discharge one or more interstate school district planning committees. Each such planning committee shall consist of at least 2 voters from each of a group of 2 or more neighboring member districts. One of the representatives from each member district shall be a member of its school board, whose term on the planning committee shall be concurrent with his term as a school board member. The term of each member of a planning committee who is not also a school board member shall expire on June 30 of the third year following his appointment. The existence of any planning committee may be terminated either by vote of a majority of its members or by joint action of the commissioners. In forming and appointing members to an interstate school district planning board, the commissioners shall consider and take into account recommendations and nominations made by school boards of member districts. No member of a planning committee shall be disqualified because he is at the same time a member of another planning board or committee created under the provisions of this

compact or under any other provisions of law. Any existing informal interstate school planning committee may be reconstituted as a formal planning committee in accordance with the provisions hereof, and its previous deliberations adopted and ratified by the reorganized formal planning committee. Vacancies on a planning committee shall be filled by the commissioners acting jointly.

B. Operating Procedures of Planning Committee. Each interstate school district planning committee shall meet in the first instance at the call of any member, and shall organize by the election of a chairman and clerk-treasurer, each of whom shall be a resident of a different state. Subsequent meetings may be called by either officer of the committee. The members of the committee shall serve without pay. The member districts shall appropriate money on an equal basis at each annual meeting to meet the expenses of the committee, including the cost of publication and distribution of reports and advertising. From time to time the commissioners may add additional members and additional member districts to the committee, and may remove members and member districts from the committee. An interstate school district planning committee shall act by majority vote of its membership present and voting.

C. Duties of Interstate School District Planning Committee. It shall be the duty of an interstate school district planning committee, in consultation with the commissioners and the state departments of education: to study the advisability of establishing an interstate school district in accordance with the standards set forth in paragraph A of article I of this compact, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such interstate district; to estimate the construction and operating costs thereof; to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of an interstate school district; and to submit a report or reports of its findings and recommendations to the several member districts.

D. Recommendations and Preparation of Articles of Agreement. An interstate school district planning committee may recommend that an interstate school district composed of all the member districts represented by its membership, or any specified combination of such member districts, be established. If the planning committee does recommend the establishment of an interstate school district, it shall include in its report such recommendation, and shall also prepare and include in its report proposed articles of agreement for the proposed interstate school district, which shall be signed by at least a majority of the membership of the planning committee, which set forth the following:

a. The name of the interstate school district.

b. The member districts which shall be combined to form the proposed interstate school district.

c. The number, composition, method of selection and terms of office of the interstate school board, provided that:

(1) The interstate school board shall consist of an odd number of members, not less than 5 nor more than 15;

(2) The terms of office shall not exceed 3 years;

(3) Each member district shall be entitled to elect at least one member of the interstate school board. Each member district shall either vote separately at the interstate school district meeting by the use of a distinctive ballot, or shall choose its member or members at any other election at which school officials may be chosen;

(4) The method of election shall provide for the filing of candidacies in advance of election and for the use of a printed non-partisan ballot;

(5) Subject to the foregoing, provision may be made for the election of one or more members at large.

d. The grades for which the interstate school district shall be responsible.

e. The specific properties of member districts to be acquired initially by the interstate school district and the general location of any proposed new schools to be initially established or constructed by the interstate school district.

f. The method of apportioning the operating expenses of the interstate school district among the several member districts, and the time and manner of payments of such shares.

g. The indebtedness of any member district which the interstate district is to assume.

h. The method of apportioning the capital expenses of the interstate school district among the several member districts, which need not be the same as the method of apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the cost of acquiring land and buildings for school purposes; the construction, furnishing and equipping of school buildings and facilities; and the

payment of the principal and interest of any indebtedness which is incurred to pay for the same.

i. The manner in which state aid, available under the laws of either New Hampshire or Vermont, shall be allocated, unless otherwise expressly provided in this compact or by the laws making such aid available.

j. The method by which the articles of agreement may be amended, which amendments may include the annexation of territory, or an increase or decrease in the number of grades for which the interstate district shall be responsible, provided that no amendment shall be effective until approved by both state boards in the same manner as required for approval of the original articles of agreement.

k. The date of operating responsibility of the proposed interstate school district and a proposed program for the assumption of operating responsibility for education by the proposed interstate school district, and any school construction; which the interstate school district shall have the power to vary by vote as circumstances may require.

l. Any other matters, not incompatible with law, which the interstate school district planning committee may consider appropriate to include in the articles of agreement, including, without limitation:

(1) The method of allocating the cost of transportation between the interstate district and member districts;

(2) The nomination of individual school directors to serve until the first annual meeting of the interstate school district.

E. HEARINGS. If the planning committee recommends the formation of an interstate school district, it shall hold at least one public hearing on its report and the proposed articles of agreement within the proposed interstate school district in New Hampshire, and at least one public hearing thereon within the proposed interstate school district in Vermont. The planning committee shall give such notice thereof as it may determine to be reasonable, provided that such notice shall include at least one publication in a newspaper of general circulation within the proposed interstate school district not less than 15 days (not counting the date of publication and not counting the date of the hearing) before the date of the first hearing. Such hearings may be adjourned from time to time and from place to place. The planning committee may revise the proposed articles of agreement after the date of the hearings. It shall not be required to hold further hearings on the revised articles of agreement but may hold one or more further hearings after notice similar to that required for the first hearings if the planning committee in its sole discretion determines that the revisions are so substantial in nature as to require further presentation to the public before submission to the state boards of education.

F. APPROVAL BY STATE BOARDS. After the hearings a copy of the proposed articles of agreement, as revised, signed by a majority of the planning committee, shall be submitted by it to each state board. The state boards may (a) if they find that the articles of agreement are in accord with the standards set forth in this compact and in accordance with sound educational policy, approve the same as submitted, or (b) refer them back to the planning committee for further study. The planning committee may make additional revisions to the proposed articles of agreement to conform to the recommendations of the state boards. Further hearings on the proposed articles of agreement shall not be required unless ordered by the state boards in their discretion. In exercising such discretion, the state boards shall take into account whether or not the additional revisions are so substantial in nature as to require further presentation to the public. If both state boards find that the articles of agreement as further revised are in accord with the standards set forth in this compact and in accordance with sound educational policy, they shall approve the same. After approval by both state boards, each state board shall cause the articles of agreement to be submitted to the school boards of the several member districts in each state for acceptance by the member districts as provided in paragraph G of this article. At the same time, each state board shall designate the form of warrant, date, time, place, and period of voting for the special meeting of the member district to be held in accordance with paragraph G of this article.

G. ADOPTION BY MEMBER DISTRICTS. Upon receipt of written notice from the state board in its state of the approval of the articles of agreement by both state boards, the school board of each member district shall cause the articles of agreement to be filed with the member district clerk. Within 10 days after receipt of such notice, the school board shall issue its warrant for a special meeting of the member district, the warrant to be in the form, and the meeting to be held at the time and place and in the manner prescribed by the state board. No approval of the superior court shall be required for such special school district meeting in New Hampshire. Voting shall be with the use of the checklist by a ballot substantially in the following form:

"Shall the school district accept the provisions of the New Hampshire-Vermont Interstate School Compact providing for the establishment of an interstate school district, together with the school districts of _____ and _____ etc., in accordance with the provisions of the proposed articles of agreement filed with the school district (town, city or incorporated school district) clerk?"

Yes ( ) No ( )

If the articles of agreement included the nomination of individual school directors, those nominated from each member district shall be included in the ballot and voted upon, such election to become effective upon the formation of an interstate school district.

If a majority of the voters present and voting in a member district vote in the affirmative, the clerk for such member district shall forthwith send to the state board in its state a certified copy of the warrant, certificate of posting, and minutes of the meeting of the district. If the state boards of both states find that a majority of the voters present and voting in each member district have voted in favor of the establishment of the interstate school district, they shall issue a joint certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the interstate school district as of its date of issuance.

H. RESUBMISSION. If the proposed articles of agreement are adopted by one or more of the member districts but rejected by one or more of the member districts, the state boards may resubmit them, in the same form as previously submitted, to the rejecting member districts, in which case the school boards thereof shall resubmit them to the voters in accordance with paragraph G of this article. An affirmative vote in accordance therewith shall have the same effect as though the articles of agreement had been adopted in the first instance. In the alternative, the state boards may either (a) discharge the planning committee, or (b) refer the articles of agreement back for further consideration to the same or a reconstituted planning committee, which shall have all of the powers and duties of the planning committee as originally constituted.

ARTICLE III

Powers of Interstate School Districts

A. POWERS. Each interstate school district shall be a body corporate and politic, with power to:

a. Acquire, construct, extend, improve, staff, operate, manage and govern public schools within its boundaries;

b. To sue and be sued, subject to the limitations of liability hereinafter set forth;

c. To have a seal and alter the same at pleasure;

d. To adopt, maintain and amend bylaws not inconsistent with this compact, and the laws of the 2 states;

e. To acquire by purchase, condemnation, lease or otherwise, real and personal property for the use of its schools;

f. To enter into contracts and incur debts;

g. To borrow money for the purposes hereinafter set forth, and to issue its bonds or notes therefor;

h. To make contracts with and accept grants and aid from the United States, the state of New Hampshire, the state of Vermont, any agency or municipality thereof, and private corporations and individuals for the construction, maintenance, reconstruction, operation and financing of its schools; and to do any and all things necessary in order to avail itself of such aid and cooperation;

i. To employ such assistants, agents, servants, and independent contractors as it shall deem necessary or desirable for its purposes; and

j. To take any other action which is necessary or appropriate in order to exercise any of the foregoing powers.

ARTICLE IV

District Meetings

A. GENERAL. Votes of the district shall be taken at a duly warned meeting held at any place in the district, at which all of the eligible legal voters of the member districts shall be entitled to vote, except as otherwise provided with respect to the election of directors.

B. ELIGIBILITY OF VOTERS. Any resident who would be eligible to vote at a meeting of a member district being held at the same time, shall be eligible to vote at a meeting of the interstate district. The board of civil authority in each Vermont member district and the supervisors of the checklist of each New Hampshire district shall respectively prepare a checklist of eligible voters for each meeting of the interstate district in the same manner, and they shall have all the same powers and duties with respect to

eligibility of voters in their districts as for a meeting of a member district.

C. WARNING OF MEETINGS. A meeting shall be warned by a warrant addressed to the residents of the interstate school district qualified to vote in district affairs, stating the time and place of the meeting and the subject matter of the business to be acted upon. The warrant shall be signed by the clerk and by a majority of the directors. Upon written application of 10 or more voters in the district, presented to the directors or to one of them, at least 25 days before the day prescribed for an annual meeting, the directors shall insert in their warrants for such meeting any subject matter specified in such application.

D. POSTING AND PUBLICATION OF WARRANT. The directors shall cause an attested copy of the warrant to be posted at the place of meeting, and a like copy at a public place in each member district at least 20 days (not counting the date of posting and the date of meeting) before the date of the meeting. In addition, the directors shall cause the warrant to be advertised in a newspaper of general circulation on at least one occasion, such publication to occur at least 10 days (not counting the date of publication and not counting the date of the meeting) before the date of the meeting. Although no further notice shall be required, the directors may give such further notice of the meeting as they in their discretion deem appropriate under the circumstances.

E. RETURN OF WARRANT. The warrant with a certificate thereon, verified by oath, stating the time and place when and where copies of the warrant were posted and published, shall be given to the clerk of the interstate school district at or before the time of the meeting, and shall be recorded by him in the records of the interstate school district.

F. ORGANIZATION MEETING. The commissioners, acting jointly, shall fix a time and place for a special meeting of the qualified voters within the interstate school district for the purpose of organization, and shall prepare and issue the warrant for the meeting after consultation with the interstate school district planning board and the members-elect, if any, of the interstate school board of directors. Such meeting shall be held within 60 days after the date of issuance of the certificate of formation, unless the time is further extended by the joint action of the state boards. At the organization meeting the commissioner of education of the state where the meeting is held, or his designate, shall preside in the first instance, and the following business shall be transacted:

a. A temporary moderator and a temporary clerk shall be elected from among the qualified voters who shall serve until a moderator and clerk respectively have been elected and qualified.

b. A moderator, a clerk, a treasurer, and 3 auditors shall be elected to serve until the next annual meeting and thereafter until their successors are elected and qualified. Unless previously elected, a board of school directors shall be elected to serve until their successors are elected and qualified.

c. The date for the annual meeting shall be established.

d. Provision shall be made for the payment of any organizational or other expense incurred on behalf of the district before the organization meeting, including the cost of architects, surveyors, contractors, attorneys, and educational or other consultants or experts.

e. Any other business, the subject matter of which has been included in the warrant, and which the voters would have had power to transact at an annual meeting.

G. ANNUAL MEETINGS. An annual meeting of the district shall be held between January 15 and June 1 of each year at such time as the interstate district may by vote determine. Once determined, the date of the annual meeting shall remain fixed until changed by vote of the interstate district at a subsequent annual or special meeting. At each annual meeting the following business shall be transacted:

a. Necessary officers shall be elected.

b. Money shall be appropriated for the support of the interstate district schools for the fiscal year beginning the following July 1.

c. Such other business as may properly come before the meeting.

H. SPECIAL MEETINGS. A special meeting of the district shall be held whenever, in the opinion of the directors, there is occasion therefor, or whenever written application shall have been made by 5 percent or more of the voters (based on the checklists as prepared for the last preceding meeting) setting forth the subject matter upon which such action is desired. A special meeting may appropriate money without compliance with RSA 33:8 or RSA 197:3 which would otherwise require the approval of the New Hampshire superior court.

I. CERTIFICATION OF RECORDS. The clerk of an interstate school district shall have the power to certify the record of the votes adopted at an interstate school district meeting to the respective com-

missioners and state boards and (where required) for filing with a secretary of state.

J. METHOD OF VOTING AT SCHOOL DISTRICT MEETINGS. Voting at meetings of interstate school districts shall take place as follows:

a. SCHOOL DIRECTORS. A separate ballot shall be prepared for each member district, listing the candidates for interstate school director to represent such member district; and any candidates for interstate school director at large; and the voters of each member district shall register on a separate ballot their choice for the office of school director or directors. In the alternative, the articles of agreement may provide for the election of school directors by one or more of the member districts at an election otherwise held for the choice of school or other municipal officers.

b. OTHER VOTES. Except as otherwise provided in the articles of agreement or this compact, with respect to all other votes (1) the voters of the interstate school district shall vote as one body irrespective of the member districts in which they are resident, and (2) a simple majority of those present and voting at any duly warned meeting shall carry the vote. Voting for officers to be elected at any meeting, other than school directors, shall be by ballot or voice, as the interstate district may determine, either in its articles of agreement or by a vote of the meeting.

ARTICLE V
Officers

A. OFFICERS: GENERAL. The officers of an interstate school district shall be a board of school directors, a chairman of the board, a vice-chairman of the board, a secretary of the board, a moderator, a clerk, a treasurer and 3 auditors. Except as otherwise specifically provided, they shall be eligible to take office immediately following their election; they shall serve until the next annual meeting of the interstate district and until their successors are elected and qualified. Each shall take oath for the faithful performance of his duties before the moderator, or a notary public or a justice of the peace of the state in which the oath is administered. Their compensation shall be fixed by vote of the district. No person shall be eligible to any district office unless he is a voter in the district. A custodian, schoolteacher, principal, superintendent or other employee of an interstate district acting as such shall not be eligible to hold office as a school director.

B. BOARD OF DIRECTORS.

a. HOW CHOSEN. Each member district shall be represented by at least one resident on the board of school directors of an interstate school district. A member district shall be entitled to such further representation on the interstate board of school directors as provided in the articles of agreement as amended from time to time. The articles of agreement as amended from time to time may provide for school directors at large, as above set forth. No person shall be disqualified to serve as a member of an interstate board because he is at the same time a member of the school board of a member district.

b. TERM. Interstate school directors shall be elected for terms in accordance with the articles of agreement.

c. DUTIES OF BOARD OF DIRECTORS. The board of school directors of an interstate school district shall have and exercise all of the powers of the district not reserved herein to the voters of the district.

d. ORGANIZATION. The clerk of the district shall warn a meeting of the board of school directors to be held within 10 days following the date of the annual meeting, for the purpose of organizing the board, including the election of its officers.

C. CHAIRMAN OF THE BOARD. The chairman of the board of interstate school directors shall be elected by the interstate board from among its members at its first meeting following the annual meeting. The chairman shall preside at the meetings of the board and shall perform such other duties as the board may assign to him.

D. VICE-CHAIRMAN OF THE BOARD OF DIRECTORS. The vice-chairman of the interstate board shall be elected in the same manner as the chairman. He shall represent a member district in a state other than that represented by the chairman. He shall preside in the absence of the chairman and shall perform such other duties as may be assigned to him by the interstate board.

E. SECRETARY OF THE BOARD. The secretary of the interstate board shall be elected in the same manner as the chairman. Instead of electing one of its members, the interstate board may appoint the interstate district clerk to serve as secretary of the board in addition to his other duties. The secretary of the interstate board (or the interstate district clerk, if so appointed) shall keep the minutes of its meetings, shall certify its records, and perform such other duties as may be assigned to him by the board.

F. MODERATOR. The moderator shall preside at the district meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed. He may prescribe rules of procedure; but such rules may be altered by the district. He may administer oaths to district officers in either state.

G. CLERK. The clerk shall keep a true record of all proceedings at each district meeting, shall certify its records, shall make an attested copy of any records of the district for any person upon request and tender of reasonable fees therefor, if so appointed, shall serve as secretary of the board of school directors, and shall perform such other duties as may be required by custom or law.

H. TREASURER. The treasurer shall have custody of all of the monies belonging to the district and shall pay out the same only upon the order of the interstate board. He shall keep a fair and accurate account of all sums received into and paid from the interstate district treasury, and at the close of each fiscal year he shall make a report to the interstate district, giving a particular account of all receipts and payments during the year. He shall furnish to the interstate directors, statements from his books and submit his books and vouchers to them and to the district auditors for examination whenever so requested. He shall make all returns called for by laws relating to school districts. Before entering on his duties, the treasurer shall give a bond with sufficient sureties and in such sum as the directors may require. The treasurer's term of office is from July 1 to the following June 30.

I. AUDITORS. At the organization meeting of the district, 3 auditors shall be chosen, one to serve for a term of one year, one to serve for a term of 2 years, and one to serve for a term of 3 years. After the expiration of each original term, the successor shall be chosen for a 3-year term. At least one auditor shall be a resident of New Hampshire, and one auditor shall be a resident of Vermont. An interstate district may vote to employ a certified public accountant to assist the auditors in the performance of their duties. The auditors shall carefully examine the accounts of the treasurer and the directors at the close of each fiscal year, and at such other times whenever necessary, and report to the district whether the same are correctly cast and properly vouched.

J. SUPERINTENDENT. The superintendent of schools shall be selected by a majority vote of the board of school directors of the interstate district with the approval of both commissioners.

K. VACANCIES. Any vacancy among the elected officers of the district shall be filled by the interstate board until the next annual meeting of the district or other election, when a successor shall be elected to serve out the remainder of the unexpired term, if any. Until all vacancies on the interstate board are filled, the remaining members shall have full power to act.

ARTICLE VI

Appropriation and Apportionment of Funds

A. BUDGET. Before each annual meeting, the interstate board shall prepare a report of expenditures for the preceding fiscal year, an estimate of expenditures for the current fiscal year, and a budget for the succeeding fiscal year.

B. APPROPRIATION. The interstate board of directors shall present the budget report at the annual meeting. The interstate district shall appropriate a sum of money for the support of its schools and for the discharge of its obligations for the ensuing fiscal year.

C. APPORTIONMENT OF APPROPRIATION. Subject to the provisions of article VII hereof, the interstate board shall first apply against such appropriation any income to which the interstate district is entitled, and shall then apportion the balance among the member districts in accordance with one of the following formulas as determined by the articles of agreement as amended from time to time:

a. All of such balance to be apportioned on the basis of the ratio that the fair market value of the taxable property in each member district bears to that of the entire interstate district; or

b. All of such balance to be apportioned on the basis that the average daily resident membership for the preceding fiscal year of each member district bears to that of the average daily resident membership of the entire interstate school district; or

c. A formula based on any combination of the foregoing factors. The term "fair market value of taxable property" shall mean the last locally assessed valuation of a member district in New Hampshire, as last equalized by the New Hampshire commissioner of revenue administration.

The term "fair market value of taxable property" shall mean the equalized grand list of a Vermont member district, as determined by the Vermont department of taxes.

Such assessed valuation and grand list may be further adjusted (by elimination of certain types of

taxable property from one or the other or otherwise) in accordance with the articles of agreement, in order that the fair market value of taxable property in each state shall be comparable.

"Average daily resident membership" of the interstate district in the first instance shall be the sum of the average daily resident membership of the member districts in the grades involved for the preceding fiscal year where no students were enrolled in the interstate district schools for such preceding fiscal year.

D. Share of New Hampshire Member District. The interstate board shall certify the share of a New Hampshire member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district. The interstate district shall not set up its own capital reserve funds; but a New Hampshire member district may set up a capital reserve fund in accordance with RSA 35, to be turned over to the interstate district in payment of the New Hampshire member district's share of any anticipated obligations.

E. Share of Vermont Member District. The interstate board shall certify the share of a Vermont member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district.

Article VII

Borrowing

A. Interstate District Indebtedness. Indebtedness of an interstate district shall be a general obligation of the district and shall also be a joint and several general obligation of each member district, except that such obligations of the district and its member district shall not be deemed indebtedness of any member district for the purposes of determining its borrowing capacity under New Hampshire or Vermont law. A member district which withdraws from an interstate district shall remain liable for indebtedness of the interstate district which is outstanding at the time of withdrawal and shall be responsible for paying its share of such indebtedness to the same extent as though it had not withdrawn.

B. Temporary Borrowing. The interstate board may authorize the borrowing of money by the interstate district (1) in anticipation of payments of operating and capital expenses by the member districts to the interstate district and (2) in anticipation of the issue of bonds or notes of the interstate district which have been authorized for the purpose of financing capital projects. Such temporary borrowing shall be evidenced by interest-bearing or discounted notes of the interstate district. The amount of notes issued in any fiscal year in anticipation of expense payments shall not exceed the amount of such payments received by the interstate district in the preceding fiscal year. Notes issued under this paragraph shall be payable within one year in the case of notes under clause (1) and 3 years in the case of notes under clause (2) from their respective dates, but the principal of and interest on notes issued for a shorter period may be renewed or paid from time to time by the issue of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same debt shall not exceed the maximum period permitted for the original loan.

C. Borrowing for Capital Projects. An interstate district may incur debt and issue its bonds or notes to finance capital projects. Such projects may consist of the acquisition or improvement of land and buildings for school purposes, the construction, reconstruction, alteration, or enlargement of school buildings and related school facilities, the acquisition of equipment of a lasting character and the payment of judgments. No interstate district may authorize indebtedness in excess of 10 percent of the total fair market value of taxable property in its member districts as defined in article VI of this compact. The primary obligation of the interstate district to pay indebtedness of member districts shall not be considered indebtedness of the interstate district for the purpose of determining its borrowing capacity under this paragraph. Bonds or notes issued under this paragraph shall mature in equal or diminishing installments of principal payable at least annually commencing no later than 2 years and ending not later than 30 years after their dates.

D. Authorization Proceedings. An interstate district shall authorize the incurring of debts to finance capital projects by a majority vote of the district passed at an annual or special district meeting. Such vote shall be taken by secret ballot after full opportunity for debate, and any such vote shall be subject to reconsideration and further action by the district at the same meeting or at an adjourned

session thereof. As an alternative, an interstate district may provide in its articles of agreement that such a vote be conducted by Australian or official balloting under procedures set forth in the articles of agreement, and that such vote be subject to any method of reconsideration, if any, which the interstate district sets forth in the articles of agreement.

E. Sale of Bonds and Notes. Bonds and notes which have been authorized under this article may be issued from time to time and shall be sold at not less than par and accrued interest at public or private sale by the chairman of the school board and by the treasurer. Interstate district bonds and notes shall be signed by the said officers, except that either one of the 2 required signatures may be a facsimile. Subject to this compact and the authorizing vote, they shall be in such form, bear such rates of interest and mature at such times as the said officers may determine. Bonds shall, but notes need not, bear the seal of the interstate district, or a facsimile of such seal. Any bonds or notes of the interstate district which are properly executed by the said officers shall be valid and binding according to their terms notwithstanding that before the delivery thereof such officers may have ceased to be officers of the interstate district.

F. Proceeds of Bonds. Any accrued interest received upon delivery of bonds or notes of an interstate district shall be applied to the payment of the first interest which becomes due thereon. The other proceeds of the sale of such bonds or notes, other than temporary notes, including any premiums, may be temporarily invested by the interstate district pending their expenditure; and such proceeds, including any income derived from the temporary investment of such proceeds, shall be used to pay the costs of issuing and marketing the bonds or notes and to meet the operating expenses or capital expenses in accordance with the purposes for which the bonds or notes were issued or, by proceedings taken in the manner required for the authorization of such debt, for other purposes for which such debt could be incurred. No purchaser of any bonds or notes of an interstate district shall be responsible in any way to see to the application of the proceeds thereof.

G. State Aid Programs. As used in this paragraph the term "initial aid" shall include New Hampshire and Vermont financial assistance with respect to a capital project, or the means of financing a capital project, which is available in connection with construction costs of a capital project or which is available at the time indebtedness is incurred to finance the project. Without limiting the generality of the foregoing definition, initial aid shall specifically include a New Hampshire state guarantee under RSA 195–C with respect to bonds or notes and Vermont construction aid under chapter 123 of 16 V.S.A. As used in this paragraph the term "long-term aid" shall include New Hampshire and Vermont financial assistance which is payable periodically in relation to capital costs incurred by an interstate district. Without limiting the generality of the foregoing definition, long-term aid shall specifically include New Hampshire school building aid under RSA 198 and Vermont school building aid under chapter 123 of Title 16 V.S.A. For the purpose of applying for, receiving and expending initial aid and long-term aid an interstate district shall be deemed a native school district by each state, subject to the following provisions. When an interstate district has appropriated money for a capital project, the amount appropriated shall be divided into a New Hampshire share and a Vermont share in accordance with the capital expense apportionment formula in the articles of agreement as though the total amount appropriated for the project was a capital expense requiring apportionment in the year the appropriation is made. New Hampshire initial aid shall be available with respect to the amount of the New Hampshire share as though it were authorized indebtedness of a New Hampshire cooperative school district. In the case of a state guarantee of interstate district bonds or notes under RSA 195–C, the interstate district shall be eligible to apply for and receive an unconditional state guarantee with respect to an amount of its bonds or notes which does not exceed 50 percent of the amount of the New Hampshire share as determined above. Vermont initial aid shall be available with respect to the amount of the Vermont share as though it were funds voted by a Vermont school district. Payments of Vermont initial aid shall be made to the interstate district, and the amount of any borrowing authorized to meet the appropriation for the capital project shall be reduced accordingly. New Hampshire and Vermont long-term aid shall be payable to the interstate district. The amounts of long-term aid in each year shall be based on the New Hampshire and Vermont shares of the amount of indebtedness of the interstate district which is payable in that year and which has been apportioned in accordance with the capital expense apportionment formula in the articles of agreement. The New Hampshire aid shall be payable at the rate of 45 percent, if there are 3 or less New Hampshire members in the interstate district, and otherwise it shall be payable as though the New Hampshire members were a New Hampshire cooperative school district.

New Hampshire and Vermont long-term aid shall be deducted from the total capital expenses for the fiscal year in which the long-term aid is payable, and the balance of such expenses shall be apportioned among the member districts. Notwithstanding the foregoing provisions, New Hampshire and Vermont may at any time change their state school aid programs that are in existence when this compact takes effect and may establish new programs, and any legislation for these purposes may specify how such programs shall be applied with respect to interstate districts. Notwithstanding the foregoing, the respective amounts of New Hampshire and Vermont initial and long-term aid, with respect to a capital project of the Dresden School District for which indebtedness is authorized by a vote of the district after July 1, 1977, shall be initially determined for each year for each member district by the manner provided in this paragraph and the aid shall be paid to the Dresden School District; however, the amount of aid for those capital projects received by the Dresden School District on account of each member district shall be used by the District to reduce the sums which would otherwise be required to be raised by taxation within that member district.

H. Tax Exemption. Bonds and notes of an interstate school district shall be exempt from local property taxes in both states, and the interest or discount thereon and any profit derived from the disposition thereof shall be exempt from personal income taxes in both states.

I. Notwithstanding paragraph G of this article, initial and long-term aid may be allocated among the members of an interstate district other than the Dresden School District in the manner which is provided in the articles of agreement of that district, or if not therein provided, in the manner specified in paragraph G for all interstate districts other than the Dresden School District.

Article VIII

Taking Over of Existing Property

A. Power to Acquire Property of Member District. The articles of agreement, or an amendment thereof, may provide for the acquisition by an interstate district from a member district of all or a part of its existing plant and equipment.

B. Valuation. The articles of agreement, or the amendment, shall provide for the determination of the value of the property to be acquired in one or more of the following ways:

a. A valuation set forth in the articles of agreement or the amendment.

b. By appraisal, in which case, one appraiser shall be appointed by each commissioner, and a third appraiser appointed by the first 2 appraisers.

C. Reimbursement to Member District. The articles of agreement shall specify the method by which the member district shall be reimbursed by the interstate district for the property taken over, in one or more of the following ways:

a. By one lump sum, appropriated, allocated, and raised by the interstate district in the same manner as an appropriation for operating expenses.

b. In installments over a period of not more than 20 years, each of which is appropriated, allocated, and raised by the interstate district in the same manner as an appropriation for operating expenses.

c. By an agreement to assume or reimburse the member district for all principal and interest on any outstanding indebtedness originally incurred by the member district to finance the acquisition and improvement of the property, each such installment to be appropriated, allocated, and raised by the interstate district in the same manner as an appropriation for operating expenses.

The member district transferring the property shall have the same obligation to pay to the interstate district its share of the cost of such acquisition, but may offset its right to reimbursement.

Article IX

Amendments to Articles of Agreement

A. Amendments to the articles of agreement shall be adopted in the manner provided in the articles of agreement, and if no such provision is made in the articles of agreement then amendments shall be adopted by the affirmative vote of ⅔ of those present and voting at an interstate district meeting, except that:

a. If the amendment proposes the addition of a new member district, the amendment shall be adopted in the same manner provided for the adoption of the original articles of agreement, provided that the planning committee shall consist of all of the members of the interstate district board of directors and all of the members of the school board of the proposed new member district or districts, and provided that the amendment shall be submitted to the voters of the interstate district, the affirmative vote of ⅔ of those present and voting at an interstate district meeting being re-

quired for approval of the amendment. The articles of agreement together with the proposed amendment shall then be submitted to the voters of the proposed new member district or districts, and an affirmative vote of a simple majority of those present and voting at each district meeting shall be required for approval of the amendment.

b. No amendment to the articles of agreement may impair the rights of bond or note holders or the power of the interstate district to procure the means for their payment.

c. Amendments to the articles of agreement of the Dresden School District shall be adopted in the following manner: (1) an amendment shall be initially approved upon the affirmative vote of a simple majority of those voters of the Dresden School District who are present and voting at a meeting called for such purpose, (2) the amendment initially approved by the voters of the Dresden School District shall become final and effective upon the expiration of 30 days after the date of that vote, unless a petition is duly filed within that 30-day period and the amendment is subsequently not approved by the voters of a member district in accordance with the procedure specified in clause (3), (3) if a petition, valid under applicable state law, is filed before the expiration of that 30-day period with the clerk of any school district which is a member of the Dresden School District, which petition requires the calling of a special meeting at that member district for the purpose of considering the approval of the amendment initially adopted by the voters of the Dresden School District, then the board of school directors of that member district shall thereupon call a special meeting of that district for that purpose, (4) if the amendment as initially approved by the voters of the Dresden School District is approved by more than 40 percent of the voters present and voting at the meeting of each member district in which a petition was filed under this section, then the amendment as initially adopted shall become final and effective upon the vote of that member district last to vote. If the amendment as initially approved by the voters of the Dresden School District is not so approved by more than 40 percent of the voters present and voting at the meeting of any one member district, then the amendment shall be null and void and of no effect.

Article X
Applicability of New Hampshire Laws

A. General School Laws. With respect to the operation and maintenance of any school of the district located in New Hampshire, the provisions of New Hampshire law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the interstate board and the powers and duties of the school administrative unit superintendent shall be exercised and discharged by the interstate district superintendent.

B. New Hampshire State Aid. A New Hampshire school district shall be entitled to receive an amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the New Hampshire member district, and as though the New Hampshire member district pupils attending the interstate school were attending a New Hampshire cooperative school district's school. The state aid shall be paid to the New Hampshire member school district to reduce the sums which would otherwise be required to be raised by taxation within the member district.

C. Continued Existence of New Hampshire Member School District. A New Hampshire member school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school district shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school district are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The New Hampshire member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor, unless the indebtedness is specifically assumed in accordance with the articles of agreement. Any trust funds or capital reserve funds and any property not taken over by the interstate district shall be retained by the New Hampshire member district and held or disposed of according to law. If all of the schools in a member district are incorporated into an interstate district, then no annual meeting of the member district shall be required unless the members of the interstate board from the member

district shall determine that there is occasion for such an annual meeting.

D. Suit and Service of Process in New Hampshire. The courts of New Hampshire shall have the same jurisdiction over the district as though a New Hampshire member district were a party instead of the interstate district. The service necessary to institute suit in New Hampshire shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in New Hampshire, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. Employment. Each employee of an interstate district assigned to a school located in New Hampshire shall be considered an employee of a New Hampshire school district for the purpose of the New Hampshire teachers retirement system, the New Hampshire state employees retirement system, the New Hampshire workers' compensation law and any other law relating to the regulation of employment or the provision of benefits for employees of New Hampshire school districts except as follows:

1. A teacher in a New Hampshire member district may elect to remain a member of the New Hampshire teachers retirement system, even though assigned to teach in an interstate school in Vermont.

2. Employees of interstate districts designated as professional or instructional staff members, as defined in article I hereof, may elect to participate in the teachers retirement system of either the state of New Hampshire or the state of Vermont but in no case will they participate in both retirement systems simultaneously.

3. It shall be the duty of the superintendent in an interstate district to: (a) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement systems; (b) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed; (c) provide the commissioners of education in New Hampshire and in Vermont with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

Article XI
Applicability of Vermont Laws

A. General School Laws. With respect to the operation and maintenance of any school of the district located in Vermont, the provisions of Vermont law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the interstate board and the powers and duties of the union superintendent shall be exercised and discharged by the interstate district superintendent.

B. Vermont State Aid. A Vermont school district shall be entitled to receive such amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the Vermont member district, and as though the Vermont member district pupils attending the interstate schools were attending a Vermont union school district's schools. Such state aid shall be paid to the Vermont member school district to reduce the sums which would otherwise be required to be raised by taxation within the member district.

C. Continued Existence of Vermont Member School District. A Vermont member school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school district shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The Vermont member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor. Any trust funds and any property not taken over shall be retained by the Vermont member school district and held or disposed of according to law.

D. Suit and Service of Process in Vermont. The courts of Vermont shall have the same jurisdiction over the districts as though a Vermont member district were a party instead of the interstate district. The service necessary to institute suit in Vermont

shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in Vermont, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. EMPLOYMENT. Each employee of an interstate district assigned to a school located in Vermont shall be considered an employee of a Vermont school district for the purpose of the state teachers' retirement system of Vermont, the state employees' retirement system, the Vermont workers' compensation law, and any other law relating to the regulation of employment or the provision of benefits for employees of Vermont school districts except as follows:

1. A teacher in a Vermont member district may elect to remain a member of the state teachers' retirement system of Vermont, even though assigned to teach in an interstate school in New Hampshire.

2. Employees of interstate districts designated as professional or instructional staff members, as defined in article I hereof, may elect to participate in the teachers' retirement system of either the state of Vermont or the state of New Hampshire but in no case will they participate in both retirement systems simultaneously.

3. It shall be the duty of the superintendent in an interstate district to: a) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement system; b) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed; c) provide the commissioners of education in New Hampshire and in Vermont with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

ARTICLE XII

Adoption of Compact by Dresden School District

The Dresden School District, otherwise known as the Hanover-Norwich Interstate School District, authorized by New Hampshire Laws of 1961, chapter 116, and by the laws of Vermont, is hereby authorized to adopt the provisions of this compact and to become an interstate school district within the meaning hereof, upon the following conditions and subject to the following limitations:

a. Articles of agreement shall be prepared and signed by a majority of the directors of the interstate school district.

b. The articles of agreement shall be submitted to an annual or special meeting of the Dresden district for adoption.

c. An affirmative vote of ⅔ of those present and voting shall be required for adoption.

d. Nothing contained therein, or in this compact, as it affects the Dresden School District shall affect adversely the rights of the holders of any bonds or other evidences of indebtedness then outstanding, or the rights of the district to procure the means for payment thereof previously authorized.

e. The corporate existence of the Dresden School District shall not be terminated by such adoption of articles of amendment, but shall be deemed to be so amended that it shall thereafter be governed by the terms of this compact.

ARTICLE XIII

Miscellaneous Provisions

A. STUDIES. Insofar as practicable, the studies required by the laws of both states shall be offered in an interstate school district.

B. TEXTBOOKS. Textbooks and scholar's supplies shall be provided at the expense of the interstate district for pupils attending its schools.

C. TRANSPORTATION. The allocation of the cost of transportation in an interstate school district, as between the interstate district and the member districts, shall be determined by the articles of agreement.

D. LOCATION OF SCHOOLHOUSES. In any case where a new schoolhouse or other school facility is to be constructed or acquired, the interstate board shall first determine whether it shall be located in New Hampshire or in Vermont. If it is to be located in New Hampshire, RSA 199, relating to schoolhouses, shall apply. If it is to be located in Vermont, the Vermont law relating to schoolhouses shall apply.

E. FISCAL YEAR. The fiscal year of each interstate district shall begin on July 1 of each year and end on June 30 of the following year.

F. IMMUNITY FROM TORT LIABILITY. Notwithstanding the fact that an interstate district may derive income from operating profit, fees, rentals, and other services, it shall be immune from suit and from liability for injury to persons or property and for other torts caused by it or its agents, servants or

independent contractors, except insofar as it may have undertaken such liability under RSA 281:7 relating to workmen's compensation, or RSA 507–B relating to the procurement of liability insurance by a governmental agency and except insofar as it may have undertaken such liability under 21 V.S.A. Section 621 relating to workers' compensation or 29 V.S.A. Section 1403 relating to the procurement of liability insurance by a governmental agency.

G. ADMINISTRATIVE AGREEMENT BETWEEN COMMISSIONERS OF EDUCATION. The commissioners of education of New Hampshire and Vermont may enter into one or more administrative agreements prescribing the relationship between the interstate districts, member districts, and each of the 2 state departments of education, in which any conflicts between the 2 states in procedure, regulations, and administrative practices may be resolved.

H. AMENDMENTS. Neither state shall amend its legislation or any agreement authorized thereby without the consent of the other in such manner as to substantially adversely affect the rights of the other state or its people hereunder, or as to substantially impair the rights of the holders of any bonds or notes or other evidences of indebtedness then outstanding or the rights of an interstate school district to procure the means for payment thereof. Subject to the foregoing, any reference herein to other statutes of either state shall refer to such statute as it may be amended or revised from time to time.

I. SEPARABILITY. If any of the provisions of this compact, or legislation enabling the same, shall be held invalid or unconstitutional in relation to any of the applications thereof, such invalidity or unconstitutionality shall not affect other applications thereof or other provisions thereof; and to this end the provisions of this compact are declared to be severable.

J. Inconsistency of Language. The validity of this compact shall not be affected by any insubstantial differences in its form or language as adopted by the 2 states.

ARTICLE XIV

Effective Date

A. This compact shall become effective when a bill of the Vermont general assembly which incorporates the compact becomes a law in Vermont and when it is approved by the United States Congress.

Source. 1967, 356:1. 1973, 544:8. 1977, 396:1–3. 2001, 292:3. 2003, 150:8, eff. Jan. 1, 2004.

CHAPTER 200–C

VOCATIONAL REHABILITATION PROGRAMS

200–C:1 Federal Vocational Rehabilitation Program. The commissioner of education, or if the commissioner of education delegates the authority in writing, the administrator of the bureau of vocational rehabilitation of the department of education, is authorized to make application to and receive funds from, to cooperate with, and to enter into any agreements with the federal government or any agency of the federal government to secure the participation of the United States government through the allotment of federal funds in the vocational rehabilitation program of this state. The bureau of vocational rehabilitation shall comply with the requirements of the applicable federal laws including the determination of eligibility for the determination of the nature and

scope of, and the provision of, vocational rehabilitation services under the state plan.

Source. 1967, 417:1. 1986, 41:24. 1994, 379:15, eff. June 9, 1994.

200–C:2 Cooperative Working Agreements. The commissioner or his delegate is authorized to make agreements between the bureau of vocational rehabilitation of the state department of education and any other agency of the state or subdivisions of the state or agency of such a subdivision, to assist in the vocational rehabilitation of persons disabled because of a physical, mental, or social disability.

Source. 1967, 417:1. 1990, 140:2, X. 1994, 379:21, eff. June 9, 1994.

200–C:3 State Matching Funds. The federal funds anticipated under this chapter are to match state funds on the basis of a state matching share not less than the percentage established by federal law of the total expenditure of funds provided for by the federal legislation and the approved state plan of the bureau of vocational rehabilitation. The funds made available to the bureau of vocational rehabilitation by any state agency or subdivision of the state or agency thereof in the form of use of personnel or facilities or in other ways, may be construed as state matching funds if federal laws or the regulations of the federal agency authorized such a construction.

Source. 1967, 417:1. 1969, 355:1. 1988, 192:1. 1994, 379:21, eff. June 9, 1994.

200–C:4 Expansion of Programs. It is the intent of the general court that the vocational rehabilitation program of cooperative agreements may be expanded as additional federal funds become available. In furtherance of this intent, the commissioner of education or his delegate may expand any agreements or enter into new agreements with any other departments or agencies of the state, subdivisions of the state, or agencies of either, under this chapter, and may expand any agreements or enter into new agreements with any federal agency charged with the distribution of funds for the vocational rehabilitation program, as federal funds become available for the program.

Source. 1967, 417:1. 1969, 355:2, eff. Aug. 30, 1969.

200–C:5 Additional Personnel. If additional federal funds become available and the additional state matching funds as they are construed under this chapter become available, and if the federal agency approves of a new program under this chapter, and on the request of the commissioner of education or his authorized delegate, the governor and council may approve additional positions beyond those authorized by RSA 200–C and 1967, 417:2 as amended for personnel to operate the programs and to fulfill the cooperative working agreements entered into by the division.

Source. 1967, 417:1. 1969, 355:3, eff. Aug. 30, 1969.

200–C:6 Access to Records.

[Repealed 1994, 379:24, VII, eff. June 9, 1994.]

History

Former RSA 200–C:6, which was derived from 1985, 232:5, related to inspection of records division.

200–C:6–a Recovery of Costs; Right of Action.

I. Whenever any person who has received services provided under this chapter shall receive a settlement or an award from a liable third person or party, including workers' compensation and social security disability benefits, and such settlement or award is related to the disability under which the person became eligible for such services, the person shall repay the cost of such services to the extent that the amount of the settlement or award makes repayment possible. No attorneys' fees shall be deducted from the amount due the state from such award or settlement.

II. Amounts repaid under paragraph I shall be payable to the bureau of vocational rehabilitation of the department of education and shall be administered as follows:

(a) If the settlement or award occurs within the same fiscal year as the receipt of any portion of services furnished, the recovered amount proportionate to the cost of services provided for such fiscal year shall be credited to the division; and

(b) If the settlement or award occurs after the fiscal year in which receipt of any portion of services furnished takes place, that part of the cost of services recovered pursuant to this section which was federally funded shall be returned to the federal government in an amount proportionate to the cost of services provided for such previous fiscal year, while the remaining state-funded part of such cost shall remain with the division.

III. The state shall have a right of action over amounts due pursuant to paragraph I.

Source. 1990, 131:2. 1994, 379:21, eff. June 9, 1994.

Telecommunications Equipment Program

200–C:7 Telecommunications Equipment Program.

I. The administrator, bureau of vocational rehabilitation, shall develop a program to make special telecommunications equipment available to deaf, hearing impaired, and speech impaired persons. The

program shall provide for the purchase, maintenance and repair of special telecommunications equipment for deaf, hearing impaired, and speech impaired persons. Any equipment purchased under the program shall be property of the state of New Hampshire.

II. The program established under paragraph I shall include specific criteria that will govern the priorities assigned to various persons who require special telecommunications equipment. Persons who are profoundly deaf or speech impaired so that they cannot use the telephone for expressive or receptive communications, as verified by a written report from an otologist, audiologist or physician, shall be eligible for equipment under the program.

Source. 1985, 322:1. 1994, 379:21, eff. June 9, 1994.

200–C:8 Rulemaking Authority. The board of education shall adopt rules, under RSA 541–A, relative to:

I. Procedures for disbursement of moneys from the program established under RSA 200–C:7.

II. Eligibility criteria for equipment under the program, including priority criteria assigned to persons seeking equipment under the program.

III. Procedures for the purchase, maintenance and repair of special telecommunications equipment.

Source. 1985, 322:1. 1994, 379:23, eff. June 9, 1994.

Workers' Personal Care Assistance Program

200–C:9 Definitions. In this subdivision:

I. "Personal care assistance" means attendant care, including, but not limited to, assistance with bathing, bowel and bladder care, dressing, personal grooming, moving in and out of bed, preparation and consumption of food, housecleaning, laundry, or other services necessary for daily living and self care in order to allow a person with severe physical disabilities to become or remain employed. A person shall be considered employed if he works a minimum of 20 hours per week for which he receives remuneration at a rate which equals or exceeds the national minimum wage.

II. "Personal care attendant" means a person who performs personal care assistance tasks for a person with severe physical disabilities.

Source. 1986, 138:1, eff. July 1, 1986.

200–C:10 Establishment; Amount of Subsidies. The administrator, bureau of vocational rehabilitation, shall develop and implement a workers' personal care assistance program for persons with severe physical disabilities. Upon application to the administrator, subsidies shall be made to eligible persons for the purpose of employing personal care attendants. An eligible person shall receive a maximum amount of $7,300 per year. Persons who receive reduced subsidies pursuant to RSA 200–C:11 shall pay a portion of the cost of their personal care services. The administrator may develop and maintain a list of personal care attendants available to be hired by persons with severe physical disabilities. The administrator may contract with centers for independent living and community-based nonprofit agencies to provide services pursuant to this section.

Source. 1986, 138:1. 1994, 379:21, eff. June 9, 1994.

200–C:11 Eligibility.

I. Rules adopted by the board of education under RSA 200–C:15 shall include eligibility standards for participation in the program, provided no person with an annual income of over $17,000, after payment of all state and federal taxes and disability-related expenses specified by the board of education in the rules, shall be eligible for a full subsidy. Persons whose annual income, after such taxes and such expenses, exceeds the limit for a full subsidy shall be eligible for subsidies which are reduced by ½ the amount their income exceeds such limit. A person whose need for personal care assistance services exceeds the amount of the subsidy for which he is eligible may spend his own income for such services, and such expenditure shall be considered a disability-related expense for purposes of determining his income.

II. Any person shall be eligible for participation in the program who needs daily personal care assistance for a period of 2 or more hours and who is:

(a) Employed at the time of application for personal care assistance and ineligible for any other state or federal personal care assistance program; or

(b) An employable person who is unable to seek or accept employment due to a lack of personal care assistance or because acceptance of such employment would render such person ineligible for or cause a reduction in services from any other state or federal program providing personal care assistance.

III. When a person eligible for assistance under this section obtains employment which renders him ineligible for, or causes a reduction in services from, another program providing personal care assistance, the director shall ensure a smooth transition between the 2 programs so that personal care subsidies provided under this section shall commence immediately

upon termination or reduction of services under the other program.

Source. 1986, 138:1. 1994, 379:23, eff. June 9, 1994.

200–C:12 Appeals. The contested case provisions of RSA 541–A:31-36 shall apply when a person is aggrieved by a decision of the administrator under this subdivision. Appeals shall be governed by the provisions of RSA 541.

Source. 1986, 138:1. 1994, 379:22, eff. June 9, 1994; 412:25, eff. Aug. 9, 1994.

200–C:13 Insufficient Funds. If personal care subsidies cannot be provided to all eligible persons because of insufficient appropriations, the administrator shall:

I. Promptly notify the governor, the general court, the Developmental Disabilities Advocacy Center, and the governor's commission on disability; and

II. Provide subsidies to employed persons first.

Source. 1986, 138:1. 1990, 140:1. 1994, 379:22, eff. June 9, 1994. 2010, 368:9, eff. Dec. 31, 2010.

200–C:14 Advisory Committee.

[Repealed 2010, 368:1(19), eff. Dec. 31, 2010.]

History

Former RSA 200–C:14, which was derived from 1986, 138:1 and 1994, 379:21, 22, related to the advisory committee established for the workers' personal care assistance program.

200–C:15 Rulemaking. The board of education shall adopt rules, pursuant to RSA 541–A, to implement the workers' personal care assistance program.

Source. 1986, 138:1. 1994, 379:23, eff. June 9, 1994.

Equipment Depository

200–C:16 Equipment Depository. There is hereby established an equipment depository within the bureau of vocational rehabilitation to purchase adaptive equipment to enable disabled persons to become gainfully employed by the state and any subdivision thereof. The bureau shall determine the equipment to be purchased, subject to the approval of governor and council. The purchases shall be limited to equipment which provides reasonable, and not extraordinary, accommodations to the needs of the disabled, such as telephone adapters, adjustable desks, and other like equipment. The bureau shall have authority to reissue equipment returned to the depository and to dispose of any equipment that is no longer useful.

Source. 1986, 171:3. 1990, 140:2, X. 1994, 379:21. 2003, 174:13, eff. July 1, 2003.

200–C:17 Disabled Persons' Employment Fund.

[Repealed 2002, 254:5, VIII, eff. July 1, 2002.]

History

Former RSA 200–C:17, which was derived from 1986, 171:3; 1990, 140:2, X; and 1994, 379:21, related to the disabled persons' employment fund.

Program for the Deaf and Hard of Hearing

200–C:18 Program for the Deaf and Hard of Hearing. There is established a program for the deaf and hard of hearing within the bureau of vocational rehabilitation which shall be administered by a coordinator designated by the administrator, bureau of vocational rehabilitation.

Source. 1989, 51:1. 1994, 379:21, eff. June 9, 1994.

200–C:19 Functions. The program established under this chapter shall:

I. Provide leadership and direction in the area of serving persons with hearing impairment.

II. Review, update and implement the state plan for the deaf and hard of hearing and ensure it is an integral part of the operation of the department of education.

III. Administer and monitor the telecommunications equipment program pursuant to RSA 200–C:7.

IV. Provide administrative support upon request of the board of licensure of interpreters for the deaf and hard of hearing established in RSA 326–I. Such support may include the operation of a state screening for New Hampshire interpreters.

V. Collect data on the needs of the hearing impaired community and investigate resources to meet those needs.

VI. Provide technical assistance to state and private agencies requesting such assistance in order to ensure accessibility for the hearing impaired.

VII. Assist in development of legislation affecting hearing impaired people in the state as approved by the state board of education.

VIII. Work with the New Hampshire registry of interpreters for the deaf, the New Hampshire Association of the Deaf, Self-Help for the Hard of Hearing, and any other consumer group interested in hearing loss, as needed, to ensure quality of services for the hearing impaired.

IX. Serve as an information and referral source for the state on the subject of hearing impairment.

Source. 1989, 51:1. 2001, 232:2, eff. July 1, 2001.

200–C:20 Rulemaking Authority. The board of education, shall adopt rules, pursuant to RSA 541–A, to implement the program for the deaf and hard of hearing.

Source. 1989, 51:1. 1994, 379:23, eff. June 9, 1994.

200–C:20–a National Level and State Level Examination Fee; Revolving Fund Established.

I. Interpreters seeking to be licensed under RSA 326–I who are required to be examined by the department of education shall be charged a fee for the national level or state level examination by the department of education, as appropriate. The state board of education shall establish, pursuant to RSA 541–A, a fee schedule for such purpose. The administrator, bureau of vocational rehabilitation, shall assess and collect such fees.

II. The administrator, bureau of vocational rehabilitation, shall establish a revolving fund into which shall be deposited fees collected under paragraph I. The revolving fund shall be nonlapsing. The commissioner of education, with approval of the governor and council, is authorized to use moneys from the revolving fund for the purposes of funding the program as provided in this subdivision.

Source. 1990, 131:3. 1994, 379:21. 2001, 232:3, eff. July 1, 2001.

Supported Employment Program

200–C:21 Supported Employment Program. There is established a supported employment program within the bureau of vocational rehabilitation which shall train eligible persons with disabilities in their employment situations by providing appropriate support services.

Source. 1989, 145:1. 1990, 140:2, IV. 1994, 379:21, eff. June 9, 1994.

200–C:22 Services. Services provided by the supported employment program shall include, but not be limited to, the following:

I. Providing vocational rehabilitation programs administered by the bureau of vocational rehabilitation.

II. Providing ongoing job support services, either at the job site or in another location, which are directly related to maintaining employment.

Source. 1989, 145:1. 1994, 379:21, eff. June 9, 1994.

200–C:23 Rulemaking. The board of education, shall adopt rules, pursuant to RSA 541–A, to implement the supported employment program.

Source. 1989, 145:1. 1994, 379:23, eff. June 9, 1994.

Independent Living Program

200–C:24 Independent Living Program. There is established an independent living program within the bureau of vocational rehabilitation which is intended to assist eligible persons with disabilities in increasing their independence.

Source. 1989, 145:1. 1990, 140:2, IV. 1994, 379:21, eff. June 9, 1994.

200–C:25 Services. Services provided by the independent living program shall include, but not be limited to, the following:

I. Providing vocational rehabilitation programs administered by the bureau of vocational rehabilitation.

II. Establishing, improving, or maintaining independent living centers.

III. Providing services to the elderly blind for the purpose of increasing independence.

Source. 1989, 145:1. 1994, 379:21, eff. June 9, 1994.

200–C:26 Rulemaking. The board of education shall adopt rules, pursuant to RSA 541–A, to implement the independent living program.

Source. 1989, 145:1. 1994, 379:23, eff. June 9, 1994.

CHAPTER 200–D

STATE SCHOLARSHIP PROGRAM

[Repealed 1981, 66:1, eff. April 3, 1981.]

History

Former RSA ch. 200–D, comprising RSA 200–D:1 to 200–D:13, which was derived from 1967, 434:1, related to a scholarship program for state residents.

CHAPTER 200–E

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

200–E:1 Agreement. The Interstate Agreement on Qualification of Educational Personnel is hereby enacted into law and entered into with all jurisdiction legally joining therein, in the form substantially as follows:

Article I

Purpose, Findings, and Policy

1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the

purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party States find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Compact can increase the availability of educational manpower.

Article II
Definitions

As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

2. "Designated State official" means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

3. "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

4. "State" means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. "Originating State" means a State (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

6. "Receiving State" means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III
Interstate Educational Personnel Contracts

1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated state officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated state official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own State.

2. Any such contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

3. No contract made pursuant to this Agreement shall be for a term longer than 5 years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any persons qualified because of successful completion of a program prior to January 1, 1954.

5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground

which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

6. A contract committee composed of the designated state officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

Article IV
Approved and Accepted Programs

1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V
Interstate Cooperation

The party States agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI
Agreement Evaluation

The designated state officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

Article VII
Other Arrangements

Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

Article VIII
Effect and Withdrawal

1. This Agreement shall become effective when enacted into law by 2 States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX
Construction and Severability

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters.

Source. 1969, 103:1, eff. June 24, 1969.

200–E:2 Designated State Official. The "designated State official" for this State shall be the commissioner of education. The commissioner shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the state board of education.

Source. 1969, 103:1, eff. June 24, 1969.

200–E:3 Filing of Contracts. True copies of all contracts made on behalf of this State pursuant to the Agreement shall be kept on file in the department of education and in the office of the Secretary of State.

The department of education shall publish all such contracts in convenient form.

Source. 1969, 103:1, eff. June 24, 1969.

CHAPTER 200–F

NEW HAMPSHIRE-MAINE INTERSTATE SCHOOL COMPACT

200–F:1 Compact. The state of New Hampshire enters into the following compact with the state of Maine subject to the terms and conditions therein stated.

New Hampshire-Maine Interstate School Compact

Article I

General Provisions

A. STATEMENT OF POLICY. It is the purpose of this compact to increase the educational opportunities within the states of New Hampshire and Maine by encouraging the formation of interstate school districts which will each be a natural social and economic region with adequate financial resources and a number of pupils sufficient to permit the efficient use of school facilities within the interstate district and to provide improved instruction. The state boards of education of New Hampshire and Maine may formulate and adopt additional standards consistent with this purpose and with these standards; and the formation of any interstate school district and the adoption of its articles of agreement shall be subject to the approval of both state boards as set forth.

B. REQUIREMENT OF CONGRESSIONAL APPROVAL. This compact shall not become effective until approved by the United States Congress.

C. DEFINITIONS. The terms used in this compact shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

a. COMMISSIONER. "Commissioner" shall refer to Commissioner of Education.

b. ELEMENTARY SCHOOL. "Elementary school" shall mean a school which includes all grades from kindergarten or grade one through not less than grade 6 nor more than grade 8.

c. INTERSTATE BOARD. "Interstate board" shall refer to the board serving an interstate school district.

d. INTERSTATE SCHOOL DISTRICT. "Interstate school district" and "interstate district" shall mean a school district composed of one or more school districts located in the State of Maine associated under this compact with one or more school districts located in the state of New Hampshire and may include either the elementary schools, the secondary schools, or both.

e. JOINT ACTION. "Joint action" where joint action by both state boards is required, each state board shall deliberate and vote by its own majority, but shall separately reach the same result or take the same action as the other state board.

f. MAINE BOARD. "Maine Board" shall refer to the Maine State Board of Education.

g. MEMBER SCHOOL DISTRICT. "Member school district" and "member district" shall mean a school administrative unit located either in Maine or New Hampshire which is included within the boundaries of a proposed or established interstate school district.

h. NEW HAMPSHIRE BOARD. "New Hampshire board" shall refer to the New Hampshire State Board of Education.

i. PROFESSIONAL STAFF PERSONNEL. "Professional staff personnel" and "instructional staff personnel" shall include superintendents, assistant superintendents, administrative assistants, principals, guidance counselors, special educational personnel, school nurses, therapists, teachers, and other certificated personnel.

j. SECONDARY SCHOOL. "Secondary school" shall mean a school which includes all grades beginning no lower than grade 7 and no higher than grade 12.

k. WARRANT. "Warrant" or "warning" to mean the same for both states.

Article II

Procedure for Formation of an Interstate School District

A. CREATION OF PLANNING COMMITTEE. The New Hampshire and Maine commissioners of education shall have the power, acting jointly, to constitute and discharge one or more interstate school district planning committees. Each such planning committee shall consist of at least 2 voters from each of a group of 2 or more neighboring member districts. One of the representatives from each member district shall be a member of its school board, whose term on the planning committee shall be concurrent with his term as a school board member. The term of each member of a planning committee who is not also a school board member shall expire on June 30 of the third year following his appointment. The existence of any planning committee may be terminated either by vote

of a majority of its members or by joint action of the commissioners. In forming and appointing members to an interstate school district planning board, the commissioners shall consider and take into account recommendations and nominations made by school boards of member districts. No member of a planning committee shall be disqualified because he is at the same time a member of another planning board or committee created under this compact or under any other provisions of law. Any existing informal interstate school planning committee may be reconstituted as a formal planning committee in accordance with the provisions hereof, and its previous deliberations adopted and ratified by the reorganized formal planning committee. Vacancies on a planning committee shall be filled by the commissioners acting jointly.

B. Operating Procedures of Planning Committee. Each interstate school district planning committee shall meet in the first instance at the call of any member, and shall organize by the election of a chairman and clerk-treasurer, each of whom shall be a resident of a different state. Subsequent meetings may be called by either officer of the committee. The members of the committee shall serve without pay. The member districts shall appropriate money on an equal basis at each annual meeting to meet the expenses of the committee, including the cost of publication and distribution of reports and advertising. From time to time the commissioners may add additional members and additional member districts to the committee, and may remove members and member districts from the committee. An interstate school district planning committee shall act by majority vote of its membership present and voting.

C. Duties of Interstate School District Planning Committee. It shall be the duty of an interstate school district planning committee, in consultation with the commissioners and the state departments of education: to study the advisability of establishing an interstate school district in accordance with the standards set forth in paragraph A, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such interstate district; to estimate the construction and operating costs thereof; to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of an interstate school district; and to submit a report or reports of its findings and recommendations to the several member districts.

D. Recommendations and Preparation of Articles of Agreement. An interstate school district planning committee may recommend that an interstate school district composed of all the member districts represented by its membership, or any specified combination of such member districts, be established. If the planning committee does recommend the establishment of an interstate school district, it shall include in its report such recommendation, and shall prepare and include in its report proposed articles of agreement for the proposed interstate school district, which shall be signed by at least a majority of the membership of the planning committee, which set forth the following:

a. The name of the interstate school district.

b. The member districts which shall be combined to form the proposed interstate school district.

c. The number, composition, method of selection and terms of office of the interstate school board, provided that:

(1) The interstate school board shall consist of an odd number of members, not less than 5 nor more than 15;

(2) The terms of office shall not exceed 3 years;

(3) Each member district shall be entitled to elect at least one member of the interstate school board. Each member district shall either vote separately at the interstate school district meeting by the use of a distinctive ballot, or shall chose its member or members at any other election at which school officials may be chosen;

(4) The method of election shall provide for the filing of candidacies in advance of election and for the use of a printed nonpartisan ballot;

(5) Subject to the foregoing, provision may be made for the election of one or more members at large.

d. The grades for which the interstate school district shall be responsible.

e. The specific properties of member districts to be acquired initially by the interstate school district and the general location of any proposed new schools to be initially established or constructed by the interstate school district.

f. The method of apportioning the operating expenses of the interstate school district among the several member districts, and the time and manner of payments of such shares.

g. The indebtedness of any member district which the interstate district is to assume.

h. The method of apportioning the capital expenses of the interstate school district among the several member districts, which need not be the same as the method of apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the cost of acquiring land and buildings for school purposes; the construction, furnishing and equipping of school buildings and facilities; and the payment of the principal and interest of any indebtedness which is incurred to pay for the same.

i. The manner in which state aid, available under the laws of either New Hampshire or Maine, shall be allocated, unless otherwise expressly provided in this compact or by the laws making such aid available.

j. The method by which the articles of agreement may be amended, which amendments may include the annexation of territory, or an increase or decrease in the number of grades for which the interstate district shall be responsible, provided that no amendment shall be effective until approved by both state boards in the same manner as required for approval of the original articles of agreement.

k. The date of operating responsibility of the proposed interstate school district and a proposed program for the assumption of operating responsibility for education by the proposed interstate school district, and any school construction; which the interstate school district shall have the power to vary by vote as circumstances may require.

l. Any other matters, not incompatible with law, which the interstate school district planning committee may consider appropriate to include in the articles of agreement, including, without limitation:

(1) The method of allocating the cost of transportation between the interstate district and member districts;

(2) The nomination of individual school directors to serve until the first annual meeting of the interstate school district.

E. HEARINGS. If the planning committee recommends the formation of an interstate school district, it shall hold at least one public hearing on its report and the proposed articles of agreement within the proposed interstate school district in Maine, and at least one public hearing thereon within the proposed interstate school district in New Hampshire. The planning committee shall give such notice thereof as it may determine to be reasonable, provided that such notice shall include at least one publication in a newspaper of general circulation within the proposed interstate school district not less than 15 days, not counting the date of publication and not counting the date of the hearing, before the date of the first hearing. Such hearings may be adjourned from time to time and from place to place. The planning committee may revise the proposed articles of agreement after the date of the hearings. It shall not be required to hold further hearings on the revised articles of agreement but may hold one or more further hearings after notice similar to that required for the first hearings if the planning committee in its sole discretion determines that the revisions are so substantial in nature as to require further presentation to the public before submission to the state boards of education.

F. APPROVAL BY STATE BOARDS. After the hearings a copy of the proposed articles of agreement, as revised, signed by a majority of the planning committee, shall be submitted by it to each state board. The state boards may if they find that the articles of agreement are in accord with the standards set forth in this compact and in accordance with sound educational policy, approve the same as submitted, or refer them back to the planning committee for further study. The planning committee may make additional revisions to the proposed articles of agreement to conform to the recommendations of the state boards. Further hearings on the proposed articles of agreement shall not be required unless ordered by the state boards in their discretion. In exercising such discretion, the state boards shall take into account whether or not the additional revisions are so substantial in nature as to require further presentation to the public. If both state boards find that the articles of agreement as further revised are in accord with the standards set forth in this compact and in accordance with sound educational policy, they shall approve the same. After approval by both state boards, each state board shall cause the articles of agreement to be submitted to the school boards of the several member districts in each state for acceptance by the member districts as provided in paragraph G. At the same time, each state board shall designate the form of warrant, date, time, place, and period of voting for the special meeting of the member district to be held in accordance with paragraph G.

G. ADOPTION BY MEMBER DISTRICTS. Upon receipt of written notice from the state board in its state of the approval of the articles of agreement by both state boards, the school board of each member district shall cause the articles of agreement to be filed with the member district clerk. Within 10 days after

receipt of such notice, the school board shall issue its warrant for a special meeting of the member district, the warrant to be in the form, and the meeting to be held at the time and place and in the manner prescribed by the state board. No approval of the superior court shall be required for such special school district meeting in New Hampshire. Voting shall be with the use of a checklist by a ballot substantially in the following form:

> "Shall the school district accept the provisions of the New Hampshire-Maine Interstate School Compact providing for the establishment of an interstate school district, together with the school districts of _____ and _____, etc., in accordance with the proposed articles of agreement filed with the school district (town, city or incorporated school district) clerk?"

Yes ( ) No ( )

If the articles of agreement included the nomination of individual school directors, those nominated from each member district shall be included in the ballot and voted upon, such election to become effective upon the formation of an interstate school district.

If a majority of the voters present and voting in a member district vote in the affirmative, the clerk for such member district shall forthwith send to the state board in its state a certified copy of the warrant, certificate of posting, and minutes of the meeting of the district. If the state boards of both states find that a majority of the voters present and voting in each member district have voted in favor of the establishment of the interstate school district, they shall issue a joint certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the interstate school district as of its date of issuance.

H. RESUBMISSION. If the proposed articles of agreement are adopted by one or more of the member districts but rejected by one or more of the member districts, the state boards may resubmit them, in the same form as previously submitted, to the rejecting member districts, in which case the school boards thereof shall resubmit them to the voters in accordance with paragraph G. An affirmative vote in accordance therewith shall have the same effect as though the articles of agreement had been adopted in the first instance. In the alternative, the state boards may either discharge the planning committee, or refer the articles of agreement back for further consideration to the same or a reconstituted planning committee, which shall have all the powers and duties as the planning committee as originally constituted.

Article III
Powers of Interstate School District

A. POWERS. Each interstate school district shall be a body corporate and politic, with power to:

a. Acquire, construct, extend, improve, staff, operate, manage and govern public schools within its boundaries;

b. Sue and be sued, subject to the limitations of liability hereinafter set forth;

c. Have a seal and alter the same at pleasure;

d. Adopt, maintain and amend bylaws not inconsistent with this compact, and the laws of the 2 states;

e. Acquire by purchase, condemnation, lease or otherwise, real and personal property for the use of its schools;

f. Enter into contracts and incur debts;

g. Borrow money for the purposes set forth, and to issue its bonds or notes therefor;

h. Make contracts with and accept grants and aid from the United States, the State of Maine, the State of New Hampshire, any agency or municipality thereof, and private corporations and individuals for the construction, maintenance, reconstruction, operation and financing of its schools; and to do any and all things necessary in order to avail itself of such aid and cooperation;

i. Employ such assistants, agents, servants and independent contractors as it shall deem necessary or desirable for its purposes; and

j. Take any other action which is necessary or appropriate in order to exercise any of the foregoing powers.

Article IV
District Meetings

A. GENERAL. Votes of the district shall be taken at a duly warned meeting held at any place in the district, at which all of the eligible legal voters of the member districts shall be entitled to vote, except as otherwise provided with respect to the election of directors.

B. ELIGIBILITY OF VOTERS. Any resident who would be eligible to vote at a meeting of a member district being held at the same time shall be eligible to vote at a meeting of the interstate district. The town clerks in each Maine member district and the

supervisors of the checklist of each New Hampshire district shall respectively prepare a checklist of eligible voters for each meeting of the interstate district in the same manner, and they shall have all the same powers and duties with respect to eligibility of voters in their districts as for a meeting of a member district.

C. Warning of Meetings. A meeting shall be warned by a warrant addressed to the residents of the interstate school district qualified to vote in district affairs, stating the time and place of the meeting and the subject matter of the business to be acted upon. The warrant shall be signed by the clerk and by a majority of the directors. Upon written application of 10 or more voters in the district, presented to the directors or to one of them, at least 25 days before the day prescribed for an annual meeting, the directors shall insert in their warrant for such meeting any subject matter specified in such application.

D. Posting and Publication of Warrant. The directors shall cause an attested copy of the warrant to be posted at the place of meeting, and a like copy at a public place in each member district at least 20 days, not counting the date of posting and the date of meeting, before the date of the meeting. In addition, the directors shall cause the warrant to be advertised in a newspaper of general circulation on at least one occasion, such publication to occur at least 10 days, not counting the date of publication and not counting the date of the meeting, before the date of the meeting. Although no further notice shall be required, the directors may give such further notice of the meeting as they in their discretion deem appropriate under the circumstances.

E. Return of Warrant. The warrant with a certificate thereon, verified by oath, stating the time and place when and where copies of the warrant were posted and published, shall be given to the clerk of the interstate school district at or before the time of the meeting, and shall be recorded by him in the records of the interstate school district.

F. Organization Meeting. The commissioners, acting jointly, shall fix a time and place for a special meeting of the qualified voters within the interstate school district for the purpose of organization, and shall prepare and issue the warrant for the meeting after consultation with the interstate school district planning board and the members-elect, if any, of the interstate school board of directors. Such meeting shall be held within 60 days after the date of issuance of the certificate of formation, unless the time is further extended by the joint action of the state boards. At the organization meeting the commissioner of education of the state where the meeting is held, or his designate, shall preside in the first instance, and the following business shall be transacted:

a. A temporary moderator and a temporary clerk shall be elected from among the qualified voters who shall serve until a moderator and clerk respectively have been elected and qualified.

b. A moderator, clerk, a treasurer and 3 auditors shall be elected to serve until the next annual meeting and thereafter until their successors are elected and qualified. Unless previously elected, a board of school directors shall be elected to serve until their successors are elected and qualified.

c. The date for the annual meeting shall be established.

d. Provision shall be made for the payment of any organizational or other expense incurred on behalf of the district before the organization meeting, including the cost of architects, surveyors, contractors, attorneys, and educational or other consultants or experts.

e. Any other business, the subject matter of which has been included in the warrant, and which the voters would have had power to transact at any annual meeting.

G. Annual Meetings. An annual meeting of the district shall be held between January 15 and June 1 of each year at such time as the interstate district may by vote determine. Once determined, the date of the annual meeting shall remain fixed until changed by vote of the interstate district at a subsequent annual or special meeting. At each annual meeting the following business shall be transacted:

a. Necessary officers shall be elected.

b. Money shall be appropriated for the support of the interstate district schools for the fiscal year beginning the following July 1.

c. Such other business as may properly come before the meeting.

H. Special Meetings. A special meeting of the district shall be held whenever, in the opinion of the directors, there is occasion therefor, or whenever written application shall have been made by 5 percent or more of the voters based on the checklists as prepared for the last preceding meeting, setting forth the subject matter upon which such action is desired. A special meeting may appropriate money without compliance with RSA 33:8 or RSA 197:3 which would otherwise require the approval of the New Hampshire superior court.

I. CERTIFICATION OF RECORDS. The clerk of an interstate school district shall have the power to certify the record of the votes adopted at an interstate school district meeting to the respective commissioners and state boards and, where required, for filing with a secretary of state.

J. METHOD OF VOTING AT SCHOOL DISTRICT MEETINGS. Voting at meetings of interstate school districts shall take place as follows:

a. SCHOOL DIRECTORS. A separate ballot shall be prepared for each member district, listing the candidates for interstate school director to represent such member district; and any candidates for interstate school director at large; and the voters of each member district shall register on a separate ballot their choice for the office of school director or directors. In the alternative, the articles of agreement may provide for the election of school directors by one or more of the member districts at an election otherwise held for the choice of school or other municipal officers.

b. OTHER VOTES. Except as otherwise provided in the articles of agreement or this compact, with respect to all other votes, the voters of the interstate school district shall vote as one body irrespective of the member districts in which they are resident, and a simple majority of those present and voting at any duly warned meeting shall carry the vote. Voting for officers to be elected at any meeting, other than school directors, shall be by ballot or voice, as the interstate district may determine, either in its articles of agreement or by a vote of the meeting.

Article V
Officers

A. OFFICERS; GENERAL. The officers of an interstate school district shall be a board of school directors, a chairman of the board, a vice-chairman of the board, a secretary of the board, a moderator, a clerk, a treasurer and 3 auditors. Except as otherwise specifically provided, they shall be eligible to take office immediately following their election; they shall serve until the next annual meeting of the interstate district and until their successors are elected and qualified. Each shall take oath for the faithful performance of his duties before the moderator, or a notary public or a justice of the peace of the state in which the oath is administered. Their compensation shall be fixed by vote of the district. No person shall be eligible to any district office unless he is a voter in the district. A custodian, school teacher, principal, superintendent or other employee of an interstate district acting as such shall not be eligible to hold office as a school director.

B. BOARD OF DIRECTORS.

a. HOW CHOSEN. Each member district shall be represented by at least one resident on the board of school directors of an interstate school district. A member district shall be entitled to such further representation on the interstate board of school directors as provided in the articles of agreement as amended from time to time. The articles of agreement as amended from time to time may provide for school directors at large, as set forth. No person shall be disqualified to serve as a member of an interstate board because he is at the same time a member of the school board of a member district.

b. TERM. Interstate school directors shall be elected for terms in accordance with the articles of agreement.

c. DUTIES OF BOARD OF DIRECTORS. The board of school directors of an interstate school district shall have and exercise all of the powers of the district not reserved herein to the voters of the district.

d. ORGANIZATION. The clerk of the district shall warn a meeting of the board of school directors to be held within 10 days following the date of the annual meeting, for the purpose of organizing the board, including the election of its officers.

C. CHAIRMAN OF THE BOARD. The chairman of the board of interstate school directors shall be elected by the interstate board from among its members at its first meeting following the annual meeting. The chairman shall preside at the meetings of the board and shall perform such other duties as the board may assign to him.

D. VICE-CHAIRMAN OF THE BOARD OF DIRECTORS. The vice-chairman of the interstate board shall be elected in the same manner as the chairman. He shall represent a member district in a state other than that represented by the chairman. He shall preside in the absence of the chairman and shall perform such other duties as may be assigned to him by the interstate board.

E. SECRETARY OF THE BOARD. The secretary of the interstate board shall be elected in the same manner as the chairman. Instead of electing one of its members, the interstate board may appoint the interstate district clerk to serve as secretary of the board in addition to his other duties. The secretary of the interstate board, or the interstate district clerk, if so appointed, shall keep the minutes of its

meetings, shall certify its records, and perform such other duties as may be assigned to him by the board.

F. MODERATOR. The moderator shall preside at the district meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed. He may prescribe rules of procedure; but such rules may be altered by the district. He may administer oaths to district officers in either state.

G. CLERK. The clerk shall keep a true record of all proceedings at each district meeting, shall certify its records, shall make an attested copy of any records of the district for any person upon request and tender of reasonable fees therefor, if so appointed, shall serve as secretary of the board of school directors, and shall perform such other duties as may be required by custom or law.

H. TREASURER. The treasurer shall have custody of all of the monies belonging to the district and shall pay out the same only upon the order of the interstate board. He shall keep a fair and accurate account of all sums received into and paid from the interstate district treasury, and at the close of each fiscal year he shall make a report to the interstate district, giving a particular account of all receipts and payments during the year. He shall furnish to the interstate directors, statements from his books and submit his books and vouchers to them and to the district auditors for examination whenever so requested. He shall make all returns called for by laws relating to school districts. Before entering on his duties, the treasurer shall give a bond with sufficient sureties and in such sum as the directors may require. The treasurer's term of office is from July 1 to the following June 30.

I. AUDITORS. At the organization meeting of the district, 3 auditors shall be chosen, one to serve for a term of one year, one to serve for a term of 2 years and one to serve for a term of 3 years. After the expiration of each original term, the successor shall be chosen for a 3 year term. At least one auditor shall be a resident of Maine, and one auditor shall be a resident of New Hampshire. An interstate district may vote to employ a certified public accountant to assist the auditors in the performance of their duties. The auditors shall carefully examine the accounts of the treasurer and the directors at the close of each fiscal year, and at such other times whenever necessary, and report to the district whether the same are correctly cast and properly vouched.

J. SUPERINTENDENT. The superintendent of schools shall be selected by a majority vote of the board of school directors of the interstate district with the approval of both commissioners.

K. VACANCIES. Any vacancy among the elected officers of the district shall be filled by the interstate board until the next annual meeting of the district or other election, when a successor shall be elected to serve out the remainder of the unexpired term, if any. Until all vacancies on the interstate board are filled, the remaining members shall have full power to act.

Article VI

Appropriation and Apportionment of Funds

A. BUDGET. Before each annual meeting, the interstate board shall prepare a report of expenditures for the preceding fiscal year, an estimate of expenditures for the current fiscal year, and a budget for the succeeding fiscal year.

B. APPROPRIATION. The interstate board of directors shall present the budget report at the annual meeting. The interstate district shall appropriate a sum of money for the support of its schools and for the discharge of its obligations for the ensuing fiscal year.

C. APPORTIONMENT OF APPROPRIATION. Subject to the provisions of article VII, the interstate board shall first apply against such appropriation any income to which the interstate district is entitled, and shall then apportion the balance among the member districts in accordance with one of the following formulas as determined by the articles of agreement as amended from time to time.

a. All of such balance to be apportioned on the basis of the ratio that the fair market value of the taxable property in each member district bears to that of the entire interstate district; or

b. All of such balance to be apportioned on the basis that the average daily resident membership for the preceding fiscal year of each member district bears to that of the average daily resident membership of the entire interstate school district; or

c. A formula based on any combination of the foregoing factors. The term "fair market value of taxable property" shall mean the last locally assessed valuation of a member district in New Hampshire, as last equalized by the New Hampshire commissioner of revenue administration.

The term "fair market value of taxable property" shall mean the equalized grand list of a Maine

member district, as determined by the Maine Bureau of Taxation.

Such assessed valuation and grand list may be further adjusted by elimination of certain types of taxable property from one or the other or otherwise, in accordance with the articles of agreement, in order that the fair market value of taxable property in each state shall be comparable.

"Average daily resident membership" of the interstate district in the first instance shall be the sum of the average daily resident membership of the member districts in the grades involved for the preceding fiscal year where no students were enrolled in the interstate district schools for such preceding fiscal year.

D. Share of New Hampshire Member District. The interstate board shall certify the share of a New Hampshire member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district. The interstate district shall not set up its own capital reserve funds; but a New Hampshire member district may set up a capital reserve fund in accordance with RSA 35, to be turned over to the interstate district in payment of the New Hampshire member district's share of any anticipated obligations.

E. Share of Maine Member District. The interstate board shall certify the share of a Maine member district of the total appropriation to the school board of each member district which shall add such sum to the amount appropriated by the member district itself for the ensuing year and raise such sum in the same manner as though the appropriation had been voted at a school district meeting of the member district.

Article VII
Borrowing

A. Interstate District Indebtedness. Indebtedness of an interstate district shall be a general obligation of the district and shall be a joint and several general obligation of each member district, except that such obligations of the district and its member districts shall not be deemed indebtedness of any member district for the purposes of determining its borrowing capacity under Maine or New Hampshire law. A member district which withdraws from an interstate district shall remain liable for indebtedness of the interstate district which is outstanding at the time of withdrawal and shall be responsible for paying its share of such indebtedness to the same extent as though it had not withdrawn.

B. Temporary Borrowing. The interstate board may authorize the borrowing of money by the interstate district (1) in anticipation of payments of operating and capital expenses by the member districts to the interstate district and (2) in anticipation of the issue of bonds or notes of interstate district which have been authorized for the purpose of financing capital projects. Such temporary borrowing shall be evidenced by interest bearing or discounted notes of the interstate district. The amount of notes issued in any fiscal year in anticipation of expense payments shall not exceed the amount of such payments received by the interstate district in the preceding fiscal year. Notes issued under this paragraph shall be payable within one year in the case of notes under clause (1) and 3 years in the case of notes under clause (2) from their respective dates, but the principal of and interest on notes issued for a shorter period may be renewed or paid from time to time by the issue of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same debt shall not exceed the maximum period permitted for the original loan.

C. Borrowing for Capital Projects. An interstate district may incur debt and issue its bonds or notes to finance capital projects. Such projects may consist of the acquisition or improvement of land and buildings for school purposes, the construction, reconstruction, alteration or enlargement of school buildings and related school facilities, the acquisition of equipment of a lasting character and the payment of judgments. No interstate district may authorize indebtedness in excess of 10 percent of the total fair market value of taxable property in its member districts as defined in article VI. The primary obligation of the interstate district to pay indebtedness of member districts shall not be considered indebtedness of the interstate district for the purpose of determining its borrowing capacity under this paragraph. Bonds or notes issued under this paragraph shall mature in equal or diminishing installments of principal payable at least annually commencing no later than 2 years and ending not later than 30 years after their dates.

D. Authorization. An interstate district shall authorize the incurring of debts to finance capital projects by a majority vote of the district passed at an annual or special district meeting. Such vote shall

be taken by secret ballot after full opportunity for debate, and any such vote shall be subject to reconsideration and further action by the district at the same meeting or at an adjourned session thereof.

E. Sale of Bonds and Notes. Bonds and notes which have been authorized under this article may be issued from time to time and shall be sold at not less than par and accrued interest at public or private sale by the chairman of the school board and by the treasurer. Interstate district bonds and notes shall be signed by the said officers, except that either one of the 2 required signatures may be a facsimile. Subject to this compact and the authorizing vote, they shall be in such form, bear such rates of interest and mature at such times as the said officers may determine. Bonds shall, but notes need not, bear the seal of the interstate district, or a facsimile of such seal. Any bonds or notes of the interstate district which are properly executed by the said officers shall be valid and binding according to their terms notwithstanding that before the delivery thereof such officers may have ceased to be officers of the interstate district.

F. Proceeds of Bonds. Any accrued interest received upon delivery of bonds or notes of an interstate district shall be applied to the payment of the first interest which becomes due thereon. The other proceeds of the sale of such bonds or notes, other than temporary notes, including any premiums, may be temporarily invested by the interstate district pending their expenditure; and such proceeds, including any income derived from the temporary investment of such proceeds, shall be used to pay the costs of issuing and marketing the bonds or notes and to meet the operating expenses or capital expenses in accordance with the purposes for which the bonds or notes were issued or, by proceedings taken in the manner required for the authorization of such debt, for other purposes for which such debt could be incurred. No purchaser of any bonds or notes of an interstate district shall be responsible in any way to see to the application of the proceeds thereof.

G. State Aid Programs. As used in this paragraph the term "initial aid" shall include New Hampshire and Maine financial assistance with respect to a capital project, or the means of financing a capital project, which is available in connection with construction costs of a capital project or which is available at the time indebtedness is incurred to finance the project. Without limiting the generality of the foregoing definition, initial aid shall specifically include a New Hampshire state guarantee under RSA 195–C with respect to bonds or notes and Maine construction aid under section 3457. As used in this paragraph the term "long-term aid" shall include New Hampshire and Maine financial assistance which is payable periodically in relation to capital costs incurred by an interstate district. Without limiting the generality of the foregoing definition, long-term aid shall specifically include New Hampshire school building aid under RSA 198 and Maine school building aid under section 3457. For the purpose of applying for, receiving and expending initial aid and long-term aid an interstate district shall be deemed a native school district by each state, subject to the following provisions. When an interstate district has appropriated money for a capital project, the amount appropriated shall be divided into a Maine share and a New Hampshire share in accordance with the capital expense apportionment formula in the articles of agreement as though the total amount appropriated for the project was a capital expense requiring apportionment in the year the appropriation is made. New Hampshire initial aid shall be available with respect to the amount of the New Hampshire share as though it were authorized indebtedness of a New Hampshire cooperative school district. In the case of a state guarantee of interstate district bonds or notes under RSA 195–C, the interstate district shall be eligible to apply for and receive an unconditional state guarantee with respect to an amount of its bonds or notes which does not exceed 50 percent of the amount of the New Hampshire share as determined above. Maine aid shall be available with respect to the amount of the Maine share as though it were funds voted by a Maine school district. Payments of Maine aid shall be made to the interstate district, and the amount of any borrowing authorized to meet the appropriation for the capital project shall be reduced accordingly. New Hampshire and Maine long-term aid shall be payable to the interstate district. The amounts of long-term aid in each year shall be based on the New Hampshire and Maine shares of the amount of indebtedness of the interstate district which is payable in that year and which has been apportioned in accordance with the capital expense apportionment formula in the articles of agreement. The New Hampshire aid shall be payable at the rate of 45 percent if there are 3 or less New Hampshire members in the interstate district, and otherwise it shall be payable as though the New Hampshire members were a New Hampshire cooperative school district. New Hampshire and Maine long-term aid shall be deducted from the total capital expenses for the fiscal year in which the long-term aid is payable, and the balance of such expenses shall be apportioned among the member districts. Not-

withstanding the foregoing provisions, New Hampshire and Maine may at any time change their state school aid programs that are in existence when this compact takes effect and may establish new programs, and any legislation for these purposes may specify how such programs shall be applied with respect to interstate districts.

H. TAX EXEMPTION. Bonds and notes of an interstate school district shall be exempt from local property taxes in both states, and the interest or discount thereon and any profit derived from the disposition thereof shall be exempt from personal income taxes in both states.

Article VIII

Taking Over of Existing Property

A. POWER TO ACQUIRE PROPERTY OF MEMBER DISTRICT. The articles of agreement, or an amendment thereof, may provide for the acquisition by an interstate district from a member district of all or a part of its existing plant and equipment.

B. VALUATION. The articles of agreement, or the amendment, shall provide for the determination of the value of the property to be acquired in one or more of the following ways:

a. A valuation set forth in the articles of agreement or the amendment.

b. By appraisal, in which case, one appraiser shall be appointed by each commissioner, and a third appraiser appointed by the first 2 appraisers.

C. REIMBURSEMENT TO MEMBER DISTRICT. The articles of agreement shall specify the method by which the member district shall be reimbursed by the interstate district for the property taken over, in one or more of the following ways:

a. By one lump sum, appropriated, allocated and raised by the interstate district in the same manner as an appropriation for operating expenses.

b. In installments over a period of not more than 20 years, each of which is appropriated, allocated and raised by the interstate district in the same manner as an appropriation for operating expenses.

c. By an agreement to assume or reimburse the member district for all principal and interest on any outstanding indebtedness originally incurred by the member district to finance the acquisition and improvement of the property, each such installment to be appropriated, allocated and raised by the interstate district in the same manner as an appropriation for operating expenses.

The member district transferring the property shall have the same obligation to pay to the interstate district its share of the cost of such acquisition, but may offset its right to reimbursement.

Article IX

Amendments to Articles of Agreement

A. Amendments to the articles of agreement may be adopted in the same manner provided for the adoption of the original articles of agreement, except that:

a. Unless the amendment calls for the addition of a new member district, the functions of the planning committee shall be carried out by the interstate district board of directors.

b. If the amendment proposes the addition of a new member district, the planning committee shall consist of all the members of the interstate board and all of the members of the school board of the proposed new member district or districts. In such case the amendment shall be submitted to the voters at an interstate district meeting, at which an affirmative vote of ⅔ of those present and voting shall be required. The articles of agreement together with the proposed amendment shall be submitted to the voters of the proposed new member district at a meeting thereof, at which a simple majority of those present and voting shall be required.

c. In all cases an amendment may be adopted on the part of an interstate district upon the affirmative vote of voters thereof at a meeting voting as one body. Except where the amendment proposes the admission of a new member district, a simple majority of those present and voting shall be required for adoption.

d. No amendment to the articles of agreement may impair the rights of bond or note holders or the power of the interstate district to procure the means for their payment.

Article X

Applicability of New Hampshire Laws

A. GENERAL SCHOOL LAWS. With respect to the operation and maintenance of any school of the district located in New Hampshire, New Hampshire law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the interstate board and the powers and duties of the school administrative unit superintendent shall be

exercised and discharged by the interstate district superintendent.

B. NEW HAMPSHIRE STATE AID. A New Hampshire school district shall be entitled to receive an amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the New Hampshire member district, and as though the New Hampshire member district pupils attending the interstate school were attending a New Hampshire cooperative school district's school. The state aid shall be paid to the New Hampshire member school district to reduce the sums which would otherwise be required to be raised by taxation within the member district.

C. CONTINUED EXISTENCE OF NEW HAMPSHIRE MEMBER SCHOOL DISTRICT. A New Hampshire member school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school district shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school district are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The New Hampshire member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor, unless the indebtedness is specifically assumed in accordance with the articles of agreement. Any trust funds or capital reserve funds and any property not taken over by the interstate district shall be retained by the New Hampshire member district and held or disposed of according to law. If all of the schools in a member district are incorporated into an interstate district, then no annual meeting of the member district shall be required unless the members of the interstate board from the member district shall determine that there is occasion for such an annual meeting.

D. SUIT AND SERVICE OF PROCESS IN NEW HAMPSHIRE. The courts of New Hampshire shall have the same jurisdiction over the district as though a New Hampshire member district were a party instead of the interstate district. The service necessary to institute suit in New Hampshire shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in New Hampshire, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. EMPLOYMENT. Each employee of an interstate district assigned to a school located in New Hampshire shall be considered an employee of a New Hampshire school district for the purpose of the New Hampshire teachers retirement system, the New Hampshire state employees retirement system, the New Hampshire workers' compensation law and any other law relating to the regulation of employment or the provision of benefits for employees of New Hampshire school districts except as follows:

a. A teacher in a New Hampshire member district may elect to remain a member of the New Hampshire retirement system, even though assigned to teach in an interstate school in Maine.

b. Employees of interstate districts designated as professional or instructional staff members, as defined in article I, may elect to participate in the teachers retirement system of either the State of New Hampshire or the State of Maine but in no case will they participate in both retirement systems simultaneously.

c. It shall be the duty of the superintendent in an interstate district to:

(1) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement systems;

(2) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed;

(3) provide the commissioners of education in New Hampshire and in Maine with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

Article XI
Applicability of Maine Laws

A. GENERAL SCHOOL LAWS. With respect to the operation and maintenance of any school of the district located in Maine, the provisions of Maine law shall apply except as otherwise provided in this compact and except that the powers and duties of the school board shall be exercised and discharged by the

interstate board and the powers and duties of the superintendent shall be exercised and discharged by the interstate district superintendent.

B. MAINE STATE AID. A Maine school district shall be entitled to receive such amount of state aid for operating expenditures as though its share of the interstate district's expenses were the expenses of the Maine member district, and as though the Maine member district pupils attending the interstate schools were attending a Maine unit. Such state aid shall be paid to the Maine member school district to reduce the sums which would otherwise be required to be raised by taxation within the member district.

C. CONTINUED EXISTENCE OF MAINE SCHOOL DISTRICTS. A Maine school district shall continue in existence, and shall have all of the powers and be subject to all of the obligations imposed by law and not herein delegated to the interstate district. If the interstate district incorporates only a part of the schools in the member school district, then the school board of the member school districts shall continue in existence and it shall have all of the powers and be subject to all of the obligations imposed by law on it and not herein delegated to the district. However, if all of the schools in the member school district are incorporated into the interstate school district, then the member or members of the interstate board representing the member district shall have all of the powers and be subject to all of the obligations imposed by law on the members of a school board for the member district and not herein delegated to the interstate district. The Maine member school district shall remain liable on its existing indebtedness; and the interstate school district shall not become liable therefor. Any trust funds and any property not taken over shall be retained by the Maine member school district and held or disposed of according to law.

D. SUIT AND SERVICE OF PROCESS IN MAINE. The courts of Maine shall have the same jurisdiction over the districts as though a Maine member district were a party instead of the interstate district. The service necessary to institute suit in Maine shall be made on the district by leaving a copy of the writ or other proceedings in hand or at the last and usual place of abode of one of the directors who resides in Maine, and by mailing a like copy to the clerk and to one other director by certified mail with return receipt requested.

E. EMPLOYMENT. Each employee of an interstate district assigned to a school located in Maine shall be considered an employee of a Maine school district for the purpose of the state retirement system, the Maine workers' compensation law, and any other laws relating to the regulation of employment or the provision of benefits for employees of Maine school districts except as follows:

a. A teacher in a Maine member district may elect to remain a member of the state retirement system of Maine, even though assigned to teach in an interstate school in New Hampshire.

b. Employees of interstate districts designated as professional or instructional staff members, as defined in article I, may elect to participate in the state retirement system of the State of Maine or the teachers retirement system of the State of New Hampshire but in no case will they participate in both retirement systems simultaneously.

c. It shall be the duty of the superintendent in an interstate district to:

(1) advise teachers and other professional staff employees contracted for the district about the terms of the contract and the policies and procedures of the retirement system;

(2) see that each teacher or professional staff employee selects the retirement system of his choice at the time his contract is signed;

(3) provide the commissioners of education in New Hampshire and in Maine with the names and other pertinent information regarding each staff member under his jurisdiction so that each may be enrolled in the retirement system of his preference.

Article XII

Miscellaneous Provisions

A. STUDIES. Insofar as practicable, the studies required by the laws of both states shall be offered in an interstate school district.

B. TEXTBOOKS. Textbooks and scholar's supplies shall be provided at the expense of the interstate district for pupils attending its schools.

C. TRANSPORTATION. The allocation of the cost of transportation in an interstate school district, as between the interstate district and the member districts, shall be determined by the articles of agreement.

D. LOCATION OF SCHOOLHOUSES. In any case where a new schoolhouse or other school facility is to be constructed or acquired, the interstate board shall first determine whether it shall be located in New Hampshire or in Maine. If it is to be located in New Hampshire, RSA 199, relating to schoolhouses, shall

apply. If it is to be located in Maine, the Maine law relating to schoolhouses shall apply.

E. FISCAL YEAR. The fiscal year of each interstate district shall begin on July 1 of each year and end on June 30 of the following year.

F. IMMUNITY FROM TORT LIABILITY. Notwithstanding the fact that an interstate district may derive income from operating profit, fees, rentals, and other services, it shall be immune from suit and from liability for injury to persons or property and for other torts caused by it or its agents, servants or independent contractors, except insofar as it may have liability under RSA 281–A, relating to workers' compensation or may have undertaken such liability under RSA 507–B relating to the procurement of liability insurance by a governmental agency and except insofar as it may have undertaken such liability under Maine laws relating to workers' compensation or Maine laws relating to the procurement of liability insurance by a governmental agency.

G. ADMINISTRATIVE AGREEMENT BETWEEN COMMISSIONERS OF EDUCATION. The commissioners of education of New Hampshire and Maine may enter into one or more administrative agreements prescribing the relationship between the interstate districts, member districts, and each of the 2 state departments of education, in which any conflicts between the 2 states in procedure, regulations, and administrative practices may be resolved.

H. AMENDMENTS. Neither state shall amend its legislation or any agreement authorized thereby without the consent of the other in such manner as to substantially adversely affect the rights of the other state or its people hereunder, or as to substantially impair the rights of the holders of any bonds or notes or other evidences of indebtedness then outstanding or the rights of an interstate school district to procure the means for payment thereof. Subject to the foregoing, any reference herein to other statutes of either state shall refer to such statute as it may be amended or revised from time to time.

I. SEPARABILITY. If any of the provisions of this compact, or legislation enabling the same, shall be held invalid or unconstitutional in relation to any of the applications thereof, such invalidity or unconstitutionality shall not affect other applications thereof or other provisions thereof; and to this end the provisions of this compact are declared to be severable.

J. INCONSISTENCY OF LANGUAGE. The validity of this compact shall not be affected by any insubstantial differences in its form or language as adopted by the 2 states.

Article XIII
Effective Date

A. This compact shall become effective when a bill of the Maine general assembly which incorporates the compact becomes a law in Maine and when it is approved by the United States Congress.

Source. 1969, 250:1. 1973, 544:8. 1994, 158:16. 2003, 150:9, eff. Jan. 1, 2004.

CHAPTER 200–G
COMPACT FOR EDUCATION

200–G:1 Compact Ratified. The general court of this state hereby ratifies the following compact to become effective at such time as the legislative bodies of at least 10 eligible party jurisdictions also ratify it.

Compact for Education Preamble

WHEREAS, the proper education of all citizens is one of the most important responsibilities of the states to preserve a free and open society in the United States; and,

WHEREAS, the increasing demands of our whole national life for improving and expanding educational services require a broad exchange of research data and information concerning the problems and practices of education; and,

WHEREAS, there is a vital need for strengthening the voices of the states in the formulation of alternative nationwide educational policies,

The states affirm the need for close and continuing consultation among our several states on all matters of education, and do hereby establish this compact for education.

Article I. Purpose and Policy

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout

the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

Article II. State Defined

As used in this compact, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission

A. The Educational Commission of the States, hereinafter called "the commission", is hereby established. The commission shall consist of 7 members representing each party state. One of such members shall be the governor; 2 shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and 4 shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, 6 members shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed 10 nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III, J.

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the

performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of 2 or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph F of this Article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this Article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

Article V. Cooperation With Federal Government

A. If the laws of the United States specifically so provide, or if administrative provisions made therefor within the federal government, the United States may be represented on the commission by not to exceed 10 representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 30 members which, subject to the provisions of this compact and consistent with the policies of the com-

mission, shall be constituted and function as provided in the bylaws of the commission. One-third of the voting membership of the steering committee shall consist of governors, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of 2 years, except that members elected to the first steering committee of the commission shall be elected as follows: 15 for one year and 15 for 2 years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than 2 terms as a member of the steering committee: provided that service for a partial term of one year or less shall not be counted toward the 2 term limitation.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to 2 or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance

A. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III, G of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III, G thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties Entry Into and Withdrawal

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor", as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same; provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an

equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this Article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matter.

Source. 1970, 25:1, eff. July 1, 1970.

200–G:2 Members of the Educational Commission of the States. Of the members of the educational commission from this state, the speaker of the house of representatives shall appoint one such member from the membership of the house and the president of the senate shall appoint one such member from the membership of the senate. Said legislative members of the commission shall serve for a term of 2 years each.

Source. 1970, 25:1, eff. July 1, 1970.

200–G:3 Copies to be Sent. The secretary of state shall send authenticated copies of this chapter to the governor of each eligible jurisdiction.

Source. 1970, 25:1, eff. July 1, 1970.

CHAPTER 200–H

MEDICAL EDUCATION LOAN PROGRAM

[Repealed 1979, 353:1, eff. July 1, 1979.]

History

Former RSA ch. 200–H, comprising 200–H:1 to 200–H:6, which was derived from 1973, 168:1; 1977, 600:2, 19; 1979, 302:2 and 434:19, related to the medical education loan program.

CHAPTER 200–I

VETERINARY/MEDICAL EDUCATION LOAN PROGRAM

[Repealed 2006, 28:10, II, eff. July 1, 2006.]

History

Former RSA 200–I:1, which was derived from 1979, 302:1, related to tuition.

Former RSA 200–I:2, which was derived from 1979, 302:1, related to repayment of financial assistance and interest rate for loan.

Former RSA 200–I:3, which was derived from 1979, 302:1, related to enforcement of collection of accounts due.

Former RSA 200–I:4, which was derived from 1979, 302:1, 353:11; 1981, 235:2; and 1985, 399:3, I, related to repayment note and interest on loan for each recipient of financial assistance.

Former RSA 200–I:5, which was derived from 1979, 302:1; 1985, 399:3, I; and 2003, 232:6, related to forgiveness, extension and reduction of medical education indebtedness.

CHAPTER 200–J

VETERINARY/MEDICAL/OPTOMETRIC EDUCATION PROGRAM

[Repealed 2011, 224:125, X, eff. July 1, 2011.]

History

Former RSA 200–J:1, which was derived from 1979, 353:2 and 2006, 28:7, related to the purpose of the veterinary, medical, and optometric education program.

Former RSA 200–J:2, which was derived from 1979, 353:2 and 2003, 232:2–5, related to the governor and authorized agreements.

Former RSA 200–J:3, which was derived from 1979, 353:2 and 1981, 235:1, related to the repayment requirement for receiving assistance under the program.

Former RSA 200–J:4, which was derived from 1979, 353:2, related to a state obligation regarding a capitation fee.

Former RSA 200–J:5, which was derived from 2008, 112:1, related to the establishment of the large animal veterinarian net tuition repayment program.

Former RSA 200–J:6, which was derived from 2008, 112:1, related to the application for a net tuition repayment program.

Former RSA 200–J:7, which was derived from 2008, 112:1, related to the establishment of the large animal veterinarian net tuition repayment fund.

Former RSA 200–J:8, which was derived from 2008, 112:1, related to administration and rulemaking.

CHAPTER 200–K

OPTOMETRIC EDUCATION PROGRAM

[Repealed 1981, 235:3, eff. Aug. 10, 1981.]

History

Former RSA 200–K, which was derived from 1979, 434:98, related to optometric education agreement with the New England College of Optometry. See now RSA 200–J.

CHAPTER 200–L

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL (NORTHEASTERN STATES)

200–L:1 Administration Authorized. The commissioner of education shall execute all documents and perform all other acts necessary to enter into and carry out the provisions of the interstate agreement on qualification of educational personnel as provided in this chapter.

Source. 1990, 42:1, eff. May 22, 1990.

200–L:2 Agreement. This contract is entered into and shall be in force in accordance with its terms and is between and among the following states party to the "Interstate Agreement on Qualification of Educational Personnel" which have subscribed hereto as evidenced by an attached signature page properly executed by the appropriate officials of the states involved: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. In each instance, such a signature page shall specifically identify this contract in such manner as to make clear that the signatures thereon represent and constitute execution of this contract. The states entering into this contract hereby covenant and agree as follows:

Article 1. Consideration and Authority. The consideration for this contract is the mutual implementation of the policy and purpose set forth in the interstate agreement on qualification of educational personnel and the benefits flowing therefrom as declared in the said interstate agreement. The authority for the making of this contract is the interstate agreement on qualification of educational personnel, as enacted by each of the contracting states, and the applicable statutes of each such state in implementation of the agreement.

Article 2. Incorporation of Interstate Agreement and Definitions.

(a) This contract is pursuant to and in implementation of the interstate agreement on qualification of educational personnel. All provisions of that agreement shall govern, to the extent that they apply to the subject matter of this contract, whether or not such provisions are specifically set forth or referred to herein.

(b) As used in this contract:

1. "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his/her state, contracts pursuant to the interstate agreement.

2. "State" means the states of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

3. "School support professional" means any person other than a teacher or school administrator, as defined below, on either the state or local level who is required by law to hold a certificate/license based on the minimum of a baccalaureate degree in order to be employed in a professional capacity in a school system.

4. "School administrator" means a school professional required by law to hold a certificate/license whose primary duties involve the development, supervision, or internal management of a school, school system or school program rather than the furnishing of direct instructional or other services to pupils.

5. "Teacher" means a school professional required by law to hold a certificate/license whose primary function is to provide instruction to students at the preschool or kindergarten level, or in any one or more grades from grade 1 to grade 12, inclusive.

Article 3. Interstate Acceptance; Northeast Regional Credential. Any teacher, school administrator, or school support professional who holds an initial or advanced certificate/license issued by a state party to this contract, which certificate/license is still in force and which has been classified as comparable pursuant to Article 4 of this contract, shall be eligible for a northeast regional credential. The northeast regional credential shall be issued upon request by the state which has issued the state certificate/license and in accordance with the administrative procedures and payment of fee established by unanimous agreement of the designated state officials. Such credential will allow the individual to perform those professional duties allowed by the comparable state certificate/license in any school system within any state which is a party to this contract. The northeast regional credential shall be valid for 24 months from the date of issuance and shall be non-renewable. Each state may designate a period of time, not to exceed 24 months, during which an individual may be employed in that state while possessing a northeast regional credential. No northeast regional credential issued pursuant to the terms of this contract shall be re-

voked or otherwise impaired because the contract has expired or been terminated.

Article 4. Comparability of Certificates/Licenses. The designated state officials shall determine by unanimous agreement which certificates/licenses are comparable for the purposes of this contract. Such determination of comparability is set forth in an appendix which is attached to and made a part of this contract. The designated state officials or their representatives shall meet at least annually to consider whether the list of comparable certificates/licenses should be revised. Any revisions shall be made by amendment to this contract as set forth in Article 7.

Article 5. Suspension and Revocation. Revocation or suspension of an individual's certificate/license imposed by the issuing state shall automatically result in the imposition of the same penalty with respect to the northeast regional credential held by that individual. The state in which the individual is employed under the northeast regional credential may revoke or suspend the northeast regional credential on any ground which would be sufficient for revocation or suspension of a certificate/license initially granted by that state and in accordance with its procedural due process.

Article 6. Construction and Severability. This contract shall be liberally construed so as to effectuate the purposes thereof. The provisions of this contract shall be severable and if any phrase, clause, sentence, or provision of this contract is declared to be contrary to the constitution of any of the party states or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this contract shall be held contrary to the constitution of any state participating therein, the contract shall remain in full force and effect as to the state affected as to all severable matters.

Article 7. Amendment of Contract. In addition to those responsibilities in Article 4, the designated state officials or their representatives may evaluate the effectiveness of the northeast regional credential and may recommend amendments to this contract. Any provisions of this contract may be amended upon unanimous agreement of the designated state officials.

Article 8. Term. This contract shall be for a term to commence on April 1, 1990, and shall terminate on March 31, 1995. It may be renewed for successive periods of 5 years. Withdrawal, except withdrawal by failure to renew, may be on one year's written notice to the designated state officials and central state recordkeeping agencies of the other party states.

Source. 1990, 42:1, eff. May 22, 1990.

200–L:3 Designated State Official. The "designated state official" as provided in Article 2 for this state shall be the commissioner of education.

Source. 1990, 42:1, eff. May 22, 1990.

CHAPTER 200–M

CART PROVIDER AND SIGN LANGUAGE INTERPRETER NET TUITION REPAYMENT PROGRAM

200–M:1 Definitions. In this chapter:

I. "CART provider" means a person who provides computer-aided, realtime translation of spoken language into English text by using a stenotype machine, notebook computer, and real time software to display the spoken text on a computer monitor, or other display device for individuals who are deaf or hard of hearing.

II. "Net tuition" means tuition costs for postsecondary school education that was directed toward the completion of a degree or certificate in judicial reporting, broadcast captioning, real time transcription, or sign language interpretation, or any other degree or certificate that the department of education, division of higher education deems acceptable for purposes of CART provider and sign language interpreter net tuition repayment.

III. "Sign language interpreter" means a person who provides American Sign-Language based interpreting, which is the process of conveying information between American Sign Language and English.

Source. 2009, 207:1, eff. July 15, 2009. 2011, 224:137, eff. July 1, 2011.

200–M:2 CART Provider and Sign Language Interpreter Net Tuition Repayment Program Established. The department of education, division of higher education shall administer a program for the promotion, acquisition, and retention of CART providers and sign language interpreters in the state.

Source. 2009, 207:1, eff. July 15, 2009. 2011, 224:138, eff. July 1, 2011.

200–M:3 Application; Repayment. An individual who has completed eligible CART or sign language interpreter training in accordance with rules adopted pursuant to RSA 200–M:5, including internships and residencies, and agrees to work as a CART provider or a sign language interpreter in this state, may apply to the department of education, division of higher education for repayment under the CART provider and sign language interpreter net tuition repayment program and become eligible to be reimbursed up to 100 percent of his or her qualifying tuition not to exceed the cost of 4 years of in-state tuition at the university of New Hampshire, during a 5-year period of working as a CART provider or sign language interpreter. A 10 percent net tuition repayment shall be made upon completion of the first year of employment in this state, with an additional 10 percent made after the second year of work, an additional 20 percent after the third year of work, an additional 30 percent after the fourth year of work, and an additional 30 percent after the fifth year of work.

Source. 2009, 207:1, eff. July 15, 2009. 2011, 224:138, eff. July 1, 2011.

200–M:4 Fund Established.

[Repealed 2017, 195:17, eff. Sept. 3, 2017.]

History

Former RSA 200–M:4, which was derived from 2009, 207:1 and 2011, 224:139, related to establishment of the CART provider and sign language interpreter net tuition repayment fund.

200–M:5 Administration; Rulemaking. The department of education, division of higher education shall adopt rules, pursuant to RSA 541–A, relative to procedures, eligibility, and qualifications for applicants, qualifying educational costs, criteria for terms of service by a CART provider and/or sign language interpreter, procedures for repayment of net tuition costs, and the administration of the program by the department of education, division of higher education. The commissioner of the department of education shall annually report to the general court on the effectiveness of this program.

Source. 2009, 207:1, eff. July 15, 2009. 2011, 224:140, eff. July 1, 2011.

CHAPTER 200–N

EPINEPHRINE ADMINISTRATION IN POSTSECONDARY EDUCATIONAL INSTITUTIONS AND INDEPENDENT SCHOOLS

200–N:1 Definitions. In this chapter:

I. "Anaphylaxis" means a rapidly progressing, life-threatening allergic reaction that can occur following exposure to certain allergens, most commonly, but not limited to, foods, insect stings, medications, and latex. Signs and symptoms of anaphylaxis include, but are not limited to, difficulty breathing, coughing, throat clearing, altered heart rhythms, hives, redness or blotches on the skin, nausea and vomiting, low blood pressure, shock, and loss of consciousness. Failure to treat these symptoms promptly, with epinephrine, may result in serious consequences up to and including death.

II. "Independent school" means a school which is governed by a board of trustees or other officials who are not publicly elected. An independent school shall not include a chartered public school established pursuant to RSA 194–B, but shall include a private school as provided in Ed 401.01(d).

III. "Licensed campus medical professional" means any of the following individuals who are employed by or have contracted with a postsecondary educational institution or an independent school and are designated by the postsecondary educational institution or independent school to serve in such a capacity:

(a) A physician licensed under RSA 329.

(b) A physician assistant licensed under RSA 328–D.

(c) An advanced practice registered nurse or registered nurse who is licensed under RSA 326–B.

IV. "Member of the campus community" means an individual who is a student, faculty member, or staff member of a postsecondary educational institution or an independent school.

V. "Trained designee" means a member of the campus community trained by a licensed campus medical professional in the emergency administration of auto-injectable epinephrine.

Source. 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

200–N:2 Emergency Administration of Epinephrine; Policies and Guidelines.

I. A postsecondary educational institution or independent school accredited to operate in this state may develop a policy in accordance with this chapter and guidelines issued under RSA 200–N:4 for the emergency administration of auto-injectable epinephrine to a member of the campus community for anaphylaxis when a licensed campus medical professional is not available.

II. Such policy shall include:

(a) Permission for a trained designee to do the following:

(1) Administer auto-injectable epinephrine to a member of the campus community for anaphylaxis when a licensed campus medical professional is unavailable.

(2) When responsible for the safety of at least one member of the campus community, carry in a secure but accessible location a supply of auto-injectable epinephrine that is prescribed under a standing protocol from a health care provider who is licensed in New Hampshire and whose scope of practice includes the prescribing of medication.

(b) Provisions that a licensed campus medical professional has responsibility for training designees in the following:

(1) The administration of auto-injectable epinephrine.

(2) Identification of an anaphylactic reaction and indications for when to use epinephrine.

III. Each postsecondary educational institution and independent school that develops a policy under this chapter shall designate a licensed campus medical professional.

IV. A licensed campus medical professional may:

(a) Establish and administer a standardized training protocol for the emergency administration of epinephrine by trained designees.

(b) Ensure that trained designees have satisfactorily completed the training protocol.

(c) Obtain a supply of auto-injectable epinephrine under a standing protocol from a physician licensed under RSA 329.

(d) Control distribution to trained designees of auto-injectable epinephrine.

Source. 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

200–N:3 Requirements for Trained Designees. An individual shall comply with the following requirements in order to act as a trained designee:

I. Be at least 18 years of age.

II. Have or reasonably expect to have, responsibility for at least one other member of the campus community as a result of the individual's employment.

III. Have satisfactorily completed the standardized training protocol established and administered by a licensed campus medical professional in accordance with guidelines developed under RSA 200–N:4.

Source. 2015, 45:1, eff. July 17, 2015.

200–N:4 Department of Health and Human Services Guidelines. The commissioner of the department of health and human services shall establish guidelines for the development of a policy by a postsecondary educational institution or an independent school for the emergency administration of epinephrine to a member of the campus community for anaphylaxis when a licensed campus medical professional is not available. The guidelines shall address issues including, but not limited to, the responsibilities of the postsecondary educational institution or independent school, the licensed campus medical professional, and the trained designee for the emergency administration of epinephrine. The commissioner shall disseminate the guidelines to the president of each postsecondary educational institution or head of an independent school.

Source. 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

200–N:5 Storage of Epinephrine.

I. A postsecondary educational institution or independent school may fill a prescription for auto-injectable epinephrine and store the auto-injectable epinephrine on the campus if a licensed health care provider whose scope of practice includes the prescribing of medication writes the prescription for auto-injectable epinephrine for the postsecondary educational institution or independent school.

II. The postsecondary educational institution or independent school shall store the auto-injectable epinephrine in an unlocked safe location in which only postsecondary educational institution or independent school personnel have access.

III. A health care provider who is licensed in this state and whose scope of practice includes the prescribing of medication may write a prescription, drug order, or protocol for auto-injectable epinephrine for the postsecondary educational institution or independent school.

IV. A pharmacist licensed under RSA 318 may dispense a valid prescription, drug order, or protocol for auto-injectable epinephrine issued in the name of a postsecondary educational institution or an independent school.

Source. 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

200–N:6 Immunity From Civil Liability.

I. A licensed campus medical professional who acts in accordance with this chapter shall not be liable for civil damages for any act or omission committed in accordance with this chapter unless the act or omission constitutes gross negligence or willful misconduct.

II. A trained designee who administers auto-injectable epinephrine in accordance with this chapter shall not be liable for civil damages resulting from the administration of auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

III. A licensed health care provider who writes a prescription, drug order, or protocol under this chapter is not liable for civil damages resulting from the administration of auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

IV. A licensed pharmacy, whether with a physical presence or doing business though mail order, that fulfills a prescription, drug order, or protocol under this chapter is not liable for civil damages resulting from the administration of auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

Source. 2015, 45:1, eff. July 17, 2015.

200–N:7 Applicability. Nothing in this chapter shall be construed to:

I. Permit a trained designee to perform the duties or fill the position of a licensed campus medical professional.

II. Prohibit the administration of a pre-filled auto-injector of epinephrine by a person acting under a lawful prescription.

III. Prevent a licensed health care provider from acting within the individual's scope of practice in administering auto-injectable epinephrine.

IV. Establish a standard of care under which a postsecondary educational institution or an independent school would have a duty to employ or contract with a licensed campus medical professional or to establish guidelines for the emergency administration of epinephrine. Except as set forth in RSA 200–N:6, a postsecondary educational institution or an independent school shall not be held liable for any act or omission related to the availability or nonavailability of epinephrine for emergency administration on campus.

Source. 2015, 45:1, eff. July 17, 2015. 2016, 42:1, eff. July 2, 2016.

TITLE XVI

LIBRARIES

CHAPTER 201–D

STATEWIDE LIBRARY DEVELOPMENT SYSTEM

201–D:11 Library User Records; Confidentiality.

I. Library records which contain the names or other personal identifying information regarding the users of public or other than public libraries shall be confidential and shall not be disclosed except as provided in paragraph II. Such records include, but are not limited to, library, information system, and archival records related to the circulation and use of library materials or services, including records of materials that have been viewed or stored in electronic form.

II. Records described in paragraph I may be disclosed to the extent necessary for the proper operation of such libraries and shall be disclosed upon request by or consent of the user or pursuant to subpoena, court order, or where otherwise required by statute.

III. Nothing in this section shall be construed to prohibit any library from releasing statistical information and other data regarding the circulation or use of library materials provided, however, that the identity of the users of such library materials shall be considered confidential and shall not be disclosed to the general public except as provided in paragraph II.

Source. 1989, 184:3, eff. July 21, 1989. 2009, 273:1, eff. July 29, 2009.

CHAPTER 202–B

NEW HAMPSHIRE STATE GOVERNMENT INFORMATION DISSEMINATION AND ACCESS ACT

202–B:1 Policy Statement; Short Title. The legislature finds that providing citizens with access to public documents will allow increased citizen involvement in state policies and empower citizens to participate in state policy decision making. To this end, the legislature hereby declares that a system of dissemination and access to state government information be administered by the state library. This chapter may be referred to as the "New Hampshire State Government Information Dissemination and Access Act."

Source. 2001, 281:4, eff. Sept. 14, 2001.

202–B:2 Definitions. In this chapter:

I. "Component of state government" means any state government department, independent regulatory agency, state government corporation, state controlled corporation, or other establishment in the executive, legislative, or judicial branch.

II. "Dissemination" means the act of distributing tangible state government information products to program libraries, or the act of making state government information products accessible to program libraries and the general public via a state government electronic information service.

III. "Program library" means a library designated under the provisions of this chapter which maintains tangible state government information products for use by the general public, offers professional assistance in locating and using state government information, and provides local capability for the general public to access state government electronic information services. These libraries shall be known as "New Hampshire state government information access libraries."

IV. "State government electronic information service" means the system or method by which a component of state government or its authorized agent disseminates state government information products to the public via a telecommunications network or successor technology.

V. "State government information" means that information, regardless of form or format, which is created or compiled by employees of the judicial, legislative, and executive branches of government, or at state expense, or as required by law; except that information which is required for official use only, is for strictly administrative or operational purposes having no public interest or educational value or otherwise excluded by state law.

VI. "State government information product" means a state publication or other discrete compila-

tion of state government information of general public interest, either conveyed in a tangible physical format including electronic media, or disseminated via a state government electronic information service.

VII. "Tangible state government information product" means any state information product that can be distributed to program libraries in a physical format.

Source. 2001, 281:4, eff. Sept. 14, 2001.

202–B:3 State Government Information Access Libraries Designated. The state librarian is authorized to designate no more than 25 public and academic libraries as state government information access libraries. In designating program libraries, the state librarian shall take into account geographic representation, population served, and capability of the library to carry out the program.

Source. 2001, 281:4, eff. Sept. 14, 2001.

202–B:4 Copies of State Government Information Products.

I. Each agency component of state government shall produce 25 copies of its tangible state government information products for deposit with the state librarian. The state librarian shall make tangible products available through distribution to program libraries and shall ensure program libraries and general public access to state information products available via state electronic information services as soon as practicable.

II. Each agency component of state government shall provide the state librarian with access to all state government electronic information services falling within the scope of this section.

III. The state library shall provide cataloging and locator services that shall assist program libraries and the general public in accessing all government information products, regardless of form or format.

IV. All government information products which are required by law to be deposited with the state library shall be deposited without any cost or charge to the state library.

Source. 2001, 281:4, eff. Sept. 14, 2001.

202–B:5 Distribution Not Required. The state librarian shall not distribute copies of:

I. The state reporter and reports provided under RSA 505.

II. Intra-office or inter-office publications and forms.

Source. 2001, 281:4, eff. Sept. 14, 2001.

202–B:6 Duties of Program Libraries. Program libraries shall make government information products received or accessed through the program available for the free use of the general public. They shall organize the tangible information products in an acceptable fashion.

Source. 2001, 281:4, eff. Sept. 14, 2001.

202–B:7 Preservation. The state librarian shall coordinate with each component of state government, the program libraries, and the state archivist to establish a system whereby state government information products available via state government electronic information services shall be maintained permanently for program library and general public access.

Source. 2001, 281:4, eff. Sept. 14, 2001.

202–B:8 Planning.

I. The state librarian shall, in cooperation with all branches and agencies of state government, develop and publish annually a plan to increase the quality and quantity of state government information available in electronic format incrementally beginning with information that is most used and readily available. A copy of the plan shall be delivered to the governor, president of the senate, speaker of the house, and the chief justice.

II. All components of state government within the executive branch shall cooperate with the state librarian providing public information, access to public information and assistance as may be requested for achieving the purposes of this chapter. All other components of state government may cooperate with the state librarian in providing public information, access to public information and assistance as may be requested.

Source. 2001, 281:4, eff. Sept. 14, 2001.

TITLE XIX–A

FORESTRY

CHAPTER 227–H

PUBLIC FOREST LANDS: MANAGEMENT, ACQUISITION, AND LOST TAXES

Expenditures of Funds Received From the United States; Federal Lands

227–H:20 Distribution. All sums received by this state from the United States, on account of the national forest in this state established under the provision of the Weeks law, so called, being an act of Congress approved March 1, 1911, and amendments thereto, shall be distributed as provided in this subdivision.

Source. 1995, 299:1, eff. Jan. 1, 1996.

227–H:21 Apportionment. The funds shall first be apportioned by the department of education among the several organized towns, unincorporated towns, and unorganized places in which such national forest is or may be situated, in proportion to the area of such national forest in each, as determined by the forest service of the United States Department of Agriculture.

Source. 1995, 299:1. 1999, 200:1, eff. Sept. 4, 1999.

227–H:22 Use of Funds by Organized Towns. The several sums so apportioned to each organized town shall be paid over by the department of education, within 90 days after receipt, to the treasurer of the school district in the town, or, if there is no school district in the town, to the treasurer of the school district of which the town is a member and shall be expended for the benefit of the public schools in the organized town, in addition to the sums required by law to be raised for such purposes, in such manner as may be determined by appropriations duly made by school district meetings.

Source. 1995, 137:7; 299:1. 1999, 200:2, eff. Sept. 4, 1999.

227–H:23 Use of Funds by Unincorporated Towns and Unorganized Places. All sums so apportioned to unincorporated towns and unorganized places shall be expended for the benefit of public schools in the counties in which such places are located, in such manner as the appropriate county legislative delegation shall prescribe giving due consideration to the expenditure of a portion of such sum as part payment towards the costs of the education of any children residing in such unincorporated towns and unorganized places. Such payment shall be made by the department of education, within 90 days after receipt, directly to financially and politically independent school districts. If there are no students residing within the unincorporated towns and unorganized places in a county, the funds shall be disbursed to the school districts within the same county as the unincorporated towns and unorganized places in a manner as the appropriate county legislative delegation shall prescribe.

Source. 1995, 299:1. 1999, 200:3, eff. Sept. 4, 1999.

Revenue From Federal Lands

227–H:24 Revenue From Federal Lands. If any lands of the state, acquired by the federal government, shall be placed under the jurisdiction of the department, in accordance with an agreement entered into by the governor and council and the federal government pursuant to the so-called Fulmer Act (16 U.S.C. sections 567a-567c), or any other similar act, the department shall administer, manage, and develop said lands and distribute the proceeds from such lands in accordance with the terms of such agreement. Other provisions of law relative to the disposition of revenue received from state lands shall not apply to the revenue received under the agreement.

Source. 1995, 299:1, eff. Jan. 1, 1996.

TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Liability of Municipalities

Liability of Municipalities

231:92–a Snow, Ice and Other Weather Hazards. Notwithstanding RSA 231:90-92, a municipality or school district shall not be held liable for damages arising from insufficiencies or hazards on public highways, bridges, or sidewalks, even if it has actual notice or knowledge of them, when such hazards are caused solely by snow, ice, or other inclement weather, and the municipality's or school district's failure or delay in removing or mitigating such hazards is the result of its implementation, absent gross negligence or reckless disregard of the hazard, of a winter or inclement weather maintenance policy or set of priorities adopted in good faith by the officials responsible for such policy; and all municipal or school district employees and officials shall be presumed to be acting pursuant to such a policy or set of priorities, in the absence of proof to the contrary.

Source. 1991, 385:6. 1998, 249:2, eff. Jan. 1, 1999.

CHAPTER 238

HIGHWAY PROGRAMS

Safety Program

Safety Program

238:1 to 238:9 Repealed.

[Repealed 2015, 276:161, eff. July 1, 2015.]

History

Former RSA 238:1, which was derived from RSA 239–B:1; 1967, 333:1; and 1981, 87:1, related to the safety program policy.

Former RSA 238:2, which was derived from RSA 239–B:2; 1967, 333:1; and 1981, 87:1, related to an acceptance of the provisions of the federal Highway Safety Act of 1966.

Former RSA 238:3, which was derived from RSA 239–B:3; 1967, 333:1; and 1981, 87:1, related to pledging to meet all obligations of the state incident to acceptance of federal aid.

Former RSA 238:4, which was derived from RSA 239–B:4; 1967, 333:1; and 1981, 87:1, related to reimbursing with federal funds appropriate state funds for expenditures made.

Former RSA 238:5, which was derived from RSA 239–B:5; 1967, 333:1; and 1981, 87:1, related to the governor's authority to secure full benefits for the state under the federal Highway Safety Act of 1966.

Former RSA 238:6, which was derived from RSA 239–B:6; 1967, 333:1; 1970, 39:13; and 1981, 87:1, related to local highway safety programs.

Former RSA 238:8, which was derived from RSA 239–B:8; 1967, 333:1; and 1981, 87:1, related to staffing of a state highway safety agency.

Former RSA 238:9, which was derived from RSA 239–B:9; 1967, 333:1; and 1981, 87:1, related to gifts and grants.

TITLE XXI

MOTOR VEHICLES

CHAPTER 259

WORDS AND PHRASES DEFINED

259:7 Bus. "Bus" shall mean every motor vehicle designed for carrying more than 10 passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Source. 1905, 86:1. 1911, 133:1. 1913, 81:1. 1915, 129:1. 1917, 229:1. 1919, 161:1. 1921, 119:1. 1923, 75:1. 1925, 25:1; 68:1. PL 99:1. 1927, 52:1. 1929, 43:1. 1935, 73:2, 3. 1939, 47:1; 130:1; 189:1, 2, 3, 5; 190:1. 1941, 98:1; 111:1; 142:2. RL 115:1. 1943, 189:1. 1947, 177:1. 1949, 189:1, 2; 197:1; 212:2; 233:1; 286:4. 1953, 252:3. RSA 259:1, I. 1981, 146:1, eff. Jan. 1, 1982.

259:12 Commercial Driver. "Commercial driver" shall mean a person who drives a commercial motor vehicle as defined in RSA 259:12–e.

Source. 1905, 86:1. 1911, 133:1. 1913, 81:1. 1915, 129:1. 1917, 229:1. 1919, 161:1. 1921, 119:1. 1923, 75:1. 1925, 25:1; 68:1. PL 99:1. 1927, 52:1. 1929, 43:1. 1935, 73:2, 3. 1939, 47:1; 130:1; 189:1, 2, 3, 5; 190:1. 1941, 98:1; 111:1; 142:2. RL 115:1. 1943, 189:1. 1947, 177:1. 1949, 189:1, 2; 197:1; 212:2; 233:1; 286:4. 1953, 252:3. RSA 259:1, IV. 1981, 146:1. 1989, 319:2, eff. July 1, 1989.

259:12–c Commercial Driver License. "Commercial driver license" or "CDL" shall mean a license issued by the department in accordance with the requirements of RSA 263:82 et seq. and the federal Commercial Motor Vehicle Safety Act of 1986 to an individual which authorizes the individual to drive a class of commercial motor vehicle.

Source. 1989, 319:3, eff. July 1, 1989.

259:12–e Commercial Motor Vehicle.

I. "Commercial motor vehicle" shall mean a motor vehicle or a combination of motor vehicles, used in commerce, to transport passengers or property if:

(a) The vehicle has a gross vehicle weight rating of 26,001 pounds or more;

(b) The vehicle has a gross combination weight rating or actual weight of 26,001 or more pounds, inclusive of any towed unit with gross vehicle weight rating or actual weight of more than 10,000 pounds;

(c) The vehicle is designed or used to transport 16 or more passengers, including the driver; or

(d) The vehicle is of any size and is used in the transportation of hazardous materials required to be placarded under 49 C.F.R. part 172, subpart F.

II. The term commercial motor vehicle shall not include:

(a) Emergency vehicles assigned or registered to a fire department or fire service organization when driven by fire service personnel in pursuit of fire service purposes, or returning from fire service purposes, or being driven in a parade.

(b) Recreational vehicles.

(c) Military vehicles when driven by non-civilian military personnel in pursuit of military purposes.

(d) Vehicles used exclusively for agriculture and farming within 150 miles of the owner's farm.

III. For purposes of RSA 263:93–a, "commercial motor vehicle" shall also mean a commercial motor vehicle as defined in 49 C.F.R section 390.5 and in any other federal regulations adopted by rule under RSA 541–A.

Source. 1989, 319:3. 2008, 282:1. 2010, 99:2. 2011, 28:1, eff. Jan. 1, 2012.

259:26 Drivers' School. "Drivers' school" shall mean the business of giving instruction, for compensation, in the operation of motor vehicles, motorcycles, and commercial motor vehicles. "Drivers' school" shall not include a business or other person giving advanced instruction, with or without compensation, when the instruction is not intended to meet the requirements of basic driver training under RSA 263:19 and the instruction is given only to licensed drivers who already hold a license for the class of vehicle for which they are being trained.

Source. RSA 263–A:1, I. 1955, 208:1 par. 1. 1981, 146:1. 2009, 75:1, eff. Aug. 8, 2009. 2014, 273:4, eff. Sept. 26, 2014.

259:96 School Bus. "School bus" shall mean a vehicle owned by a public or governmental agency, or a privately owned vehicle, including a station wagon, suburban, panel body vehicle and vehicles converted to a school bus, but excluding a passenger vehicle, employed solely in transporting school children to and from school or school activities by virtue of a contract with a municipality, municipal board or school board authorities.

Source. RSA 263:26–a. 1961, 251:3. 1981, 146:1, eff. Jan. 1, 1982.

259:96–a Mixed Use School Bus. "Mixed use school bus" shall mean a station wagon, suburban, sport utility vehicle, passenger van, panel body vehi-

cle, or vehicle converted to a school bus, owned or leased by a public school or private school and driven by a school employee, which bears a valid state inspection sticker and is employed principally in transporting schoolchildren to and from school activities.

Source. 1996, 19:5. 2011, 44:2. 2013, 176:1, eff. Aug. 31, 2013.

CHAPTER 261

CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES

Number Plates

Number Plates

261:92 Publicly Owned Vehicles; Nonprofit Corporations. The director shall have the authority to prescribe special rules relative to registration of vehicles owned and driven by the government of the United States, the state, or by any county, city, town, regional planning commission, school district, volunteer fire department, eligible nonprofit corporation operating transportation under contract with the department of transportation for the public or for elderly or disabled persons, or public or private educational institution used for the purpose of student driver training, and may issue permanent number plates for such vehicles. Said vehicles displaying said number plates shall be deemed to be properly registered under the provisions of this title and may be driven upon the ways of the state without further registration or subsequent number plates.

Source. 1945, 4:1. 1953, 252:5. RSA 262:14. 1981, 146:1. 1992, 150:6. 2000, 200:7, eff. July 29, 2000.

CHAPTER 263

DRIVERS' LICENSES

Issuance of Licenses

License Examination Agents

Conditions and Requirements for a License

Motor Vehicle Drivers' School

Driver Training Fund

Commercial Licensing

Issuance of Licenses

263:1 License Required; Penalty.

I. No person, except those expressly exempted under RSA 263:25 or other provisions of this title, shall drive any motor vehicle upon any way in this state unless such person has a valid driver's license, as required under the provisions of this chapter, for the class or type of vehicle being driven.

II. Any person who held a driver's license of the appropriate class or type but whose driver's license has been expired for not more than 12 months shall be guilty of a violation or, for a second or subsequent offense shall be guilty of a class B misdemeanor.

III. Any person who drives a motor vehicle in this state and who has never had a license shall be guilty of a class B misdemeanor.

Source. 1905, 86:4. 1911, 133:8. 1921, 119:7, 8. PL 101:1, 9. 1927, 11:2. 1937, 69:1. 1939, 103:1. RL 117:1, 9. 1945, 44:3. RSA 261:1, 13; 262:27–a. 1965, 207:1. 1967, 281:1. 1973, 528:138. 1981, 146:1. 1985, 213:15, eff. Jan. 1, 1986. 2014, 296:1, eff. Jan. 1, 2015.

263:1–a Allowing an Improper Person. No person shall knowingly permit a motor vehicle owned or controlled by him to be driven by a person who is not properly licensed or otherwise entitled to drive. Any person who violates this section shall be guilty of a violation, and if the license or driving privilege of the person allowed to drive is under suspension or revocation, the owner or person in control of the vehicle, notwithstanding title LXII, shall be fined not less than $100.

Source. 1985, 213:16, eff. Jan. 1, 1986.

263:1–b Offenses Committed by Unlicensed Driver. A person who is convicted of violating RSA 263:1 and is also convicted of a motor vehicle violation, exclusive of a violation of RSA 261:40, RSA 261:59, or RSA 266:5, shall not be entitled to be issued a driver's license sooner than 12 months from the date of the conviction or, if the person has not yet reached the age required for a license, 12 months from the date of eligibility, except that a license may be issued if the person satisfies the director after an administrative hearing that the person will drive in a safe manner if the license is issued. The director may place such restrictions on any license so issued as the director deems in the best interest of public safety.

Source. 2005, 170:1, eff. Jan. 1, 2006.

263:1–c Effect of License. A driver's license issued by the state of New Hampshire is a written declaration to the holder of permission to operate a motor vehicle.

Source. 2006, 211:1, eff. June 1, 2006.

263:1–d Enhanced Drivers' Licenses and Identification Cards.

I. The department may enter into a memorandum of understanding with any federal agency for the purpose of obtaining approval of an enhanced driver's license or enhanced nondriver's picture identification card as proof of identity and citizenship for persons entering the United States at land and sea ports, in accordance with the Western Hemisphere Travel Initiative developed by the United States Department of State and the United States Department of Homeland Security.

II. The department shall adopt rules pursuant to RSA 541–A to implement the program.

Source. 2016, 71:9, eff. May 10, 2016.

263:2 Possession of License Required. Every person driving a motor vehicle shall have his driver's license upon his person or in the vehicle in some easily accessible place and shall display the same on demand of and manually surrender the same into the hands of the demanding officer for the inspection thereof. No person charged with a violation of this section shall be convicted if, within a period of 48 hours, he produces in the office of the arresting officer evidence that he held a valid driver's license which was in effect at the time of his arrest.

Source. 1905, 86:4. 1911, 133:10. 1921, 119:9. PL 101:16. RL 117:18. RSA 261:23, 23–a. 1971, 122:1. 1981, 146:1, eff. Jan. 1, 1982.

263:6 Examination. Before a license is granted to any person, the applicant, if not previously licensed to drive a motor vehicle in this state, shall pass such examinations as to the person's qualifications as the director may prescribe. Such examinations may include an examination for visual acuity, knowledge, and road skill as prescribed by the director. All license examinations shall be conducted by department of safety personnel and shall include knowledge questions regarding distracted driving, driving under the influence, and driving during poor weather conditions. No license shall be issued until the director is satisfied that the applicant is a proper person to receive it. No physical defect of an applicant shall prohibit the applicant from receiving a license unless it can be shown by common experience that such defect results in an incapacity to safely drive a motor vehicle, except as provided in RSA 263:13.

Source. 1905, 86:4. 1911, 133:8. 1919, 161:3. 1921, 119:7. PL 101:2. 1931, 144:1. RL 117:2. 1945, 177:1. RSA 261:3. 1967, 376:1. 1981, 146:1. 1999, 290:1, eff. Sept. 14, 1999. 2016, 98:1, eff. July 18, 2016.

263:6–a Informing First-Time Applicants of the DWI and Controlled Drug Laws. Before issuing a license to any person who has not been previously licensed to drive a motor vehicle in this state, the department shall inform the applicant of the following:

I. It is unlawful to drive with an alcohol concentration of 0.08 or more, or, in the case of a person under 21 years of age, 0.02 or more.

I–a. It is unlawful for any person to manufacture, possess, have under his or her control, sell, purchase, prescribe, administer, or transport or possess with intent to sell, dispense, or compound any controlled substance, except as authorized by law.

II. The penalties for violations of the DWI laws.

III. The administrative license suspension penalties for a refusal to take, or a failure to complete, a preliminary breath test or, upon arrest, any physical or chemical test for the purpose of determining a level of alcohol in your system.

IV. The fee for reissuance of a driver's license after suspension for any of the reasons stated above.

V. The penalties for unlawful transportation of an alcoholic beverage by a person under 21.

VI. The penalties for unlawful possession of an alcoholic beverage by a person under 21.

VII. Any other information concerning driving responsibility that the director deems necessary.

Source. 1997, 323:1. 2006, 143:1, eff. July 21, 2006.

263:6–b Medical/Vision Advisory Board.

I. In order to advise the director on medical criteria for the reporting and examination of drivers with medical impairments, a medical/vision advisory board is hereby established within the division. The board shall be composed of 3 members appointed by the director. Two of the members of the board shall be licensed physicians and residents of this state, and one member of the board shall be a licensed optometrist and a resident of this state. Of the original appointees, one shall serve for a term of 2 years and 2 shall serve for terms of 4 years. Subsequent appointees shall each serve for a term of 4 years or until their successors are appointed and approved. Any vacancy shall be filled in the same manner as the original appointment for the remainder of the term. The members of the board shall receive no compensation for their services and shall not hire any staff personnel but shall be paid mileage when attending to the duties of the committee at the maximum rate established in the Internal Revenue Code and regulations. After the first full year of operation of the advisory board, the board shall meet as needed.

II. No civil or criminal action shall lie against any member of the medical/vision advisory board who acts in good faith in advising the director under the provisions of this section. Good faith shall be presumed on the part of members of the medical/vision advisory board in the absence of a showing of fraud or malice.

III. The medical/vision advisory board shall:

(a) Create and keep current criteria and science-based guidelines for use by division hearing examiners in making licensing determinations.

(b) Develop and promote assessment techniques available to healthcare providers to assist patients in driving-related issues.

(c) Assist the division in developing policy regarding medical conditions' effects on driving.

(d) Serve as liaison to the healthcare community in promoting best medical practices related to driving safely.

Source. 2005, 123:1. 2009, 51:1, eff. July 1, 2009.

263:6–c Blind Pedestrian Information and Examination.

I. Before issuing or renewing a driver's license, the department shall inform the applicant of the provisions of RSA 265:41 and other safety issues respecting blind pedestrians.

II. The examination required by RSA 263:6 shall include testing of the applicant's knowledge of motor vehicle safety respecting blind pedestrians.

Source. 2008, 16:1, eff. July 11, 2008.

263:6–d Reporting Medically Unfit Person; Immunity. Any licensed health care provider who reasonably and in good faith believes a person cannot safely operate a motor vehicle based on clinical evaluation appropriate to his or her practice and who reports such to the division of motor vehicles shall be immune from any civil or criminal liability that might otherwise result from making the report. All reports made and medical records reviewed and maintained by the division of motor vehicles pursuant to this section shall be considered motor vehicle records under RSA 260:14.

Source. 2014, 258:1, eff. Jan. 1, 2015.

263:7 Reexamination.

I. The director may require with cause any person holding a license to drive motor vehicles or applying for reissue of such license to pass such

examination as to the person's qualifications as the director shall prescribe. Such reexamination may include an examination for visual acuity as prescribed by the director. All license examinations shall be conducted by department of safety personnel. No license shall be reissued to such person or continued in effect until the director is satisfied as to such person's fitness to drive a motor vehicle. The age of the license holder shall not constitute cause for reexamination under this section.

II. The director may waive reexamination requirements for a driver who previously held a valid commercial driver license and subsequently had that commercial privilege become inactive as a result of the expiration of his or her medical certification and then obtains a valid medical certification within 24 months of entering the inactive status.

Source. RSA 261:3–a. 1955, 294:1. 1957, 25:1. 1963, 271:1. 1967, 376:2. 1981, 146:1. 1999, 290:2. 2011, 79:1, eff. July 15, 2011. 2014, 35:1, eff. July 26, 2014.

License Examination Agents

263:7–a to 263:7–f Repealed.

[Repealed 1999, 290:5, eff. Sept. 14, 1999.]

History

Former RSA 263:7–a to 263:7–f, which were derived from 1987, 212:1, related to license examination agents.

Conditions and Requirements for a License

263:16 Age Limit. No driver's license shall be issued to any person under 18 years of age and it shall be unlawful for any person under 18 years of age to drive a motor vehicle on the ways of this state, except as provided in RSA 263:19, 20, 21, 23 and 25.

Source. 1911, 133:8. 1921, 119:7. PL 101:3. RL 117:4. 1953, 125:1. RSA 261:6. 1965, 339:1. 1981, 146:1, eff. Jan. 1, 1982.

263:17 Special Requirements for Minors. No person under the age of 18 years shall be issued a driver's license unless the person's father, mother, or guardian, or, in the event there is no parent or guardian, another responsible adult, gives written permission for the issuance of such license, insurance coverage is presented at the time of application or the person under 18 is emancipated by marriage.

Source. RSA 260:8–a. 1957, 214:3; 308:2. 1981, 146:1. 1987, 404:3, eff. July 25, 1987.

263:18 Cancellation of Minor's License. Upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for a license as required by RSA 263:17, the division may cancel such license and, upon such cancellation, shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter.

Source. RSA 261:25. 1965, 207:2. 1981, 146:1. 1987, 404:28, eff. July 25, 1987.

263:19 Driver Education.

I. A driver's license may be issued subject to the provisions of this chapter to a person under the age of 18 years who has attained his or her sixteenth birthday, if such person shall present a certificate of successful completion of a driver education course given by a public or nonpublic secondary school and approved by the department of education in cooperation with the department of safety or given by a motor vehicle drivers' school licensed under the provisions of this chapter. An approved driver education course licensed under this chapter, shall consist of not less than 30 hours of classroom instruction, not less than 10 hours of behind the wheel driver training and not less than 6 hours of observation, in accordance with rules adopted pursuant to RSA 541–A, published by the commissioner of safety, such standards to be not less than those presently required. The classroom instruction shall include 45 minutes of a nationally-recognized motorcycle safety education course approved by the director and 45 minutes of a nationally-recognized tractor-trailer safety education and awareness course approved by the director. The department of safety, by the nature of its function, shall be held ultimately responsible for setting and maintaining the quality standards for driver education in the state. This authority shall apply uniformly over both secondary school courses and private motor vehicle drivers' school courses.

II. To qualify for a driver's license under this section, a person under the age of 18 shall also certify the completion of 40 hours of additional supervised driving time under the supervision of a licensed parent or guardian, or, if there is no licensed parent or guardian, under the supervision of a licensed adult over the age of 25, and that at least 10 of the hours of additional supervised driving time were during the period from ½ hour after sunset to ½ hour before sunrise. The commissioner shall adopt rules relative to the method of certification.

III. Any person who wishes to obtain a motorcycle endorsement shall not be required to complete the 40 hours of practice driving time specified in paragraph II, but shall successfully complete a program authorized pursuant to RSA 263:34–b, except that no such endorsement shall be required for the operation of an autocycle.

IV. Any person wishing to qualify for a driver's license who submits proof that the person has a disability covered by the Americans with Disabilities

Act may request a waiver of a requirement of this section from the commissioner. The commissioner or his or her agents may approve such requests at their discretion.

Source. RSA 261:6–a. 1965, 339:2. 1981, 146:1. 1999, 157:2; 290:4; 297:6–8. 2002, 83:4. 2006, 59:1. 2009, 6:1. 2010, 368:27, eff. Dec. 31, 2010. 2014, 273:1, eff. Sept. 26, 2014. 2015, 222:4, eff. July 1, 2015.

263:20 Driver Education; Reciprocity. The provisions of RSA 263:19 shall not prevent the issuance of a driver's license to any individual who can provide satisfactory evidence of completion of a course of driver education, approved by the state in which the course is offered, provided that the commissioner of safety shall determine that such course is essentially equivalent to the state's minimum standards. The commissioner shall take all reasonable steps to facilitate appropriate interstate driver education. The commissioner shall include in its report pursuant to RSA 20:7, a report to the general court on the progress of reciprocal driver education.

Source. RSA 261:6–b. 1965, 339:2. 1981, 146:1. 1993, 59:1. 1999, 130:1. 2008, 352:1, eff. July 7, 2008. 2015, 259:26, eff. July 1, 2015.

263:21 Exception. The director, upon being satisfied that no readily available means of transportation exist to and from a school and that the provisions of RSA 263:19 would cause undue hardship, may permit a driver's license, limited to use to and from school and school assignments, to be issued to a person who has attained his sixteenth birthday and is under 18 years of age who has not completed an approved driver education program, if the other requirements of this chapter are met by such person.

Source. RSA 261:6–c. 1965, 339:2. 1981, 146:1, eff. Jan. 1, 1982.

263:22 Suspension of Age Requirement. In addition to the other powers of the director, during any war emergency and until April 1 next succeeding the termination thereof, he shall have authority to issue a commercial driver's license to any person between the ages of 16 and 18 otherwise duly qualified. During said period the provisions of RSA 263:27, inconsistent with the provisions hereof, are hereby suspended. Said license shall be restricted to the driving of motor vehicles of 18,000 pounds manufacturers' rating or less.

Source. 1951, 97:3. RSA 261:8. 1981, 146:1. 1989, 319:19, eff. July 1, 1989.

263:24 Age of School Bus Driver; Certification. No person shall drive a school bus as provided in RSA 266:7 unless he is 18 years of age or over and has been certified for said driving by the school board, as provided in RSA 263:29.

Source. 1945, 90:2. RSA 263:29. 1965, 207:3. 1973, 72:57. 1981, 146:1, eff. Jan. 1, 1982.

263:25 Exception for Persons Learning to Drive.

I. Except as provided in paragraph II, a person who does not possess a driver's license may drive a motor vehicle while being taught to drive, when accompanied by a person holding a driver's license of the appropriate class and type for the vehicle being driven, who is occupying the seat beside, or, in the case of a bus, immediately adjacent to, the person who is being taught to drive. This exception shall not apply to persons whose driving privileges or driver's licenses have been suspended or revoked for cause, persons less than 15-½ years of age, and persons learning to drive commercial motor vehicles unless they meet the requirements of paragraph II. For all unlicensed drivers the person accompanying them shall be a certified driving instructor, parent, legal guardian, or responsible adult who is 25 years of age or older and who is a licensed driver. The person accompanying the unlicensed driver shall be liable for the violation of any provision of this title or rules adopted hereunder committed by such unlicensed driver. A person who is learning to drive pursuant to the provisions of this section shall have in his possession proof of the fact he meets the age requirement.

II. In the case of a person learning to drive a commercial motor vehicle, the person may not drive as provided in paragraph I unless he or she is at least 18 years of age and unless he or she: (a) has a valid noncommercial driver's license; and (b) has been issued a learner permit pursuant to RSA 263:88.

Source. 1905, 86:5. 1911, 133:9. 1913, 81:4. 1921, 119:8. PL 101:10. 1941, 100:1. RL 117:10. 1949, 189:4. RSA 261:14. 1961, 231:1. 1981, 146:1. 1989, 315:1; 319:20. 1990, 262:1. 2013, 146:1, eff. Aug. 27, 2013.

263:27 Age Limitation for Commercial Driver Licenses. A commercial driver license shall be issued to any person who has passed a commercial driver's examination. No such license shall be issued to any person less than 18 years of age.

Source. 1911, 133:8. 1921, 119:7. PL 101:14. RL 117:16. 1949, 189:7. RSA 261:21. 1967, 341:5. 1981, 146:1. 1989, 319:21, eff. July 1, 1989.

263:29 School Bus Driver's Certificate. The owner of any school bus transporting children to and from any private or public school, or the owner of any bus owned or used by a religious organization or a nonprofit organization used exclusively as a bus for the transportation of its members in connection with functions of the organization, shall submit to the

authorities in the town or city or to the organization which pays for said transportation a list of names of the persons who are to drive the buses used in such transportation. Such authority shall submit the list of names to the department requesting an investigation of each driver's criminal and motor vehicle record. If such driver is found to be qualified to bear the responsibility of such transportation, the division shall cause said driver to be examined under the rules adopted pursuant to RSA 265:58. No person shall drive a school bus unless he has satisfactorily passed the special examination for said driving and received from the division a special school bus driver's certificate. The director may revoke such special school bus driver's certificate for good cause shown.

Source. 1945, 90:1. 1949, 114:4. RSA 263:28. 1955, 204:1. 1961, 251:5. 1981, 146:1. 1985, 213:17. 1989, 305:8, eff. July 1, 1989.

263:29–a School Bus Driver Qualification Files.

I. The employer of a school bus driver shall maintain, and the department shall have access to, a file on each person qualified to operate a school bus as provided in RSA 263:29. The file shall include the following:

(a) The driver's application for employment.

(b) The medical examiner's certificate.

(c) The results of the driver road test, if such test is otherwise required by law.

(d) Certifications of road test, if otherwise required by law.

(e) Annual driver certification of violations.

(f) Inquiry to previous employers, covering the 3 years prior to the driver's application for employment.

(g) Inquiry to state agencies.

(h) Annual review of driving record.

(i) Controlled substances test results, if otherwise required by law.

(j) Driver training documentation.

(k) Copy of driver license and school bus certificate.

II. In addition to other rulemaking authority provided by law, the commissioner shall have authority to adopt rules, pursuant to RSA 541–A, relative to the operation of school buses and the requirements for and filing of school bus accident reports.

Source. 1996, 19:2, eff. July 1, 1996.

263:29–b Positive Tests for Illegal Drugs. A holder of a school bus driver's certificate who tests positive on a random or scheduled drug test for the presence of any illegal controlled drug in his or her system shall have his or her school bus driver's certificate revoked by the director for a minimum of 2 years.

Source. 2010, 221:1, eff. June 28, 2010.

Motor Vehicle Drivers' School

263:44 License Required; Fee, Term, Renewal. No person shall engage in the business of conducting a drivers' school without being licensed therefor by the department. Application therefor shall be in writing and contain such information therein as the department shall require. If the application is approved, the applicant shall be granted a license upon the payment of a fee of $200; provided, however, that no license fee shall be charged for the issuance of a license to any board of education, school board, public, private, or parochial school, which conducts a course in driver education. A license so issued shall be valid during the calendar year. The annual fee for renewal shall be $100. The department shall issue a license certificate or license certificates to each licensee, one of which shall be displayed in each place of business of the licensee. In the case of loss, mutilation or destruction of a certificate, the department shall issue a duplicate upon proof of the facts and the payment of a fee of $1.

Source. RSA 263–A:2. 1955, 208:1, par. 2. 1977, 563:82. 1981, 146:1, eff. Jan. 1, 1982. 2014, 273:2, eff. Sept. 26, 2014.

263:44–a Driver Education Certificate. No person shall be a driver education instructor unless such person has a driver education certificate issued by the department.

Source. 2005, 245:1, eff. Jan. 1, 2006.

263:44–b Driver Education Certificate Application.

I. Every applicant for an initial driver education certificate shall submit to the division of motor vehicles a notarized criminal history record release form, as provided by the New Hampshire division of state police, department of safety, which authorizes the release of his or her criminal history record, if any, to the division of motor vehicles.

II. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. If the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the division of motor vehicles may, in lieu of the criminal history records check,

accept police clearances from every city, town, or county where the person has lived during the past 5 years.

III. The division of motor vehicles shall submit the criminal history records release form and fingerprint form to the division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the division of motor vehicles. The division of motor vehicles shall maintain the confidentiality of all criminal history records information received pursuant to this section.

Source. 2013, 176:2, eff. Aug. 31, 2013.

263:45 Rules. The commissioner may adopt pursuant to RSA 260:5 such rules as he deems reasonable for the conduct of drivers' schools.

Source. RSA 263–A:4. 1955, 208:1, par. 4. 1981, 146:1, eff. Jan. 1, 1982.

263:46 Renewal No Bar to Revoking License. Notwithstanding the renewal of a license, the department may revoke or suspend such license for causes and violations, as prescribed herein, occurring during any prior license period.

Source. RSA 263–A:6. 1955, 208:1, par. 6. 1981, 146:1, eff. Jan. 1, 1982.

263:46–a Notification of Offenses.

I. Every applicant for or holder of a driver education certificate or school license shall notify the director within 5 business days by certified mail, return receipt requested, of being arrested, indicted, or summonsed to court in this or any other state or foreign jurisdiction as a defendant for an offense under RSA 265:79, RSA 265:79–a, RSA 265:79–b, RSA 265–A:2, RSA 265–A:3, or RSA 265–A:43, or any offense under RSA 630, RSA 631, or RSA 632–A. If employed or under contract to a school or school district, the licensee, certificate holder, or applicant shall provide a copy of the notification made to the director to the principal or equivalent chief administrator of the school in like manner and time frame.

II. Every applicant for or holder of a driver education certificate or school license shall notify the director within 5 business days by certified mail, return receipt requested, of being convicted of any offense other than a parking violation under Title XXI or RSA 630, RSA 631, or RSA 632–A or an equivalent offense in another jurisdiction, or if his or her license or privilege to drive a motor vehicle has been suspended or revoked in this or any other jurisdiction. If employed or under contract to a school or school district, the applicant, licensee, or certificate holder shall provide a copy of the notification made to the director to the principal or equivalent chief administrator of the school within 5 business days by certified mail, return receipt requested.

Source. 2005, 245:2. 2010, 168:1, eff. June 17, 2010.

263:47 Hearings. Every applicant or licensee shall be entitled to a hearing, before his application for a license or a renewal thereof is refused or his license is revoked, and shall be given due notice thereof. The sending of a notice of a hearing by registered mail to the last known address of a licensee or applicant 10 days prior to the date of the hearing shall be deemed due notice. The person deputized by the department to conduct a hearing shall have power to subpoena witnesses, administer oaths to witnesses and take testimony of any person or cause his deposition to be taken. A subpoena issued under the authority of this section shall be served in the same manner as a subpoena issued out of the superior court. Witnesses subpoenaed hereunder shall be entitled to the same fees and mileage as are allowed in civil actions in courts of record.

Source. RSA 263–A:7. 1955, 208:1, par. 7. 1981, 146:1, eff. Jan. 1, 1982.

263:48 Penalties. Any person who violates any of the provisions of this subdivision shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. RSA 263–A:9. 1955, 208:1, par. 9. 1973, 528:148. 1981, 146:1, eff. Jan. 1, 1982.

263:49 Records Kept by Licensee. Every licensee shall keep such records as the department may by rule require. The records of the licensee shall be open to the inspection of representatives of the department at all times during reasonable business hours.

Source. RSA 263–A:8. 1955, 208:1, par. 8. 1981, 146:1, eff. Jan. 1, 1982.

263:50 Grounds for Denial of License. The department may deny the application of any person for a license if, in its discretion, the department determines that:

I. Such applicant has made a material false statement or concealed a material fact in connection with his application;

II. Such applicant, any officer, director, stockholder or partner, or any other person directly or indirectly interested in the business, was the former holder of a license hereunder, or was an officer, director, stockholder or partner in a corporation or partnership which held a license under this subdivi-

sion and which license was revoked or suspended by the director;

III. Such applicant or any officer, director, stockholder, partner, employee, or any other person directly or indirectly interested in the business, has been convicted of a crime;

IV. Such applicant has failed to furnish satisfactory evidence of good character, reputation and fitness;

V. Such applicant does not have a place of business as required by this chapter;

VI. Such applicant is not the true owner of the drivers' school;

VI–a. Such applicant, upon original application, has failed to submit a complete set of fingerprints taken by a qualified law enforcement agency;

VII. The application is not accompanied by a certificate of insurance endorsing a combined single limit for each accident in the amount of $500,000 suffered or caused by reason of negligence of the applicant or any agent or employee of the applicant, approved as to form and coverage by the director and issued by a company duly licensed to transact business in this state under the insurance laws of this state; or

VIII. Such applicant has failed to comply with any applicable rule adopted pursuant to RSA 21–P:14.

Source. RSA 263–A:3. 1955, 208:1, par. 3. 1971, 48:2. 1977, 192:1. 1981, 146:1. 1992, 282:6. 2010, 168:2, eff. June 17, 2010. 2014, 273:3, eff. Sept. 26, 2014.

263:51 Grounds for Revoking or Suspending School License or Driver Education Certificate. Any employee of the department authorized by the commissioner to hold hearings in such cases may suspend or revoke any school license or driver education certificate issued under the provisions of this subdivision or refuse to issue a renewal thereof if:

I. The licensee or certificate holder has made a material false statement or concealed a material fact in connection with the application for a license or the renewal thereof;

II. The licensee or certificate holder has been convicted of a crime or of any offense under RSA 265:79 or RSA 265–A, or his or her license or privilege to drive a motor vehicle has been suspended or revoked;

III. The licensee or certificate holder has been charged with an offense under RSA 265:79 or RSA 265–A, RSA 630, RSA 631, or RSA 632–A and it appears to the commissioner, after a hearing, that an immediate license suspension pending the outcome of the criminal proceeding is required in the interest of public safety;

IV. The licensee or certificate holder has failed to comply with any of the provisions of this subdivision or any applicable rule adopted pursuant to RSA 21–P:14;

V. The licensee or any partner or officer of such licensee has been guilty of fraud or fraudulent practices in relation to the business conducted under the license, or guilty of inducing another person to resort to fraud or fraudulent practices in relation to securing for himself, herself, or another the license to drive a motor vehicle or motorcycle;

VI. The licensee has knowingly employed, as an instructor, a person who has been convicted of a crime or has retained such a person in such employ after knowledge of his or her conviction; or

VII. The licensee has failed to maintain satisfactory insurance to meet damage claims required by RSA 263:50.

Source. RSA 263–A:5. 1955, 208:1, par. 5. 1971, 48:3. 1981, 146:1. 1992, 282:7. 2005, 245:3. 2013, 176:3, eff. Aug. 31, 2013.

Driver Training Fund

263:52 Driver Training Fund.

I. The proceeds from original license fees as provided in RSA 263:42 and the vanity plate service fee collected in accordance with RSA 261:89, plus the fee for the renewal of the use of such plates, after any refunding authorized by law and costs of such plates or designation of effective periods thereof and issuance of same have been appropriated and deducted, shall be expended for course materials, licensing of schools, and certification of instructors in connection with safe motor vehicle driving conducted in or under the supervision of secondary schools. Such balance shall be kept in a separate fund. The commissioner of safety shall adopt, pursuant to RSA 541–A, and publish, rules governing the courses of instruction and training.

II. The $40 vanity plate service fee and the fee for renewal of vanity number plates shall automatically be credited to the driver training fund until all fees in such fund equal the amount of money estimated by the general court as available for expenditure for course materials, licensing of schools, and certification services in connection with driver training from that fund for that fiscal year. Once the driver training course materials, licensing of schools, and certification services have been funded in accordance with the legislative estimates for the current fiscal year,

the next 1.5 million dollars shall be transferred to the department of safety as restricted revenue, thereafter the balance of all such fees shall be transferred to the general fund and shall be available as unrestricted revenue.

Source. RSA 262:1–a. 1957, 292:1. 1963, 142:1. 1969, 244:1. 1971, 415:1. 1974, 45:4. 1981, 146:1. 1982, 42:155. 1983, 469:105. 1993, 295:1. 1995, 308:5. 1997, 252:1. 2009, 144:198, 199. 2011, 224:5, eff. July 1, 2011. 2015, 243:12, eff. Jan. 1, 2016.

Commercial Licensing

263:82 Statement of Intent; Construction.

I. The purpose of this subdivision is to implement the federal Commercial Vehicle Safety Act of 1986 (CMVSA), (Title XII of Public Law 99-570) and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

(a) Permitting commercial drivers to hold only one license;

(b) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses; and

(c) Strengthening commercial driver licensing and testing standards.

II. This subdivision is a remedial law which should be liberally construed to promote the public health, safety, and welfare. To the extent that this subdivision conflicts with general driver licensing provisions, this subdivision shall prevail. Where this subdivision is silent, the general driver licensing provisions shall apply.

Source. 1989, 319:17, eff. July 1, 1989.

263:83 Limitation on Number of Driver's Licenses. No person who drives a commercial motor vehicle shall have more than one driver's license.

Source. 1989, 319:17, eff. July 1, 1989.

263:84 Notification Required by Driver.

I. Any driver of a commercial motor vehicle holding a driver's license issued by this state:

(a) Who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in any other state, or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the department within 30 days of the date of conviction.

(b) Who is convicted of violating any state law or local ordinances relating to motor vehicle traffic control in this or any other state, or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify his employer in writing of the conviction within 30 days of the date of conviction.

II. Each driver whose driver's license is suspended, revoked, or cancelled by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify his employer of that fact before the end of the business day following the day the driver received notice of that fact.

III. Each person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of application, with the following information for the 10 years preceding the date of application:

(a) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(b) The dates between which the applicant drove for each employer; and

(c) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

Source. 1989, 319:17, eff. July 1, 1989.

263:85 Employer Responsibilities.

I. Each employer shall require the applicant to provide the information specified in RSA 263:84, III.

II. No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period in which:

(a) The driver has a driver's license suspended, revoked, or cancelled by a state; has lost the privilege to drive a commercial motor vehicle in a state; or has been disqualified from driving a commercial motor vehicle;

(b) The driver has more than one driver's license, except during the 10-day period beginning on the date the person is issued a driver's license, and, until December 31, 1989, whenever a state law enacted on or before June 1, 1986, requires the person to have more than one driver's license; or

(c) The driver does not possess a valid commercial driver license.

Source. 1989, 319:17, eff. July 1, 1989.

263:86 Commercial Driver License Required.

I. Except as provided in RSA 263:25, II or when driving with a commercial driver learner permit and accompanied by the holder of a commercial driver

license valid for the vehicle being driven, no person shall drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver license valid for the vehicle being driven. For the purpose of making the transition from the previous driver license classification system to the commercial driver license system established in this subdivision, a person may drive a vehicle while in possession of a valid, unexpired driver's license; provided that on or after April 1, 1992, or such other date as may be established by the federal government, no person shall drive a commercial motor vehicle unless he has a commercial driver license as required by this subdivision.

II. A commercial driver license may be issued only to a person who drives or will drive commercial motor vehicles and who is domiciled in this state; provided that a nonresident CDL may be issued pursuant to RSA 263:89.

III. A commercial driver license may not be issued to a person during a period in which the person is disqualified from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or cancelled in any state; nor may a commercial driver license be issued to a person who has a commercial driver license issued by any other state unless the person first surrenders the commercial driver license issued by the other state, which license shall be returned to the issuing state for cancellation.

Source. 1989, 319:17. 1990, 262:3, eff. June 27, 1990.

263:87 Commercial Driver License Qualification Standards.

I. No person shall be issued a commercial driver license unless that person is a resident of the state of New Hampshire and has passed a knowledge and skills test for driving a commercial motor vehicle. The knowledge and skills test shall comply with minimum federal standards established by federal regulation, as enumerated in 49 CFR 383, sub-parts G and A, in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the department. The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test in accordance with 49 CFR 383.

II. The department may waive the skills test for a commercial driver license applicant who meets the following requirements:

(a) The applicant has a minimum of 2 years of recent experience driving a vehicle that is representative of the group of vehicles for which he wishes to obtain a commercial driver license;

(b) The applicant's employer has provided certification to the division of motor vehicles that indicates that the applicant has the experience as required in subparagraph (a);

(c) The applicant holds a commercial light, commercial heavy or tractor-trailer or commercial driver license at the time he applies for the commercial driver license, and is regularly employed as a commercial motor vehicle driver; and

(d) The applicant has a driving record that is free of license suspensions, revocations, or cancellations, and free of disqualifying offenses, for a 2-year period immediately prior to applying for a commercial driver license.

Source. 1989, 319:17, eff. July 1, 1989.

263:88 Commercial Driver Learner Permit.

I. The department may issue a commercial driver learner permit to an individual who holds a valid driver's license.

II. The commercial driver learner permit may not be issued for a period to exceed 180 days. Only one renewal or reissuance shall be granted within a one-year period. The holder of a commercial driver learner permit may drive a commercial motor vehicle on a highway only when accompanied by a person who holds a commercial driver license valid for the type of vehicle driven who occupies a seat immediately adjacent to the individual for the purpose of giving instruction in driving the commercial motor vehicle. A commercial driver learner permit shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or cancelled in any state.

Source. 1989, 319:17. 1990, 262:2. 2013, 146:2, eff. Aug. 27, 2013.

263:89 Nonresident Commercial Driver License. The department may issue a nonresident commercial driver license to a resident of a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 CFR 383. The word "nonresident" shall appear on the face of the nonresident commercial driver license. An applicant shall surrender any nonresident commercial driver license issued by another state. Prior to issuing a nonresident commer-

cial driver license, the department shall establish the practical capability of revoking, suspending, or cancelling the nonresident commercial driver license and disqualifying that person with the same conditions applicable to the commercial driver license issued to a resident of the state of New Hampshire. A foreign driver applying for a nonresident commercial driver license shall complete all of the New Hampshire requirements for a commercial driver license. In addition, holders of a nonresident commercial driver license shall notify the department of issuance of any disqualifications or license suspensions or revocations, whether in the United States or in the foreign driver's country of domicile.

Source. 1989, 319:17, eff. July 1, 1989.

263:90 Application for Commercial Driver License.

I. The application for a commercial driver license or commercial driver learner permit shall include the following:

(a) The full name and current mailing and residential address of the license applicant;

(b) A physical description of the applicant, including sex, height, weight, eye and hair color;

(c) Date of birth;

(d) Applicant's social security number, unless the application is made by the resident of a foreign jurisdiction for a commercial driver license;

(e) Applicant's signature;

(f) Certifications of driver qualification;

(g) Any other information required by the department.

II. The application shall be accompanied by the fee provided in RSA 263:42.

III. When a licensee changes his name, mailing address, or residence, he shall notify the department as provided in RSA 263:9.

IV. No person who has been a resident of the state of New Hampshire for 30 days may drive a commercial motor vehicle under the authority of a commercial driver license issued by another jurisdiction.

Source. 1989, 319:17, eff. July 1, 1989.

263:91 Commercial Driver License.

I. The commercial driver license shall be marked "commercial driver license" or "CDL" or "nonresident commercial driver license" or "NRCDL" or "commercial driver learner permit" or "CDLP" and shall be, to the maximum extent practicable, tamperproof, and shall include, but not be limited to, the following information:

(a) The full legal name and current residential address of the licensee. A post office box number shall not constitute a current residential address;

(b) The licensee's color photograph;

(c) A physical description of the licensee including sex, height, weight, eye and hair color;

(d) Date of birth;

(e) Social security number, if requested by the applicant;

(f) Any number or identifier deemed appropriate by the department;

(g) The licensee's signature;

(h) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;

(i) The name of this state; and

(j) The expiration date.

II. Before issuing a commercial driver license, the department shall ascertain from the commercial driver license information system and the national driver register (NDR) all available information pertaining to the driving record of the person to be licensed.

III. Within 10 days after issuing a commercial driver license, the department shall notify the commercial driver license information system of that fact, providing all information required to ensure identification of the person.

IV. The department shall maintain copies of all documents including, but not limited to, the application, commercial driver license issued, and any other documents pertaining to the licensee.

V. Within 10 days after suspending, revoking or cancelling a commercial driver license, the department shall notify the commercial driver license information system of that disqualification.

Source. 1989, 319:17, eff. July 1, 1989.

263:92 Classifications, Endorsements and Restrictions.

I. Notwithstanding any other provisions of this title, the commissioner may adopt rules under RSA 541–A to establish a commercial driver license classification system, including such endorsements and restrictions as are necessary, that incorporates the requirements of the federal government and of state law.

II. Any driver who operates a motor vehicle in violation of the provisions of the commercial driver license classification system shall be subject to a fine of $100.

Source. 1989, 319:17. 2005, 177:41, eff. July 1, 2005.

263:93 License Expiration and Renewal. The commercial driver license shall expire on the licensee's birthdate in the fifth year following the issuance of such license. When applying for renewal of a commercial driver license, the applicant shall complete the application form as specified in RSA 263:90 and shall provide updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement shall be taken and passed.

Source. 1989, 319:17. 2001, 91:14, eff. July 1, 2001.

263:93–a Disqualification and Out-of-Service Orders.

I. Notwithstanding any law to the contrary, any person who knowingly drives a commercial motor vehicle that is subject to an out-of-service order shall be guilty of a class B misdemeanor for a first offense, or a class A misdemeanor for any subsequent offense within a 10-year period, and the person's commercial driver license or privilege to drive shall be suspended for not less than 180 days nor more than one year for a first offense, for not less than 2 years nor more than 5 years for a second offense within a 10-year period, or for not less than 3 years nor more than 5 years for a third or subsequent offense within a 10-year period.

II. Any person who knowingly transports hazardous materials in a commercial motor vehicle that is subject to an out-of-service order or who operates a commercial motor vehicle designed or used to transport 15 or more passengers, including the driver, while such vehicle is subject to an out-of-service order shall be guilty of a misdemeanor and the person's commercial driver license or privilege to drive shall be suspended for not less than 180 days nor more than 2 years for a first offense, or for not less than 3 years nor more than 5 years for a second or subsequent offense within a 10-year period.

III. Any person who knowingly requires or permits a driver to violate or fail to comply with an out-of-service order shall be:

(a) If a natural person, guilty of a class B misdemeanor for a first offense, or a class A misdemeanor for a second or subsequent offense within a 10-year period.

(b) If any other person, guilty of a class A misdemeanor.

IV. If a driver or employer is defaulted for failing to appear in court after being charged under paragraphs I–III, the court shall enter a guilty finding.

Source. 1996, 255:3. 2007, 206:1. 2010, 95:2, eff. Jan. 1, 2011.

263:93–b Administrative Fines.

[Repealed 2007, 206:2, eff. Jan. 1, 2008.]

History

Former RSA 263:93–b, which was derived from 1996, 255:3, related to administrative fines for out-of-service orders.

263:93–c Administrative Fines.

I. The commissioner, after notice and hearing pursuant to RSA 541–A, may impose an administrative fine not less than $2,500 for a first offense and not less than $5,000 for a second or subsequent offense upon any driver who violates or fails to comply with an out-of-service order.

II. The commissioner, after notice and hearing pursuant to RSA 541–A, may impose an administrative fine of not less than $2,750 and not more than $25,000 upon any employer who violates 49 C.F.R. section 383.37(c) by knowingly allowing a driver to violate an out-of-service order.

Source. 2010, 95:3, eff. Jan. 1, 2011.

263:94 Violations; Penalties; Serious Violations.

I. A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department of:

(a) A conviction within this or any other jurisdiction of driving a motor vehicle under the influence of alcohol or any drug;

(b) A conviction within this or any other jurisdiction of driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age 21 as determined by testing methods approved by law in this state or any other state or jurisdiction;

(c) A first conviction within this or any other jurisdiction of leaving the scene of an accident involving a motor vehicle driven by the person;

(d) A first conviction within this or any other jurisdiction of using a motor vehicle in the commission of a felony;

(e) A first instance of refusing to submit to a test or tests under the implied consent laws in this or any other jurisdiction to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) A first conviction within this or any other jurisdiction of driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle; or

(g) A first conviction within this or any other jurisdiction of causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

II. If any of the violations in paragraph I occurred while transporting hazardous material, the person is disqualified for a period of not less than 3 years.

III. A person is disqualified from driving a commercial motor vehicle for life if it has been determined that the person has been convicted of 2 or more violations of any of the offenses specified in paragraph I or of a subsequent instance of refusing to submit to a test as described in subparagraph I(e), or any combination of those offenses, arising from 2 or more separate incidents.

IV. The commissioner may adopt rules, in accordance with RSA 541–A and pertinent federal regulations, establishing guidelines, including conditions under which a disqualification for life under paragraph III may be reduced to a period of not less than 10 years.

V. A person is disqualified from driving a commercial motor vehicle for life who is convicted in this or any other jurisdiction of using a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by RSA 318–B:1.

VI. (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of 2 serious traffic violations, as defined in RSA 259:98–a, or 120 days if convicted of 3 serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a 3-year period. These penalties shall be imposed consecutively and may not be served concurrently.

(b) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of any combination of 2 serious traffic violations within a 3-year period while operating a noncommercial motor vehicle, provided the conviction results in the revocation, cancellation, or suspension of his or her driver's license, including a commercial driver license or commercial endorsement.

(c) A person is disqualified from driving a commercial motor vehicle for a period of not less than 120 days if convicted of any combination of 3 or more serious traffic violations within a 3-year period while operating a noncommercial motor vehicle, and the conviction results in the revocation, cancellation, or suspension of his or her driver's license, including a commercial driver license or commercial endorsement. This penalty shall be imposed in addition to and consecutively to any penalty imposed under subparagraph VI(b).

(d) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if it is determined, in the check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information in the application process.

(e) A person is disqualified from driving a commercial motor vehicle if that person has been disqualified by the Federal Motor Carrier Safety Administration as a result of being deemed an imminent hazard as defined in RSA 259:43–c.

VII. Prior to disqualifying a driver under this section, the commissioner shall provide the driver with notice and an opportunity for a hearing.

Source. 1989, 319:17. 1991, 294:2. 2006, 260:24. 2010, 95:4. 2013, 180:6, eff. Jan. 1, 2014.

263:95 Commercial Drivers Prohibited From Driving With Any Alcohol in Their Systems.

[Repealed 2006, 260:37, VIII, eff. Jan. 1, 2007.]

History

Former RSA 263:95, which was derived from 1989, 319:17, related to prohibition of commercial drivers from driving with any alcohol in their systems. See now RSA 265–A:24.

263:96 Implied Consent Requirements for Commercial Motor Vehicle Drivers.

[Repealed 2006, 260:37, IX, eff. Jan. 1, 2007.]

History

Former RSA 263:96, which was derived from 1989, 319:17; 1991, 294:3; and 1992, 258:4, related to implied consent to testing of any person driving as a commercial driver upon state roads. See now RSA 265–A:25.

263:97 Notification of Traffic Violations; Furnishing Driving Record Information.

I. (a) Within 5 days after receiving a report of the conviction of any resident or nonresident holder of a commercial driver license of any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the department shall notify the driver licensing authority in the licensing state of the conviction, and the commercial driver license information system.

(b) Within 5 days after the conviction of any resident or nonresident holder of a commercial driver license of any violation of state law or local ordinance relating to motor vehicle traffic control, other than a parking violation, committed in a commercial motor vehicle, the clerk of the court having jurisdiction shall notify the department of the conviction.

(c) This notice shall contain such information as the commissioner requires by rules adopted under RSA 541–A.

II. The department shall furnish such information regarding the driving record of any person holding a commercial driver license as shall be mandated by federal law or regulation to:

(a) The driver license administrator of any other state, or province or territory of Canada, requesting that information.

(b) The police department of any other state conducting an official investigation.

(c) The commercial driver license information system.

(d) Any person upon request and payment of a fee of $5; provided, however, that the driving record information furnished under this subparagraph shall not include the social security number of any person.

Source. 1989, 319:17. 2013, 180:7, eff. Jan. 1, 2014.

263:98 Rulemaking Authority. The commissioner shall adopt rules under RSA 541–A relative to:

I. Procedures for commercial drivers to notify the department of convictions of violating any state law or local ordinance relating to motor vehicle traffic control, in any other state or Canada, other than parking violations.

II. Information required by RSA 263:97, I.

III. State testing procedures, which shall include the skills and knowledge tests for commercial driver licensing.

IV. The procedure to be followed by individuals who are permitted to conduct third-party testing.

V. The department's procedure for suspending, revoking, or cancelling a nonresident commercial driver license.

VI. Waiver from the commercial driver license program for farm vehicles, fire fighting equipment and military vehicles.

VII. A list of what constitutes serious traffic violations as provided in RSA 259:98–a.

VIII. The length of a disqualification period after which a person shall be treated as an original commercial driver license applicant for examination purposes.

IX. A method for examining and prorating the license fees of persons issued driver's licenses prior to July 1, 1989, who are required by the federal government to obtain commercial driver licenses before April 1, 1992, or such other date as may be established, and whose license will not come up for renewal prior to that date.

X. Commercial driver license classifications, endorsements and restrictions in compliance with this subdivision and federal requirements.

Source. 1989, 319:17, eff. July 1, 1989.

263:99 Authority to Enter Into Agreements. The commissioner may enter into or make agreements, arrangements, or declarations to carry out the provisions of this subdivision.

Source. 1989, 319:17, eff. July 1, 1989.

263:100 Reciprocity. Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle: if the person has a commercial driver license issued by any state or province or territory of Canada, in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver licenses; if the commercial driver license of the person is not suspended, revoked, or cancelled; and if the person is not disqualified from driving a commercial motor vehicle.

Source. 1989, 319:17, eff. July 1, 1989.

CHAPTER 265

RULES OF THE ROAD

Special Stops Required

Special Stops Required

265:50 Certain Vehicles Must Stop at All Railroad Grade Crossings.

I. The driver of any vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks.

II. No stop need be made at any such crossing when a police officer or a traffic control signal directs traffic to proceed, or by vehicles engaged in the common or contract carriage of passengers for hire, or school buses transporting school students, when such vehicles or buses are exempt by order of the commissioner of transportation.

III. Every vehicle used for the transportation of flammable liquids in cargo tanks, whether loaded or empty, or for the transportation of cylinders of liquified petroleum gas shall, upon approaching any railroad grade crossing, be brought to a full stop not more than 50 feet and not less than 15 feet from the nearest rail of such grade crossing, and shall not proceed until due caution has been taken to ascertain that the course is clear, except that a full stop need not be made at a railroad grade crossing where a police officer or a traffic control signal (not a railroad flashing signal) directs traffic to proceed; nor at an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of the proper state authority, when such marking can be read from the driver's position.

IV. The term "cylinders of liquefied petroleum gas" as used in this section, shall not be deemed to include the following:

(a) Portable jugs of the nature used by tradesmen such as steamfitters, painters, plumbers, etc.; or

(b) Bottled gas cylinders when attached to house trailers in transit.

Source. 1939, 69:1. RL 119:19. RSA 263:38. 1949, 127:1. RSA 263:78. 1961, 72:1. 1963, 330:1. RSA 262–A:47. 1981, 146:1. 1985, 213:20, eff. Jan. 1, 1986.

265:50–a Failure to Stop at Railroad Crossings; Fine. The fine for a violation of the provisions of RSA 265:48, RSA 265:49, or RSA 265:50 shall be $100 plus penalty assessment for a first offense and $250 plus penalty assessment for a subsequent offense in a 12-month period.

Source. 2005, 177:30, eff. July 1, 2005. 2015, 202:4, eff. Jan. 1, 2016.

265:52 Penalty for Violation of Railroad Crossing Provision. If any person is convicted of an offense under any provision of RSA 265:50 or 265:51, such person shall be guilty of a violation for the first offense, and, for any subsequent offense committed during any calendar year, such person shall be guilty of a misdemeanor. The director may revoke such person's driver's license and no new license shall be issued to such person for at least 90 days after the date of such revocation.

Source. RSA 262–A:49. 1963, 330:1. 1973, 528:141; 529:48. 1981, 146:1, eff. Jan. 1, 1982.

265:52–a Penalty for Violation of Railroad Crossing Provision by Commercial Drivers.

I. In addition to the penalties in RSA 265:52, a person is disqualified from driving a commercial motor vehicle for the period of time specified in paragraph II if he or she is convicted of one of the following offenses at a railroad grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(a) For commercial drivers who are not required to stop at all railroad grade crossings, failing to

slow down and check that the tracks are clear of an approaching train.

(b) For commercial drivers who are not required to stop at all railroad grade crossings, failing to stop before reaching the crossing, if the tracks are not clear.

(c) For commercial drivers who are required to stop at all railroad grade crossings, failing to stop before driving onto the crossing.

(d) For all commercial drivers, failing to have sufficient space to drive completely through the crossing without stopping.

(e) For all commercial drivers, failing to obey a traffic control device or the directions of a law enforcement officer at the crossing.

(f) For all commercial drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

II. A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than 60 days if the driver is convicted of or is found to have committed a first offense of a railroad grade crossing violation.

(b) Not less than 120 days if the driver is convicted of a second railroad grade crossing violation in separate incidents within a 3-year period.

(c) Not less that one year if the driver is convicted of a third or subsequent railroad grade crossing violation in separate incidents within a 3-year period.

Source. 2010, 95:5, eff. Jan. 1, 2011.

Buses

265:54 Overtaking and Passing School Bus.

I. The driver of a vehicle upon a way upon meeting or overtaking from either direction any school bus, plainly marked with school bus signs or such other distinguishing identification as the director may require, which has stopped on the highway for the purpose of receiving or discharging school children shall stop his or her vehicle before reaching such school bus at least 25 feet away from such school bus. The driver shall not proceed until such school bus resumes motion, or until flashing red lights cease to operate.

I–a. Testimony under oath from the school bus driver or other witness that a vehicle failed to stop and remain stopped as required by paragraph I shall be sufficient evidence to prove that the owner of the vehicle was driving and has violated the provisions of paragraph I, unless such evidence is rebutted or contradicted.

I–b. Except as provided in paragraph IV, a person who violates the provisions of paragraph I shall be guilty of a violation and shall be fined $150 plus penalty assessment for a first offense, and shall be fined not less than $250 nor more than $1,000 for a subsequent offense. In addition, the director may suspend the person's license to drive or nonresident driving privilege for a period of 30 days for a second or subsequent offense.

II. Whenever road conditions and space permit and whenever the number of vehicles following a moving school bus is 5 or more, the driver of the school bus shall pull over and let the following vehicles pass. A driver passing the school bus must do so without driving any part of his vehicle to the left of or across any unbroken painted line marked on the highway.

III. The driver of a vehicle upon a divided highway with separate roadways need not stop when meeting or passing a school bus which is traveling in the opposite direction on the other half of the divided highway, or when upon a controlled access highway if a school bus is stopped in a loading zone which is part of or adjacent to such highway and pedestrians are not permitted to cross the roadway.

IV. Except as provided in paragraph III, no driver of a vehicle who is required to stop his or her vehicle in accordance with paragraph I shall overtake and pass a school bus on the right. A person who violates the provisions of this paragraph shall be guilty of a violation and shall be fined $500 plus penalty assessment. In addition, the director shall suspend the person's license to drive or nonresident driving privilege for a period of up to 30 days for a first offense. For a second or subsequent offense, the person must appear before the court and shall be fined not less than $500 nor more than $1,200 plus penalty assessment. The director shall suspend the person's license to drive or nonresident driving privilege for a period of 30 days for a second offense, and for a period of not less than 30 days nor more than 120 days for a third or subsequent offense.

Source. 1949, 114:1. 1953, 56:1. RSA 263:43. 1961, 251:6. 1963, 330:1. 1975, 46:1. RSA 262–A:52. 1981, 146:1; 479:41. 1983, 355:1. 1986, 127:27. 2001, 132:2, eff. June 29, 2001. 2015, 202:6, 7, eff. Jan. 1, 2016.

265:55 Approaching Buses, Etc. The driver of any vehicle approaching or passing a bus, streetcar, or other vehicle used for transporting passengers, which has been stopped to allow passengers to alight

or embark, shall slow down his vehicle and, if necessary for the safety of the public, bring it to a full stop.

Source. 1915, 129:6. 1921, 119:11. PL 103:12. 1935, 107:1. RL 119:21. RSA 263:42. 1981, 146:1, eff. Jan. 1, 1982.

265:56 School Bus Signs. No school bus used for the purpose of transporting school children shall be driven upon the ways of the state unless it carries the designation "School Bus" in a conspicuous place showing to the front and rear thereof in lettering not less than 8 inches in height, and has such other distinguishing marks as the director may prescribe. When a school bus is being driven upon a way for purposes other than the transportation of school children, all designating marks thereon indicating school bus shall be covered or concealed.

Source. 1935, 107:2. RL 119:13. 1949, 114:2. 1951, 20:9. RSA 263:25. 1961, 251:1. 1963, 330:1. RSA 262–A:53. 1981, 146:1, eff. Jan. 1, 1982.

265:57 Driving of School Buses.

I. The driver of a school bus shall decrease speed when approaching a school bus stop and activate the amber warning lights a minimum of 100 feet prior to the stop.

II. (a) The driver shall stop the bus as far to the right of the highway as possible, yet remain on the traveled portion of the roadway. If facilities and stopping areas are available, the school bus shall be stopped completely off the highway.

(b) The bus shall be stopped in a position at least 10 feet from the students or in a position which allows students to cross at least 10 feet in front of the bus.

III. As the driver approaches a school bus stop, the driver shall check oncoming traffic, traffic to the rear of the school bus, and traffic to both sides of the school bus to ascertain whether traffic is stopping. When the school bus has come to a complete stop and it is safe to take on or discharge students, the driver shall open the service door and thereby activate the red flashing lights.

IV. If the school bus is equipped with strobe lights, the strobe lights shall be kept in continuous operation at all times throughout the regular route, home-to-school and school-to-home.

V. The fine for a violation of this section shall be $250.

Source. RSA 263:38–a. 1961, 251:7. 1981, 146:1; 479:11, 42. 2001, 81:1. 2005, 177:33, eff. July 1, 2005.

265:58 School Bus Driving Rules. The director shall adopt pursuant to RSA 260:5 and enforce all needful rules to govern the driving of all school buses used for the transportation of school children when owned and driven by any school district, publicly or privately owned, or driven while under contract in this state. The rules shall also apply to buses owned or used by a religious organization or a nonprofit organization used exclusively as a bus for the transportation of the organization's members in connection with functions of the organization.

Source. 1951, 113:1. RSA 263:39. 1981, 146:1. 1989, 305:9, eff. July 1, 1989.

265:59 Vehicle Formerly Used as School Bus to be Repainted. Any person who drives a vehicle formerly used as a school bus, as defined in RSA 259:96, on the ways of the state shall cause it to be painted a color readily distinguishable from national school bus chrome yellow.

Source. RSA 262–A:53–a. 1969, 3:1. 1981, 146:1, eff. Jan. 1, 1982.

Speed Limitations

265:60 Basic Rule and Maximum Limits.

I. No person shall drive a vehicle on a way at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the way in compliance with legal requirements and the duty of all persons to use due care.

II. Where no hazard exists that requires lower speed for compliance with RSA 265:60, I, the speed of any vehicle not in excess of the limit specified in this section or established as hereinafter authorized shall be prima facie lawful, but any speed in excess of the limit specified in this section or established as hereinafter authorized shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(a) In a posted school zone, at a speed of 10 miles per hour below the usual posted limit from 45 minutes prior to each school opening until each school opening and from each school closing until 45 minutes after each school closing.

(b) 30 miles per hour in any business or urban residence district as defined in RSA 259:118;

(c) 35 miles per hour in any rural residence district as defined in RSA 259:93, and on any class V highway outside the compact part of any city or town as defined in RSA 229:5, IV;

(d) 55 miles per hour in other locations, except as provided in (e);

(e) 65 miles an hour on the interstate system, the central New Hampshire turnpike and the eastern New Hampshire turnpike in locations where said highways are 4-lane divided highways or other divided highways of 4 or more lanes, except that the speed limit on the portion of I-93 from mile marker 45 to the Vermont border shall be 70 miles per hour.

(f) On a portion of a highway where officers or employees of the agency having jurisdiction of the same, or any contractor of the agency or their employees, are at work on the roadway or so close thereto as to be endangered by passing traffic, at a speed of 10 miles per hour below the usual posted limit, but in no case greater than 45 miles per hour. The speed shall be displayed on signs as required by RSA 265:6–a.

(g) For a vehicle equipped with a transponder, 25 miles per hour through a toll booth or gate that is equipped with a transponder reader for automated toll collection except for an open road tolling lane and except that at toll booths staffed by toll collectors drivers whose vehicles are not equipped for automated tolling shall come to a full stop at the toll booth so that the attendant may collect the toll.

(h) In the toll collection area of an open road tolling lane, at a speed greater than is reasonable and prudent for the conditions and actual and potential hazards existing at the time or greater than a per se maximum speed of 65 miles per hour, whichever is less.

III. The limits specified in subparagraphs II(e) and II(g) shall be the maximum lawful speed and no person shall drive a vehicle on said ways at a speed in excess of such maximum limit. The prima facie speed limits set forth in this section may be altered as authorized in RSA 265:62.

IV. The driver of every vehicle shall, consistent with requirements of paragraph I, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic by reason of weather or highway conditions.

V. The fines for violation of subparagraphs II(a)–(d) shall be as follows:

Miles per hour above the limit specified:

1–10	$50
11–15	75
16–20	100
21–25	200
26 +	$350

The fines listed in this paragraph shall be plus penalty assessment.

VI. The fines for violations of subparagraph II(e) shall be as follows:

Miles above the 65 mph limit:

1–5	$65
6–10	100
11–15	150
16–20	250
21 +	350

Miles above the 70 mph limit:

1–5	$65
6–10	100
11–15	200
16–20	300
21 +	400

The fines listed in this paragraph shall be plus penalty assessment.

Source. 1905, 86:8. 1909, 154:4. 1911, 133:13. 1921, 119:13. PL 103:17. 1927, 76:2. 1937, 125:1. RL 119:29. 1949, 286:1. RSA 263:53. 1963, 330:1. RSA 262–A:54. 1965, 335:1. 1979, 358:4. 1981, 146:1. 1987, 217:1. 1988, 245:11. 1989, 164:1. 1997, 11:1. 1999, 73:1. 2005, 177:42. 2010, 51:2, 3. 2013, 192:1, eff. Jan. 1, 2014. 2015, 202:8, eff. Jan. 1, 2016.

Serious Traffic Offenses

265:81 Transporting Alcoholic Beverages.

[Repealed 2006, 260:37, XI, eff. Jan. 1, 2007.]

History

Former RSA 265:81, which was derived from RSA 262:40–a; 1959, 216:1; 1965, 242:1; 1971, 54:1; 1973, 72:55, 56; 1979, 117:12, 362:4; 1981, 146:1; 1983, 332:9; 1990, 255:9; 1991, 207:1; and 2005, 177:39, related to guidelines for transporting alcoholic beverages and penalties for violation of guidelines. See now RSA 265–A:44.

265:81–a Transportation of Alcoholic Beverages by a Minor.

[Repealed 2006, 260:37, XII, eff. Jan. 1, 2007.]

History

Former RSA 265:81–a, which was derived from 1991, 207:2, related to limitations on transportation of alcoholic beverages by a minor. See now RSA 265–A:45.

Special Rules

265:107 Rules for Carrying Passengers. Nothing in RSA 265:106 shall be construed to prevent the transportation under such rules as shall be adopted pursuant to RSA 260:5 by the director of those enrolled at summer camps or students, teachers, or

employees of colleges and schools when it is for recreational or religious purposes; or prevent the transportation of employees of any town, city, county or the state, federal government, or any agency thereof, or of employees of the owner of such vehicle when in the course of going to or from their place of employment; or when transportation is in a vehicle approved by the director under RSA 266:7.

Source. 1941, 170:1. RL 119:50. RSA 263:80. 1957, 161:1. 1981, 146:1, eff. Jan. 1, 1982.

265:107–a Child Passenger Restraints Required.

I. No person shall drive a motor vehicle on any way while carrying as a passenger a person less than 18 years of age unless such person is wearing a seat or safety belt which is properly adjusted and fastened. Except as provided in paragraph II, no person shall drive a motor vehicle on any way while carrying as a passenger a person less than 18 years of age unless the motor vehicle was designed for and equipped with child passenger restraints in accordance with the safety standards approved by the United States Department of Transportation in 49 C.F.R. section 571.213.

I–a. No person who is less than 18 years of age shall drive a motor vehicle or autocycle on any way unless such person is wearing a seat or safety belt which is properly adjusted and fastened.

I–b. No person shall drive a motor vehicle on any way while carrying as a passenger a person less than 7 years of age unless such passenger is properly fastened and secured by a child restraint system which is in accordance with the safety standards approved by the United States Department of Transportation in 49 C.F.R. section 571.213. If the passenger is 57 inches or more in height, the provisions of this paragraph shall not apply.

II. A person shall not be guilty of a violation of this section if the motor vehicle the person is driving is regularly used to transport passengers for hire, is a school bus weighing more than 10,000 pounds or is a school bus weighing less than 10,000 pounds that was manufactured without safety belts, or there is an individualized education program statement contraindicating the use of restraints, is a vehicle manufactured before 1968, is a motorcycle as defined in RSA 259:63, is an antique motor car or motorcycle as defined in RSA 259:4, or is being operated in a parade authorized by law or ordinance, provided that the parade vehicle is travelling at a speed of no more than 10 miles per hour.

III. Any driver who violates the provisions of this section shall be guilty of a violation, and shall be subject to the following fines:

(a) $50 for a first offense.

(b) $100 for a second or subsequent offense.

IV. A violation of this section shall not be used as evidence of contributory negligence in any civil action.

V. A conviction for violating the provisions of this section shall not preclude prosecution of any other offense for which violation of this section might constitute an element.

VI. [Repealed.]

Source. 1983, 45:1. 1987, 240:1. 1989, 302:1. 1993, 21:1. 1995, 6:1. 1997, 244:1–4. 1999, 227:1. 2000, 19:1. 2003, 55:1. 2005, 177:24. 2006, 142:1, 2. 2008, 274:32. 2013, 246:1, eff. Jan. 1, 2014. 2015, 222:6, eff. July 1, 2015.

CHAPTER 266

EQUIPMENT OF VEHICLES

Inspections

266:1 Inspection Authorized.

I. The director may require the inspection of any vehicle, except an OHRV, snowmobile, moped, or any other vehicle exempted under this chapter, to determine whether it is fit to be driven. Such inspection shall be made at such times and in such manner as the director may specify, subject to the requirements set forth in this section.

II. Any vehicle registered under this title, except an OHRV, snowmobile, moped, or other exempt vehicle, shall be inspected once a year, during the month in which the birth date of the owner is observed, if the owner is a natural person. An inspection sticker shall be valid for the same duration as the vehicle's

registration, which shall not exceed 16 months. If the month in which the anniversary of the owner's birth occurs will be one of the next 4 months, an inspection sticker may be issued, with an expiration date of the birth month in the following year, of the first person named on the title application. Nothing in this paragraph shall require any person who has registered and had inspected a vehicle with temporary plates to have the vehicle reinspected upon receipt of permanent motor vehicle plates. An inspection sticker shall not expire when a vehicle is transferred to a licensed dealer.

II–a. Notwithstanding RSA 266:1, II, if the month in which the anniversary of the owner's birth occurs will be one of the next 4 months, and the vehicle owner provides written verification of absence from New Hampshire during the entire anniversary month, an inspection sticker may be issued, with an expiration date of the birth month in the following year, of the first person named on the title application.

III. If the owner of the vehicle is a company or corporation or other than a natural person, the annual inspection shall be made during the month designated by the director as the registration month for such legal entity. Vehicles registered as antique motor vehicles and antique motorcycles and which are 40 years old and over shall be inspected biennially. Antique motor vehicles and custom vehicles shall be inspected in the month of April. Without regard to the owner's birth date or registration month, motorcycles, autocycles, and recreational vehicles shall be inspected annually by July 1.

IV. Notwithstanding paragraphs II and III, newly registered vehicles, other than vehicles transferred to a licensed dealer, OHRVs, snowmobiles, and mopeds, and vehicles, other than vehicles transferred to a licensed dealer, OHRVs, snowmobiles, and mopeds, the ownership of which has been transferred, shall be inspected not later than 10 days after the registration or transfer of ownership of said vehicle. However, if a new vehicle is purchased at retail from a licensed dealer, as defined in RSA 259:18, the vehicle shall be inspected not later than 20 days after the date of transfer. A used vehicle for which a dealer has issued a 20-day plate pursuant to RSA 261:109 shall be inspected by the dealer or an authorized inspection station on behalf of the dealer at the time of the attachment of the plate unless a valid inspection sticker issued by the dealer is in place, in which case the vehicle shall be inspected within 20 days or before the sticker expires, whichever occurs first. All other expired motor vehicle inspections shall be subject to the 10-day grace period in RSA 266:5.

V. The director may authorize properly qualified persons to make inspections without expense to the state at stations designated by the director, and may at any time revoke such authorization or designation; provided, however, that inspections conducted at such stations at the request and under the direction of a police officer or a state trooper or authorized employee of the department of safety shall be paid for as follows:

(a) In the event violations of this section are uncovered, by the owner of the vehicle.

(b) In the event no such violations are uncovered, by the agency represented by the police officer or state trooper or authorized employee of the department of safety.

The biennial fee to be paid by the inspection station upon authorization to make inspections shall be $50 and shall not be refundable nor prorated, however, applications submitted during the second year of the license cycle shall be subject to a fee of only $25.

V–a. An inspection station may, upon request, be designated a "motorcycle only" inspection station. A "motorcycle only" inspection station may inspect only motorcycles and shall not be required to conduct OBD II emission testing under RSA 266:59–b or to purchase or lease any equipment relating to the OBD II emission testing program.

VI. Each inspection station shall conspicuously post on its premises a notice, in a form and size approved by the director, indicating that the station is an authorized inspection station.

VII. Each inspection station shall conspicuously post on the outside of the building a sign showing the inspection fee charged and the additional fee charged for OBD II testing under RSA 266:59–b. No inspection station shall include of the cost of OBD II testing or reporting in the inspection fee charged for a vehicle not subject to the OBD II requirements under RSA 266:59–b.

VII–a. (a) The director is authorized to require inspection stations to submit inspection data to the department electronically, provided that if electronic submission is required the following inspection stations shall be allowed to submit inspection data electronically or on a designated schedule and form prescribed by the department:

(1) Inspection stations that are authorized to inspect only motorcycles.

(2) [Repealed.]

(3) Fleet motor vehicle inspection stations for non-OBD II vehicles.

(4) Municipal and county government inspection stations.

(b) The department shall not require an inspection station to transfer inspection information electronically for any vehicle of model year 1995 or older.

VIII. A new vehicle which has been delivered in this state with a certificate of origin in the form prescribed by the director is exempt from the inspection requirements contained in this section until it is sold at retail. Upon retail sale of such a vehicle, the owner shall be required to have the vehicle inspected pursuant to paragraph IV and as provided in this section and the rules adopted under this chapter.

IX. Notwithstanding any other provisions of this section to the contrary, all school buses exceeding 10,000 pounds gross vehicle weight shall be inspected semiannually. The month for the first inspection shall be the month in which the birth date of the owner is observed, if the owner is a natural person; if the owner is other than a natural person, the first inspection shall be conducted during the month designated by the director as the registration month for such legal entity. In either case, the second inspection shall be 6 months later.

X. The director may authorize properly qualified persons to inspect any motor vehicle, except an OHRV, snowmobile, moped, or any other vehicle exempted under this chapter, which has been involved in a fatal accident or an accident involving serious bodily injury as defined in RSA 625:11, VI, to determine whether the vehicle was in compliance with state inspection requirements.

XI. (a) The department may impose an administrative fine upon any inspection station for any violation of an inspection law or rule adopted under the provisions of this chapter. The authority to impose such a fine shall be in addition to any other remedy or penalty that may be imposed, but in no event shall the department impose both a fine and a suspension of inspection privileges in the same proceeding. The maximum amounts of the fines which may be assessed shall be as follows:

(1) For the first violation, $250.

(2) For the second violation, $500.

(3) For the third violation, $750.

(4) For the fourth violation, $1,000.

(5) For 5 or more violations, $2,000.

(b) No fine shall take effect unless approved by the commissioner. The commissioner shall have the authority to modify the amount of the fine assessed.

Source. 1931, 80:1. 1939, 199:1. RL 116:11. 1951, 20:1. RSA 260:14. 1965, 240:6. 1969, 84:1; 291:1; 488:2. 1975, 121:1. 1976, 4:9, 10. 1978, 38:5. 1981, 146:1; 538:8. 1986, 218:1. 1988, 45:1; 288:9, 13. 1989, 305:16. 1990, 79:8. 1992, 282:8, 9. 1995, 3:2; 41:2. 2001, 115:1. 2005, 14:1; 203:7; 267:4, 5; 296:2, 6, I, 7. 2006, 83:1; 90:11. 2007, 91:1; 372:5. 2010, 353:4. 2012, 38:1, eff. Jan. 1, 2013. 2014, 234:3, eff. Jan. 1, 2015; 245:3, eff. Sept. 19, 2014. 2015, 222:8, eff. July 1, 2015.

266:1–a State Police Duties Relative to Vehicle Inspection.

I. The director of the division of state police, with the approval of the commissioner of safety shall assign a suitable complement of state troopers to assist the director of motor vehicles in enforcing the motor vehicle inspection laws and rules. A state trooper assigned pursuant to this section shall have the powers of a peace officer, certified under RSA 106–L:5, V, and shall have as a primary function statewide enforcement duties related to the inspection process, including inspection station auditing, investigation of alleged inspection station malfeasance, rejected vehicle follow-up, and sticker monitoring. A state trooper assigned under this section shall have the authority to enter any motor vehicle inspection station authorized under RSA 266:1, during the station's business hours, to fulfill his or her duties, and shall be assigned other enforcement duties as determined by the commissioner.

II. The commissioner shall furnish suitable equipment to a state trooper, as the commissioner deems necessary, to carry out his or her duties under this section.

Source. 1999, 302:1. 2001, 139:2. 2002, 262:4. 2013, 127:1, eff. Aug. 24, 2013. 2017, 206:15, eff. Sept. 8, 2017.

266:7 Inspection of School Buses. The director shall have authority, through his duly authorized agents, to inspect any motor vehicle used for the purpose of transporting school children to any school to determine its fitness for such purpose, and if he finds that such vehicle is unfit, he may refuse to permit it to be designated as a school bus. Said inspection shall be made before any motor vehicle transporting school children to any school is used for said transportation. The director shall cause to be issued some identification if such vehicle is approved as a school bus.

Source. 1939, 69:1. RL 119:14. 1945, 49:1. RSA 263:27. 1961, 251:4. 1981, 146:1, eff. Jan. 1, 1982.

Lights, Signals, Flashers, Reflectors and Flags

266:39 School Bus Stop Signals and Strobe Lights.

I. The director shall adopt rules pursuant to RSA 260:5 requiring certain school buses to be equipped

with automatic flasher-type stop lights located on the front and rear. Said stop lights shall be of such types and designs as approved by said director. No school bus shall be driven upon the ways of the state which does not carry the equipment which may be required by the director under the provisions of this paragraph. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a way for the purpose of permitting school children to board or alight from said school bus.

II. White strobe lights may be permanently mounted on the longitudinal center line of the bus roof. Strobe lights shall be capable of being activated and deactivated by the driver.

Source. 1949, 114:3. RSA 263:26. 1961, 251:2. 1981, 146:1. 2001, 81:2, eff. Aug. 18, 2001.

Miscellaneous

266:62 School Bus Design Rules. The director shall adopt pursuant to RSA 260:5 and enforce all needful rules to govern the design of all school buses used for the transportation of school children when owned and operated by any school district, publicly or privately owned, or operated while under contract in this state.

Source. 1951, 113:1. RSA 263:39. 1981, 146:1, eff. Jan. 1, 1982.

Safety Devices Required for Transporting

266:72 Spillage of Material.

I. No vehicle shall be driven or moved on any way unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a way in cleaning or maintaining such way.

II. No person shall operate on any way any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the way. Without limiting the foregoing provision, no person shall drive on any way any open vehicle loaded with earth, sand, asphalt, stone, gravel, or other particulate substance unless said vehicle is equipped with and said load is entirely covered and secured by a tarpaulin or similar covering which prevents the escape of any substance from said load onto the way.

II–a. No person shall operate on any way any open vehicle loaded with light scrap metal, unless the load is covered with and secured by a close-fitting tarpaulin which prevents the escape of any light scrap metal from the load onto the way. For the purposes of this paragraph "light scrap metal" means any fragments less than 8 inches wide and no more than ⅛ inch thick of manufactured metal articles or shredded metal parts rejected or discarded and useful only as material for reprocessing. The provisions of this paragraph shall not apply to truck operators transporting crushed vehicles to shredding facilities or to transporters of heavy scrap metals to or from metal scrap dealers or remelting facilities.

III. Any person who violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. Any person shall be liable to the state or town for any damage done to the way by spillage.

IV. The provisions of paragraphs I, II, II–a, and III of this section shall not apply to a local farmer transporting his or her own farm products or materials incidental to a local farming operation where such transporting requires incidental use of a way, provided that such farmer shall not thereby be relieved of his or her duty to exercise reasonable care to prevent hazardous spillage.

V. The provisions of paragraphs II and II–a shall not apply to:

(a) The operation of construction equipment as defined in RSA 259:42 and motor vehicles used in the construction of highways provided that such equipment or motor vehicle is used within a highway construction zone as prescribed by the commissioner of transportation, provided that the driver of any such vehicle shall not thereby be relieved of the duty to exercise reasonable care;

(b) The operation of municipal and state highway maintenance equipment;

(c) The driving of any vehicle on a way at speeds of less than 30 miles per hour.

Source. RSA 249:51. 1965, 178:1. 1973, 530:32; 573:1, 2. 1981, 146:1. 1994, 373:1–3. 1995, 232:1. 2004, 257:33. 2006, 317:7. 2010, 251:5, eff. Sept. 4, 2010.

266:72–a Motor Carriers; Equipment; Roadside Inspections.

I. The commissioner may adopt as rules, under RSA 541–A, the current version of the federal motor carrier safety regulations promulgated by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration and Federal Motor Carrier Safety Administration, contained in 49 C.F.R. parts 107, 382, and 385–397. Notwithstanding the provisions of RSA 541–A, any amendments or additions by the respective federal agencies or their

successor agencies shall also amend or supplement the rules adopted by the commissioner of safety without further action on the part of the commissioner. The commissioner shall be authorized to exempt vehicles and drivers operating exclusively in intrastate commerce from such rules which the commissioner determines impose an unnecessary regulatory burden without providing a corresponding safety benefit.

II. Whenever the commissioner finds that a motor carrier safety regulation in 49 C.F.R. sections 390-397, provides an equal or greater degree of safety the commissioner may, pursuant to RSA 260:5, adopt the federal regulation as a rule, and the rule shall take precedence over the conflicting provisions of this title. No person who is in compliance with the corresponding rule adopted by the commissioner shall be convicted of violating a conflicting provision of this title. The commissioner shall request the introduction, at the next annual session of the legislature following adoption of such a rule, of legislation amending or repealing the conflicting provision of this title and, if the legislation is not enacted, any rule so adopted shall be automatically repealed 60 days after the last day of the legislative session.

III. The drivers of all vehicles subject to the motor carrier rules who operate exclusively in intrastate commerce shall be subject to the medical examination, written tests, and road tests required by 49 C.F.R. sections 391.31–391.49, as amended, provided, however, that the commissioner may waive specific requirements or standards of the medical examination for any such driver who has a valid commercial driver's license issued by this state on or after January 1, 1990, if it would not jeopardize public safety to grant such a waiver. The commissioner may adopt rules pursuant to RSA 541–A relative to standards for the granting of such waivers. The department shall make interested parties aware of the provisions of this paragraph. Once a waiver is granted under this paragraph, the waiver shall be placed on the medical examination card required by federal regulation.

III–a. Paragraph III shall not apply to intrastate transportation performed by the state, or any political subdivision of the state. However, nothing in this section shall prevent or inhibit any public employer from establishing internal policies making the motor carrier safety rules applicable to its vehicles and drivers.

IV. Utility service vehicle drivers providing intrastate service shall be exempt from the provisions of 49 C.F.R. 395 as adopted pursuant to this section.

V. (a) A driver of a motor carrier shall stop the vehicle on the request of any enforcement officer of the department of safety or other law enforcement agent certified to conduct truck inspections or by command of roadside signs so that the officer may:

(1) Examine:

(A) Vehicle components.

(B) Driver's physical condition.

(C) Cargo condition.

(D) Documents.

(2) Enter the cab or cargo area as necessary to determine that:

(A) The vehicle is in safe operating condition.

(B) The cargo is properly secured.

(b) Every owner/operator of a motor carrier, or his or her authorized agent, shall submit accounts, books, records, memoranda, correspondence, and other documents for inspection, upon demand by any enforcement officer of the department of safety or other law enforcement agent certified to conduct truck inspections who in the course of enforcing the motor carrier rules is acting within the scope of his or her duties and authority, at the motor carrier's principal place of business during regular business hours.

(c) Any operator who fails to stop or allow inspection as described in subparagraph (a) shall be guilty of a misdemeanor. A second violation of subparagraph (a) shall result in suspension of the person's license or privilege to drive in New Hampshire and notification of such suspension to national motor vehicle license databases.

VI. The driver of any vehicle operating intrastate and registered with New Hampshire farm or agricultural plates and with a gross vehicle weight, gross vehicle weight rating, or gross combination weight rating of 26,000 pounds or less; designed or used to transport fewer than 16 passengers, including the driver; and which does not transport materials required to be placarded pursuant to 49 C.F.R. part 172, subpart F, shall be exempt from the provisions of 49 C.F.R. parts 391, 392, 393, 395, and 396, as adopted as rules pursuant to this section, except that such exemption shall not apply to the requirements of 49 C.F.R. section 392.3, operating while fatigued or ill, 49 C.F.R. section 392.4, use of illegal drugs or

substances, 49 C.F.R. section 392.5, driver use of alcohol, 49 C.F.R. part 393, subpart C, brakes, and 49 C.F.R. section 396.7, unsafe operations forbidden.

Source. 1985, 213:24. 1989, 139:1. 1997, 252:2, 3. 2008, 187:1, 2. 2012, 172:2. 2013, 180:9, eff. Jan. 1, 2014; 185:1, eff. July 2, 2013.

Emergency Lights and Warning Lights

266:78–k School Buses. School buses shall be equipped with warning lights and stop signals only as provided in RSA 266:39.

Source. 2008, 358:12, eff. Sept. 9, 2008.

TITLE XXIII

LABOR

CHAPTER 273–A

PUBLIC EMPLOYEE LABOR RELATIONS

273–A:1 Definitions. In this chapter:

I. "Board" means the public employee labor relations board created by RSA 273–A:2.

II. "Board of the public employer" means the executive body of the public employer, such as the city council, board of selectmen, the school board or the county commissioners.

(a) For purposes of this chapter:

(1) The board of the public employer for executive branch state employees means the governor and council.

(2) The board of the public employer for the judiciary means the chief justice of the supreme court with the advice and consent of the judicial branch administrative council appointed pursuant to supreme court rule 54.

(b) In certain political subdivisions of the state the board of the public employer may also be the legislative body.

III. "Budget submission date" means the date by which, under law or practice, the public employer's proposed budget is to be submitted to the legislative or other similar body of the government, or to the city council in the case of a city, for final action. In the case of a town, school district or supervisory union it means February 1 of each year, except in the case of a city school district or city school administrative unit which has a separate budget submission date applied to it by the city.

IV. "Cost item" means any benefit acquired through collective bargaining whose implementation requires an appropriation by the legislative body of the public employer with which negotiations are being conducted.

V. "Grievance" means an alleged violation, misinterpretation or misapplication with respect to one or more public employees, of any provision of an agreement reached under this chapter.

VI. "Impasse" means the failure of the 2 parties, having exhausted all their arguments, to achieve agreement in the course of good faith bargaining, resulting in a deadlock in negotiations.

VII. "Legislative body" means that governmental body having the power to appropriate public money. The legislative body of the state community college system and university system shall be the board of trustees.

VIII. "Professional employee" means any employee engaged in work predominantly intellectual and varied in character, involving the consistent exercise of discretion and judgment, and requiring knowledge in a discipline customarily acquired in a formal program of advanced study.

IX. "Public employee" means any person employed by a public employer except:

(a) Persons elected by popular vote;

(b) Persons appointed to office by the chief executive or legislative body of the public employer;

(c) Persons whose duties imply a confidential relationship to the public employer; or

(d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed.

X. "Public employer" means the state and any political subdivision thereof, the judicial branch of the state, any quasi-public corporation, council, commis-

sion, agency or authority, the state community college system, and the state university system.

XI. "Terms and conditions of employment" means wages, hours and other conditions of employment other than managerial policy within the exclusive prerogative of the public employer, or confided exclusively to the public employer by statute or regulations adopted pursuant to statute. The phrase "managerial policy within the exclusive prerogative of the public employer" shall be construed to include but shall not be limited to the functions, programs and methods of the public employer, including the use of technology, the public employer's organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions.

XII. [Repealed.]

Source. 1975, 490:2. 1977, 437:1. 1983, 270:1. 2001, 170:1, 2. 2007, 107:1, eff. June 11, 2007; 368:1, eff. Sept. 15, 2007. 2011, 159:1, I, eff. Aug. 8, 2011. 2014, 13:1, 2, eff. July 13, 2014.

273–A:2 The Board.

I. There is hereby created a public employee labor relations board consisting of 5 members, appointed by the governor and council. Two members shall be appointed who shall have extensive experience representing organized labor. Two members shall be appointed who shall have extensive experience in representing management interests. One member, who shall be the chairman, shall be appointed to represent the public at large, and shall not hold elective or appointive public office, or elective or appointive office, or membership in, organized labor at the time of his appointment or during his term. Members of the board may be removed by the governor and council for cause.

I–a. The governor and council shall appoint, in addition to the regular board members specified in paragraph I, 4 alternate board members. One member shall have extensive experience representing organized labor, one member shall have extensive experience in representing management interests, and 2 members shall represent the public at large. The members representing the public at large shall not hold elective or appointive public office, or elective or appointive office, or membership in, organized labor at the time of appointment or during their term. Alternate board members shall serve a 6-year term, and may be removed by the governor and council.

II. Each member of the board shall serve for a term of 6 years, except that of the members first appointed, one shall be appointed for 2 years, one for 3 years, one for 4 years, one for 5 years and one for 6 years. Each member shall serve until his successor is appointed and qualified. A person appointed to fill a vacancy shall be appointed for the unexpired term by the governor and council.

III. Three members of the board shall constitute a quorum; provided, however, that no meeting shall be held unless organized labor, management and the public at large are each represented by at least one board member. In the absence of the 2 regular board members representing organized labor, or the 2 regular board members representing management, their respective alternates shall act in their place so as to constitute a quorum representative of each interest. Alternate board members shall also serve when the respective regular board members do not participate in a meeting due to a conflict of interest.

IV. The board may appoint an executive director and such other staff, including counsel, as it deems necessary, who shall serve at the pleasure of the board.

V. The board shall maintain a list of neutral third parties but the parties to an impasse may agree upon other persons not on the list.

VI. The board may make, amend and rescind in the manner prescribed by RSA 541–A such rules, establish such procedures and conduct such studies as may be necessary to carry out the provisions of this chapter.

VII. The members of the public employee labor relations board shall be paid $50 a day and their necessary expenses while actually engaged in the performance of their duties.

VIII. All board decisions shall be indexed in a timely fashion.

IX. The board shall develop, post, and maintain on its website training to educate negotiating parties as to applicable laws and rules and the skills that contribute to effective collective bargaining.

Source. 1975, 490:2. 1979, 374:1, 2. 1985, 257:1. 1994, 356:1. 1999, 156:2, eff. Aug. 27, 1999. 2013, 36:1, eff. June 4, 2013.

273–A:2–a Conflict of Interest.

I. No board member shall participate in any case or issue before the board in which he has a potential conflict of interest. A conflict of interest shall include any case or action in which a member has a personal or professional interest and any case or action in which a member is personally or professionally associated with any of the parties involved.

II. The board shall adopt rules, under RSA 541–A, to establish procedures for identifying and

addressing potential conflicts of interest by board members.

Source. 1987, 379:3, eff. May 26, 1987.

273–A:3 Obligation to Bargain.

I. It is the obligation of the public employer and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith. "Good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.

II. (a) Any party desiring to bargain shall serve written notice of its intention on the other party at least 120 days before the budget submission date; provided, however, that bargaining with state employees shall commence not later than 120 days before the deadline for submission of the governor's proposed operating budget.

(b) Only cost items shall be submitted to the legislative body of the public employer for approval at the next annual meeting of the legislative body, unless there is an emergency as defined in RSA 31:5 or RSA 197:3. If the legislative body rejects the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations on the entire agreement. No cost item agreed to by the public employer and the employee organization shall be modified by the legislative body of such public employer.

(c) If the public employer is a local political subdivision with a city or town council form of government cost items shall be submitted within 30 days to the city council or aldermen or to the town council for approval. Within 30 days of the receipt of the submission, the city council, aldermen, or the town council shall vote to accept or reject the cost items. If the city council or aldermen or the town council rejects any part of the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations on all or part of the entire agreement.

III. Matters regarding the policies and practice of any merit system established by statute, charter or ordinance relating to recruitment, examination, appointment and advancement under conditions of political neutrality and based upon principles of merit and competence shall not be subjects of bargaining under the provisions of this chapter. Nothing herein shall be construed to diminish the authority of the state personnel commission or any board or agency established by statute, charter or ordinance to conduct and grade merit examinations from which appointments or promotions may be made.

IV. Each public employer shall record its budget submission date with the board.

Source. 1975, 490:2. 1977, 437:2. 1979, 374:3. 1985, 39:1. 1998, 205:1, eff. Aug. 17, 1998. 2013, 244:1, eff. Sept. 22, 2013.

273–A:4 Grievance Procedures. Every agreement negotiated under the terms of this chapter shall be reduced to writing and shall contain workable grievance procedures. No grievance resulting from the failure of a teacher to be renewed pursuant to RSA 189:14–a shall be subject to arbitration or any other binding resolution, except as provided by RSA 189:14–a and RSA 189:14–b. Any such provision in force as of the effective date of this section shall be null and void upon the expiration date of that collective bargaining agreement. However, after the expiration date of that collective bargaining agreement, nothing in this section shall be deemed to prohibit the school district public employer and the exclusive bargaining representative from entering into a subsequent agreement that may include arbitration or any other binding resolution for teacher nonrenewals pursuant to RSA 189:14–a and RSA 189:14–b. If such grievance procedures become incorporated into a subsequent collective bargaining agreement, those procedures shall become null and void at the expiration of that agreement. "Grievance resulting from failure of a teacher to be renewed" means a grievance that challenges nonrenewal, or that seeks reversal or reinstatement from nonrenewal as a remedy.

Source. 1975, 490:2. 2003, 204:5. 2008, 246:2, eff. Aug. 23, 2008. 2011, 267:3, eff. July 1, 2011.

273–A:5 Unfair Labor Practices Prohibited.

I. It shall be a prohibited practice for any public employer:

(a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;

(b) To dominate or to interfere in the formation or administration of any employee organization;

(c) To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization;

(d) To discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this chapter;

(e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations;

(f) To invoke a lockout;

(g) To fail to comply with this chapter or any rule adopted under this chapter;

(h) To breach a collective bargaining agreement;

(i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

II. It shall be a prohibited practice for the exclusive representative of any public employee:

(a) To restrain, coerce or otherwise interfere with public employees in the exercise of their rights under this chapter;

(b) To restrain, coerce or otherwise interfere with public employers in their selection of agents to represent them in collective bargaining negotiations or the settlement of grievances;

(c) To cause or attempt to cause a public employer to discriminate against an employee in violation of RSA 273–A:5, I(c), or to discriminate against any public employee whose membership in an employee organization has been denied or terminated for reasons other than failure to pay membership dues;

(d) To refuse to negotiate in good faith with the public employer;

(e) To engage in a strike or other form of job action;

(f) To breach a collective bargaining agreement.

(g) To fail to comply with this chapter or any rule adopted hereunder.

Source. 1975, 490:2. 1979, 374:4, eff. Aug. 22, 1979.

273–A:6 Violations.

I. The board shall have primary jurisdiction of all violations of RSA 273–A:5, but no complaint may be filed with the board for violation of RSA 273–A:5, I(c) or (d) until the complainant has exhausted the administrative remedies provided by statutes other than this chapter. The board may refer any prohibited practice charges, as defined in RSA 273–A:5, to a hearing officer who shall conduct a hearing, make findings of fact, and report to the board within the time limits set forth in this section.

II. Complaints shall be filed by affidavit and shall be accompanied by a $60 filing fee. Such fees shall be continually appropriated to the board. A copy of the complaint shall be given to the party complained against at the time the complaint is filed. The board or its designee shall hold a hearing within 45 days under rules adopted by the board pursuant to RSA 541–A and shall give 5 working days' notice of the hearing by certified mail to all persons required to appear and to the representative of any party against whom a complaint has been filed.

III. The board may issue a cease and desist order if it deems one necessary in the public interest, pending the hearing.

IV. The board or its designee shall have the power to compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and to take testimony under oath, as provided in RSA 516, and may delegate such powers to any persons it may appoint.

V. Both parties shall have the right to be represented by counsel.

VI. The board or its designee shall render its decision within 45 days after the hearing, in accordance with rules adopted by the board pursuant to RSA 541–A. Upon finding that a party has violated RSA 273–A:5, the board may (a) issue a cease and desist order; (b) order reinstatement of an employee with back pay; (c) require periodic reporting of compliance; (d) order payment of the costs incurred by a party negotiating in good faith in negotiations found by the board to have been carried on not in good faith by the other party, if the board finds such penalty appropriate to the circumstances; or (e) order such other relief as the board may deem necessary.

VII. The board shall summarily dismiss any complaint of an alleged violation of RSA 273–A:5 which occurred more than 6 months prior to the filing of the complaint with the body having original jurisdiction of that complaint.

VIII. Any proceeding referred to a hearing officer under this section or RSA 273–A:8, I shall be reviewable by the board on motion of any party thereto or on motion of the board if the motion is made within 30 days of the rendering of such decision; otherwise the decision shall become final. The review by the board may result in approval, denial, or modification of the decision of the hearing officer and

may be made administratively by the board without a hearing de novo unless ordered by the board.

IX. Any order issued by the board shall contain findings of fact and rulings of law on which the order is based. Any other decision made by the board shall contain, in a written record of oral proceedings or other written document, findings of fact and rulings of law on which the decision is based.

Source. 1975, 490:2. 1979, 374:5, 6. 1992, 192:2. 1994, 356:2, 3, eff. July 1, 1994.

273–A:7 Injunctions. The board shall petition the superior court for the county in which the party sought to be enjoined is principally located for such order of the court as may be necessary to compel obedience to an order of the board and the superior court shall issue its order upon satisfying itself that:

I. The order of the board was within its jurisdiction to issue; and

II. There is substantial evidence on the record considered as a whole to support the finding of the board.

Source. 1975, 490:2. 1977, 437:3, eff. Sept. 3, 1977.

273–A:8 Determining Bargaining Unit.

I. The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273–A:10. In making its determination the board should take into consideration the principle of community of interest. The community of interest may be exhibited by one or more of the following criteria, although it is not limited to such:

(a) Employees with the same conditions of employment;

(b) Employees with a history of workable and acceptable collective negotiations;

(c) Employees in the same historic craft or profession;

(d) Employees functioning within the same organizational unit.

In no case shall the board certify a bargaining unit of fewer than 10 employees with the same community of interest. For purposes of this section, probationary employees shall be counted to satisfy the employee minimum number requirement. In no case shall such probationary employees vote in any election conducted under the provisions of this chapter to certify an employee organization as the exclusive representative of a bargaining unit.

II. The board may certify a bargaining unit composed of professional and non-professional employees only if both the professional and non-professional employees, voting separately, vote to join the proposed bargaining unit. Persons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise.

III. In the event the bargaining unit is determined by the board's designee, the decision may be appealed to the board for final determination.

Source. 1975, 490:2. 1983, 270:2. 2008, 137:1, eff. Aug. 5, 2008. 2011, 45:1, eff. July 8, 2011.

273–A:9 Bargaining by State Employees.

I. All cost items and terms and conditions of employment affecting state employees in the classified system generally shall be negotiated by the state, represented by the governor as chief executive, with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the governor.

II. To assist in the conduct of such negotiations the governor may designate an official state negotiator who shall serve at the pleasure of the governor.

III. The governor shall also appoint an advisory committee to assist in the negotiating process. The manager of employee relations appointed under RSA 21–I:44, II shall be a member of this committee.

III–a. No person who is appointed to serve as a state negotiator or as a member of the state negotiating team or any person who serves as a member of the employee bargaining committee shall use his or her position to obtain anything of value for the private benefit of such person or the person's immediate family. Nothing in this section shall prevent an employee or taxpayer from serving on a negotiating team or bargaining committee.

IV. The division of personnel, through the manager of employee relations and the manager's staff, shall provide administrative and professional support to the governor in the conduct of negotiations.

V. [Repealed.]

Source. 1975, 490:2. 1986, 12:7. 1995, 9:35, 36. 1997, 351:53. 1999, 225:15, 16. 2004, 137:1, eff. July 18, 2004. 2010, 368:1(50), eff. Dec. 31, 2010.

273–A:9–a Bargaining by Judicial Employees.

I. All cost items and terms and conditions of employment affecting judicial employees generally shall be negotiated by the unified court system, rep-

resented by the chief justice of the supreme court with the advice and consent of the judicial branch administrative council appointed pursuant to supreme court rule 54, with a single employee bargaining committee comprised of exclusive representatives of all interested bargaining units. Negotiations regarding terms and conditions of employment unique to individual bargaining units shall be negotiated individually with the representatives of those units by the chief justice and the administrative council.

II. The chief justice of the supreme court, with the advice and consent of the judicial branch administrative council appointed pursuant to supreme court rule 54, may designate an official negotiator who shall serve at the pleasure of the chief justice and the administrative council.

Source. 2001, 170:3. 2007, 107:2, eff. June 11, 2007.

273–A:9–b Legislative Oversight Committee on Employee Relations.

I. There shall be a permanent joint legislative committee known as the legislative oversight committee on employee relations.

II. (a) The committee shall include the following members:

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

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

(b) Members of the committee shall receive mileage at the legislative rate.

III. The chair of the committee shall rotate biennially between the senate president or designee and the speaker of the house of representatives or designee, provided that the senate president shall serve as the first chairperson under the provisions of this subparagraph, beginning with the 2015–16 biennium. In the event that the presiding officer or designee serving as chairperson resigns or for any reason is unable to serve, the other presiding officer or designee shall serve as chairperson for the remainder of the biennium, provided that such substitution shall not change the rotation provided for in this subparagraph.

IV. The committee shall meet with the state negotiating committee after the first Wednesday in December in even-numbered years, as necessary, to discuss the state's objectives in the bargaining process. Meetings shall be at the call of the chairperson.

V. The committee shall hold public hearings on all collective bargaining agreements with state employees and on all fact finder's reports relative to the collective bargaining process with state employees, and shall submit any recommendations on such agreements or reports to the members of the senate and the house of representatives.

VI. The senate president may appoint one or more alternates to serve on the committee in the event that a senate member is unable to attend. The speaker of the house of representatives may appoint one or more alternates to serve on the committee in the event that a house member is unable to attend.

Source. 2015, 274:20, eff. Sept. 16, 2015.

273–A:10 Elections.

I. If a petition is filed by:

(a) At least 30 percent of the employees in the bargaining unit seeking recognition, alleging that they wish to be represented in collective bargaining by an employee organization as their exclusive representative or asserting that the employee organization which has been certified by the board is no longer the representative of the majority of employees in the bargaining unit; or

(b) A public employer alleging that one or more employee organizations has petitioned to be recognized as the exclusive representative of a majority of employees in a bargaining unit; the board shall investigate such petition and may hold hearings for the purpose of determining whether or not grounds exist for conducting an election. Upon so finding, the board shall order an election to be held under its supervision and in accordance with rules prescribed by the board. Otherwise, it shall dismiss the petition.

II. The petition shall consist of separate forms for each employee, whose names shall not be disclosed.

III. The ballot shall contain a space permitting a vote against representation by any employee organization whatever; and no election shall be held within 12 months after an election in which a majority of those voting cast ballots against representation by any employee organization.

IV. An employee organization receiving a simple majority of the votes cast shall be certified by the board as the exclusive representative of the bargaining unit. In the absence of a simple majority, a runoff election shall be conducted between the 2 options receiving the most votes.

V. The board shall not certify any employee organization as the exclusive representative of a bargaining unit without an election being held pursuant to this section.

VI. (a) Certification as exclusive representative shall remain valid until the employee organization is dissolved, voluntarily surrenders certification, loses a valid election or is decertified.

(b) The board shall decertify any employee organization which is found in a judicial proceeding to discriminate with regard to membership, or with regard to the conditions thereof, because of age, sex, race, color, creed, marital status or national origin; or has systematically failed to allow its membership equal participation in the affairs of the employee organization.

(c) Any challenge to a certified exclusive bargaining representative, whether in a decertification election or a challenge by another labor organization, shall result in decertification or change in bargaining representation if decertification or the challenging organization is approved by a majority vote of members of the bargaining unit voting.

VII. Two or more bargaining units may with the approval of the public employer affected combine for the purpose of engaging in collective bargaining negotiations with a single public employer and the bargaining unit thus created shall enjoy the same rights and be subject to the same duties as if a single exclusive representative for the combined bargaining unit had been certified by the board.

VIII. [Repealed.]

IX. [Repealed.]

Source. 1975, 490:2. 1979, 374:7. 1983, 149:1. 2007, 368:2, eff. Sept. 15, 2007. 2011, 159:1, II, eff. Aug. 8, 2011.

273–A:11 Rights Accompanying Certification.

I. Public employers shall extend the following rights to the exclusive representative of a bargaining unit certified under RSA 273–A:8:

(a) The right to represent employees in collective bargaining negotiations and in the settlement of grievances. An individual employee may present an oral grievance to his employer without the intervention of the exclusive representative. Until the grievance is reduced to writing, the exclusive representative shall be excluded from a hearing if the employee so requests; but any resolution of the grievance shall not be inconsistent with the terms of an existing agreement between the parties.

(b) The right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement. Notwithstanding the foregoing, an election may be held not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire.

II. A reasonable number of employees who act as representatives of the bargaining unit shall be given a reasonable opportunity to meet with the employer or his representatives during working hours without loss of compensation or benefits.

Source. 1975, 490:2, eff. Aug. 23, 1975.

273–A:12 Resolution of Disputes.

I. (a) Whenever the parties request the board's assistance or have bargained to impasse, or if the parties have not reached agreement on a contract within 60 days, or in the case of state employees 90 days, prior to the budget submission date, and if not otherwise governed by ground rules:

(1) The chief negotiator for the bargaining unit may request to make a presentation directly to the board of the public employer. If this request is approved by the board of the public employer, the chief negotiator for the board of the public employer shall in turn have the right to make a presentation directly to the bargaining unit. The cost of the respective presentations shall be borne by the party making the presentation.

(2) The chief negotiator for the board of the public employer may request to make a presentation directly to the bargaining unit. If this request is approved by the bargaining unit, the chief negotiator for the bargaining unit shall in turn have the right to make a presentation directly to the board of the public employer. The cost of the respective presentations shall be borne by the party making the presentation.

(b) If the impasse is not resolved, a neutral party chosen by the parties, or failing agreement, appointed by the board, shall undertake to mediate the issues remaining in dispute. If the parties so choose, or if mediation does not result in agreement within 45 days, or in the case of state employees 75 days, prior to the budget submission date, a neutral party chosen by the parties, or failing agreement, appointed by the board, shall make and report findings of fact together with recommendations for resolving each of the issues remaining in dispute, which findings and recommendations shall not be made public until the negotiating teams shall have considered them for 10 days.

II. If either negotiating team rejects the neutral party's recommendations, his findings and recommendations shall be submitted to the full membership of the employee organization and to the board of the public employer, which shall vote to accept or reject so much of his recommendations as is otherwise permitted by law.

III. (a) If either the full membership of the employee organization or the board of the public employer rejects the neutral party's recommendations, the findings and recommendations shall be submitted to the legislative body of the public employer at the next annual meeting of the legislative body, unless there is an emergency as defined in RSA 31:5 or RSA 197:3, which shall vote to accept or reject so much of the recommendations as otherwise is permitted by law.

(b) If the public employer is a local political subdivision with a city or town council form of government and if either the full membership of the employee organization or the board of the public employer rejects the neutral party's recommendations, the findings and recommendations shall be submitted within 30 days to the city council or aldermen or town council for approval. Within 30 days of the receipt of the submission, the city council or aldermen or town council shall vote to accept or reject the recommendations as otherwise is permitted by law.

IV. If the impasse is not resolved following the action of the legislative body, negotiations shall be reopened. Mediation may be requested by either party and may, at the mediator's option, involve the board of the public employer. In cases where the board of the public employer also serves as the legislative body of a municipality, the mediator may request no more than one less than a quorum of the legislative body to participate in the mediation.

V. Nothing in this chapter shall be construed to prohibit the parties from providing for such lawful procedures for resolving impasses as the parties may agree upon; providing that no such procedures shall bind the legislative body on matters regarding cost items. The parties shall share equally all fees and costs of such procedures.

VI. The parties shall share equally all fees and costs of mediation and fact-finding required by this chapter.

VII. [Repealed.]

Source. 1975, 490:2. 1979, 374:9. 1998, 205:2; 341:1. 2008, 388:1, eff. July 15, 2008. 2011, 3:1, eff. Mar. 1, 2011. 2012, 161:1, eff. Jan. 1, 2013.

273–A:13 Strikes Prohibited. Strikes and other forms of job action by public employees are hereby declared to be unlawful. A public employer shall be entitled to petition the superior court for a temporary restraining order, pending a final order of the board under RSA 273–A:6 for a strike or other form of job action in violation of the provisions of this chapter, and may be awarded costs and reasonable legal fees at the discretion of the court.

Source. 1975, 490:2, eff. Aug. 23, 1975.

273–A:14 Appeals. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain review of such order in the manner prescribed in RSA 541.

Source. 1975, 490:2, eff. Aug. 23, 1975.

273–A:15 Actions by or Against Public Employee Organizations. Actions by or against the exclusive representative of a bargaining unit may be brought, without respect to the amount of damages, in the superior court of the county in which it is principally located, or where the plaintiff resides or has its principal place of business, if the plaintiff is a resident of this state or is incorporated in this state.

Source. 1975, 490:2, eff. Aug. 23, 1975.

273–A:16 Records and Reports.

I. A copy of all agreements reached as a result of collective bargaining under this chapter shall be filed with the board by the parties within 14 days after execution of said agreement.

II. Except as provided in paragraph IV, all documents and records of the board shall be public records and shall be kept for a minimum of 10 years.

III. The board shall biennially submit a report of its activities to the governor and council.

IV. In adjudicatory hearings conducted by the board, the board's deliberative processes shall be privileged and exempt from the public disclosure provisions of RSA 91–A. Decisions and orders in these adjudicatory hearings, including any prehearing orders required by RSA 541–A:31, V(d), shall be publicly available, but only after they have been reduced to writing, signed by a representative of the board, and served upon the parties.

V. Within 14 days after a legislative body votes on a collective bargaining agreement or a fact finding report, the result of such vote shall be reported by the public employer to the board, which shall maintain a record of such information and provide an annual summary report to the speaker of the house of representatives and the senate president.

Source. 1975, 490:2. 1979, 374:10. 2005, 278:2, 3, eff. Sept. 20, 2005. 2013, 36:2, eff. June 4, 2013.

273–A:17 Gifts, Grants, or Donations. The board is authorized to receive any gifts, grants, or donations and to disburse and expend such gifts, grants, and donations.

Source. 1994, 356:4, eff. July 1, 1994.

CHAPTER 275

PROTECTIVE LEGISLATION

Procuring Employment; Imposition of Conditions

275:3 Payment for Medical Examination or Records Furnished. It shall be unlawful for any employer, as defined in RSA 275:4, to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.

Source. 1951, 125:1, eff. May 29, 1951.

275:4 Definition of Terms.

I. The term "employer" as used in the preceding section shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within the state. A franchisor is only an employer if the franchisor agrees in writing to assume the role of employer or co-employer of the franchisee or the employee of the franchisee.

I–a. For the purposes of this section, "franchisee" and "franchisor" have the same meanings as in section 436.1 of title 16 of the Code of Federal Regulations.

II. In this subdivision, "employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281–A:2, VI(b)(2), (3), or (4), or RSA 281–A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

Source. 1951, 125:2. 1999, 279:1. 2007, 362:2, eff. Jan. 1, 2008. 2012, 139:1, eff. Aug. 6, 2012. 2017, 255:1, eff. July 18, 2017.

275:5 Penalty. Any employer who violates the provisions of RSA 275:3 or RSA 275:4 shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. It shall be the duty of the labor commissioner to enforce the provisions hereof.

Source. 1951, 125:3. RSA 275:5. 1957, 187:15. 1973, 530:42, eff. Oct. 31, 1973 at 11:59 p.m.

Access to Personnel Files

275:56 Employee Access to Personnel Files.

I. Except as provided in paragraph III, every employer shall provide a reasonable opportunity for any employee who so requests to inspect such employee's personnel file and further, upon request, provide such employee with a copy of all or part of such file. An employer may only charge the employee a fee reasonably related to the cost of supplying the requested documents.

II. If, upon inspection of his personnel file, an employee disagrees with any of the information contained in such file, and the employee and employer cannot agree upon removal or correction of such information, then the employee may submit a written statement explaining his version of the information together with evidence supporting such version. Such statement shall be maintained as part of the employee's personnel file and shall be included in any transmittal of the file to a third party and shall be included in any disclosure of the contested information made to a third party.

III. The provisions of this section shall not require the disclosure of:

(a) Information in the personnel file of a requesting employee who is the subject of an investigation at the time of his request if disclosure of such information would prejudice law enforcement; or

(b) Information relating to a government security investigation.

IV. Health, fitness, lifestyle, and other information obtained from employees by their employer or the employer's agents for purposes of providing employees with a health risk assessment or other wellness program shall not be considered personnel records, shall not be retained in an employee personnel file, and shall be inadmissible in any proceedings under RSA 281–A.

Source. 1983, 408:1. 2007, 263:159, eff. July 1, 2007.

Crime Victim Employment Leave Act

275:61 Definitions. In this subdivision:

I. "Crime" means an offense designated by law as a felony or a misdemeanor.

II. "Employee" means employee as defined in RSA 275:4.

III. "Employer" means employer as defined in RSA 275:4, provided that for the purposes of this subdivision, an employer shall have 25 or more employees for each working day in each of 20 or more calendar weeks during any calendar year.

IV. "Immediate family" means the father, mother, stepparent, child, stepchild, sibling, spouse, grandparent, or legal guardian of the victim; or any person involved in an intimate relationship and residing in the same household with the victim.

V. "Victim" means any person who suffers direct or threatened physical, emotional, psychological, or financial harm as a result of the commission or the attempted commission of a crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

Source. 2005, 109:1, eff. Jan. 1, 2006.

275:62 Right to Leave Work.

I. An employer shall permit an employee who is a victim of a crime to leave work so that the employee may attend court or other legal or investigative proceedings associated with the prosecution of the crime.

II. An employer shall not discharge an employee who is a victim of a crime because the employee exercises his or her right to leave work pursuant to this subdivision.

III. An employer shall not be required to compensate an employee who is a victim of a crime and who exercises his or her rights under this subdivision.

IV. An employee who leaves work pursuant to this subdivision may elect to use, or an employer may require the employee to use, the employee's accrued paid vacation time, personal leave time, or sick leave time.

V. An employee shall not lose seniority while absent from his or her employment under this subdivision.

VI. Before an employee may leave work under this subdivision, he or she shall provide the employer with a copy of the notice of each scheduled hearing, conference, or meeting that is provided to the employee by the court or agency responsible for providing notice to the employee.

VII. An employer shall maintain the confidentiality of any written documents or records submitted by an employee relative to the employee's request to leave work under this subdivision.

Source. 2005, 109:1, eff. Jan. 1, 2006.

275:63 Limitations on Leave. An employer may limit the leave provided under this subdivision if the employee's leave creates an undue hardship to the

employer's business. In this section "undue hardship" means a significant difficulty and expense to a business, and includes the consideration of the size of the employer's business, the employee's position and role within the business, and the employer's need for the employee.

Source. 2005, 109:1, eff. Jan. 1, 2006.

275:64 Discrimination Prohibited. No employer shall discharge, threaten, or otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because the employee has exercised his or her right to leave work as provided under this subdivision.

Source. 2005, 109:1, eff. Jan. 1, 2006.

275:65 Penalty. Any employer violating any provision of this subdivision shall be subject to a civil penalty, to be imposed by the labor commissioner in accordance with the procedures established in RSA 273:11–a. An employer aggrieved by the commissioner's assessment of such penalty may appeal in accordance with RSA 273:11–c.

Source. 2005, 109:1, eff. Jan. 1, 2006.

CHAPTER 275–C

GOVERNOR'S COMMISSION ON DISABILITY

General Provisions

Committee on Architectural Barrier-Free Design

General Provisions

275–C:1 Definitions. As used in this chapter:

I. "Commission" means the governor's commission on disability.

II. "Person with a disability" means one who, because of a substantial physical, mental or emotional disability or dysfunction, requires special services in order to enjoy the benefits of society.

Source. 1977, 545:1. 1990, 140:1, 2, II, eff. June 18, 1990.

275–C:2 Commission Established; Membership; Terms. There is hereby established the governor's commission on disability which shall consist of 30 members appointed by the governor. At least 15 commission members shall be persons with a disability or parents or guardians of persons with a disability. There shall be 20 members appointed from the general public and 10 shall be appointed from organizations which provide services for persons with disabilities. Each member of the commission shall serve, without compensation, for a 6 year term and until his successor is appointed and qualified, provided that of the initial members appointed hereunder, 10 shall serve for 2 years, 10 for 4 years and 10 for 6 years, as designated by the governor. The governor shall appoint a chairman of the commission from among the members appointed from persons with a disability or their parents or guardians. Vacancies shall be filled for the unexpired term and there shall be no restrictions on reappointment.

Source. 1977, 545:1. 1990, 140:1, 2, I, III, eff. June 18, 1990.

275–C:3 Ex Officio Members. The following, or their designees, shall serve as ex officio members without a vote on the commission: (1) the commissioner of health and human services, (2) the administrator of the bureau of vocational rehabilitation, department of education, (3) the supervisor of blind services, bureau of vocational rehabilitation, department of education, (4) the commissioner of labor, (5) the commissioner of the department of employment security, and (6) a member of the state board of education designated by the governor.

Source. 1977, 545:1. 1985, 207:3. 1994, 379:17. 1995, 310:153, eff. Nov. 1, 1995.

275–C:4 Executive Director; Staff. The commission shall select an executive director of the commission by a vote of a majority of all voting commission members. The executive director shall be in the unclassified service of the state with an annual salary as shall be prescribed by RSA 94 and shall act as secretary to the commission and shall perform such other duties as the commission may require of him. The commission shall approve employment of such clerical help and other employees as are necessary, upon the recommendation of the executive director.

Source. 1977, 545:1. 1979, 434:33, I. 1985, 207:4, eff. May 31, 1985.

275–C:5 Organization of Commission. The commission shall organize itself in conformity with its responsibilities under this chapter and shall establish committees to address issues which affect persons with a disability. The members of such committees shall be designated by the chairman, with the approval of a majority of the commission.

Source. 1977, 545:1. 1985, 207:5. 1990, 140:2, I, eff. June 18, 1990.

275–C:6 Duties and Powers. The commission shall have the following duties and powers:

I. To advise the governor, appropriate state agencies, and the public on matters pertaining to public policy and the administration of programs, services and facilities for persons with a disability in New Hampshire;

II. To encourage the development of coordinated, interdepartmental goals and objectives and the coordination of programs, services and facilities among all state departments and private providers of service as they relate to persons with a disability;

III. To serve as a source of information to the public regarding all services to persons with a disability;

IV. To review and make comment to the governor, state agencies, the legislature, and the public concerning adequacy of state programs, plans and budgets for services to persons with a disability and for funding under the various federal grant programs;

V. To research, formulate and advocate plans, programs and policies which will serve the needs of persons with a disability, which may include an assessment of the needs of persons with disabilities, a census of services provided by public and private organizations, identification of unfilled needs, long term goals, short term objectives, action plans to meet objectives and measures of performance. The commission shall be guided by the goal of formulating an integrated, comprehensive, statewide plan to address the needs of persons with a disability;

VI. To make annual reports to the governor on the activities of the commission.

VII. To design, produce, and issue special registration tags and certificates for permanent service animal registration and licensing.

VIII. To adopt rules, pursuant to RSA 541–A, relative to:

(a) The application procedure for waiver requests.

(b) Information required on an application for waiver request.

(c) The fee for an application for waiver request.

(d) Other matters related to the administration of applications for waiver requests.

Source. 1977, 545:1. 1985, 207:6. 1990, 140:2, I, III, eff. June 18, 1990. 2012, 211:3, eff. Aug. 12, 2012. 2015, 276:265, eff. July 1, 2015.

275–C:7 Meetings; Removal. The commission shall meet at least once every 3 months to conduct its business and give direction to the activities of the executive director and staff. Members of the commission may be removed by the governor for cause.

Source. 1977, 545:1, eff. Sept. 13, 1977.

275–C:8 Gifts, Grants, or Donations. The commission is authorized to receive any gifts, grants, or donations made for any of the purposes of its program and to disburse and administer the same in accordance with the terms thereof.

Source. 1977, 545:1, eff. Sept. 13, 1977.

275–C:8–a Newsline for the Blind; Funding. Beginning July 1, 2017, and in each fiscal year thereafter, the sum of $31,500 is hereby appropriated to the governor's commission on disability for the purpose of funding the National Federation of the Blind's "Newsline for the Blind," an information and news service that provides individuals who are otherwise unable to read newsprint with access to existing newspapers and other printed materials. Said funds shall be a charge against the telecommunications relay service trust fund established by the public utilities commission.

Source. 2007, 263:72, eff. July 1, 2007. 2017, 156:131, eff. July 1, 2017.

275–C:9 Display of Wheelchair Symbol on Buildings.

I. In this section:

(a) "Wheelchair symbol" means the wheelchair symbol adopted by the Rehabilitation International's World Congress in 1969.

(b) "Accessible building" means a building which, in the determination of the governor's commission on disability, is accessible to elderly persons and persons with disabilities.

II. Any person owning an accessible building may appropriately display the wheelchair symbol to identify such accessibility.

III. No person may display the wheelchair symbol on any building which is not an accessible building.

IV. The governor's commission on disability shall obtain a supply of wheelchair symbols and shall issue wheelchair symbols to any person who applies for them and who owns an accessible building.

Source. 1977, 372:1. 1990, 140:1, 2, IX, eff. June 18, 1990.

Committee on Architectural Barrier-Free Design

275–C:10 Definitions. As used in this subdivision:

I. "Architectural barriers" mean physical attributes of buildings and facilities which by their presence, absence, or design present unsafe conditions or deter access and free mobility for persons with disabilities in and around buildings and facilities.

II. "Buildings and facilities" means all buildings, facilities, appurtenant grounds and curbs which are used or to be used by the public and the cost of the construction, rehabilitation, or substantial remodeling of which is to be paid for, in whole or in part, by federal, state, county or municipal funds.

III. "Disabled" means having a temporary or permanent impairment or condition which causes a person to walk with difficulty or insecurity; affects the sight or hearing to the extent that a person is insecure or exposed to danger; or causes faulty coordination or reduces mobility, flexibility, coordination, or perceptiveness.

Source. 1977, 269:1. 1990, 140:2, III, X, eff. June 18, 1990.

275–C:11 Permanent Committee for Barrier-Free Design Established. There is hereby established a permanent committee of the commission, to be known as the committee on architectural barrier-free design. Such committee shall be appointed by the chairman, with the approval of the commission and shall consist of at least 11 members, a majority of whom shall be persons with a disability who have demonstrated an understanding of and commitment to architectural barrier-free design. One member shall be a representative of the interests of the building trades, one member shall be a registered engineer or architect, and the remaining members shall be ex officio members of the governor's commission, or their designees.

Source. 1977, 269:1; 545:5. 1985, 207:8. 1990, 140:2, I. 1992, 50:1, eff. June 12, 1992.

275–C:12 Bylaws. The permanent committee on architectural barrier-free design shall meet as soon as possible after appointment and elect one of its appointed members as chairman who shall serve for a term of 2 years and until a successor is elected. The committee shall meet not less than 6 times annually, and at such other times as may be designated by the chairman. Six members of the committee shall constitute a quorum at all meetings. The members and the chairman shall receive no compensation for their services, but may be reimbursed for necessary expenses out of any funds available to the governor's commission on disability for said purposes. Members of the committee may be dismissed by the governor for cause.

Source. 1977, 269:1. 1985, 207:10. 1990, 140:1, eff. June 18, 1990.

275–C:13 Staff and Consultants. The committee may utilize the staff of the governor's commission on disability and personnel from any other agency or department, with the consent of the executive director of such agency or department, to enable it to discharge its responsibilities and powers under this chapter.

Source. 1977, 269:1. 1985, 207:10. 1990, 140:1, eff. June 18, 1990.

275–C:14 Duties. The committee on architectural barrier-free design, in furthering the purposes of this subdivision to ensure that buildings and facilities are accessible to and functional for persons with disabilities through the elimination of architectural barriers, shall:

I. Establish, publish, and enforce a code for barrier-free design, covering all buildings and facilities whose construction, rehabilitation, or substantial remodeling begins at any time after a reasonable time following promulgation of the code, which shall be at least as restrictive as the American National Standards Institute Specifications, as modified, and which shall be regularly amended so as to reflect technological advances, research evidence, and the changing needs of persons with a disability.

II. Adopt such rules under RSA 541–A as may be necessary to enforce the provisions of this subdivision and the code for barrier-free design.

III. Hold public hearings prior to the adoption of any rules by the committee in accordance with RSA 541–A.

Source. 1977, 269:1. 1985, 207:9, 10. 1990, 140:2, I, III, eff. June 18, 1990.

275–C:15 Powers. The committee on architectural barrier-free design shall:

I. Conduct studies, hold hearings, administer oaths, issue subpoenas, publish reports, and recommend legislation to implement this subdivision;

II. Receive, process, and review complaints from any person alleging a violation of the code;

III. Issue cease-and-desist orders that enjoin an owner, an owner's agent, or a lessee-in-possession from further construction or use of buildings and facilities, until compliance with the code for barrier-free design. To compel obedience to such orders, the committee on architectural barrier-free design shall petition the superior court for the county in which the party sought to be enjoined is principally located. Upon satisfying itself that the order of the committee was within its jurisdiction to issue and that there is substantial evidence on the record considered as a whole to support the finding of the committee, the superior court shall issue its order.

IV. Except as provided in paragraph V, grant waivers to an owner, an owner's agent or a lessee-in-possession, pertaining only to places of public accommodation provided for in RSA 155:39–a, from specific requirements of the code for barrier-free design where, upon a clear and convincing showing, a compelling public interest is deemed to outweigh the state's interest in removing architectural barriers.

V. With respect to construction projects subject to the provisions of RSA 155:39–d, grant waivers to an owner, an owner's agent or a lessee-in-possession from specific requirements of the code for barrier-free design upon good cause shown.

VI. Charge a nonrefundable fee for any application for waiver request submitted under paragraph IV or V, which shall be payable to the governor's commission on disability. Each application for waiver request shall contain no more than 2 items to be reviewed for waiver. All fees shall be paid in advance with the application for waiver request. Any building or facility, as defined in RSA 275–C:10 II, shall not be subject to an application fee but shall file an application for waiver request as provided in this section.

Source. 1977, 269:1. 1979, 75:3. 1985, 207:10. 1990, 170:2, 3, eff. July 1, 1990. 2015, 276:264, 266, eff. July 1, 2015.

275–C:16 Official Noncompliance. It shall be unlawful for any state or local authority who reviews building plans prior to their approval for construction or for any building inspector to knowingly and willingly approve the construction or opening of any building or facility which is not in compliance with the code of barrier-free design, unless such building or facility had received a valid waiver from the committee on architectural barrier-free design.

Source. 1977, 269:1. 1985, 207:10, eff. May 31, 1985.

275–C:17 Penalty. Notwithstanding RSA Title LXII, failure to comply with any provision of this subdivision or any rule or regulation issued thereunder shall be punishable by a fine of not less than $100 nor more than $1,000, or by imprisonment for not more than 30 days, or both.

Source. 1977, 269:1, eff. Aug. 21, 1977.

275–C:18 Severability. If any provision of this subdivision or the application of such provision to any person or circumstances is held invalid the remainder of this subdivision or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Source. 1977, 269:1, eff. Aug. 21, 1977.

CHAPTER 275–E

WHISTLEBLOWERS' PROTECTION ACT

275–E:1 Definitions. In this chapter:

I. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281–A:2, VI(b)(2), (3), or (4), or RSA 281–A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching

an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

II. "Employer" means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, governmental entity, and any common carrier who employs any person. Employer shall include any person acting in the interest of an employer directly or indirectly.

III. "Governmental entity" means any branch, department, commission, bureau, agency, or agent of the government of this state or a political subdivision of this state.

Source. 1987, 386:1. 1999, 279:3. 2007, 362:4, eff. Jan. 1, 2008. 2012, 139:3, eff. Aug. 6, 2012.

275–E:2 Protection of Employees Reporting Violations.

I. No employer shall harass, abuse, intimidate, discharge, threaten, or otherwise discriminate against any employee regarding compensation, terms, conditions, location, or privileges of employment because:

(a) The employee, in good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States; or

(b) The employee objects to or refuses to participate in any activity that the employee, in good faith, believes is a violation of the law; or

(c) The employee, in good faith, participates, verbally or in writing, in an investigation, hearing, or inquiry conducted by any governmental entity, including a court action, which concerns allegations that the employer has violated any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States.

II. An aggrieved employee may bring a civil suit within 3 years of the alleged violation of this section. The court may order reinstatement and back-pay, as well as reasonable attorney fees and costs, to the prevailing party.

Source. 1987, 386:1, eff. Jan. 1, 1988. 2010, 340:2, eff. July 20, 2010.

275–E:3 Protection of Employees Who Refuse to Execute Illegal Directives. No employer shall discharge, threaten or otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because the employee has refused to execute a directive which in fact violates any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States.

Source. 1987, 386:1, eff. Jan. 1, 1988.

275–E:4 Rights and Remedies.

I. Any employee who alleges a violation of rights under RSA 275–E:2 or 3, and who has first made a reasonable effort to maintain or restore such employee's rights through any grievance procedure or similar process available at such employee's place of employment, may obtain a hearing with the commissioner of labor or a designee appointed by the commissioner. Following such hearing, the labor commissioner or the designee appointed by such commissioner shall render a judgment on such matter, and shall order, as the commissioner or his designee considers appropriate, reinstatement of the employee, the payment of back pay, fringe benefits and seniority rights, any appropriate injunctive relief, or any combination of these remedies.

II. Decisions rendered by the commissioner of labor under paragraph I may be appealed pursuant to RSA 541.

Source. 1987, 386:1. 1992, 72:1, eff. May 20, 1992.

275–E:5 No Effect on Bargaining or Common Law Rights. This chapter shall not be construed to diminish or impair either the rights of a person under any collective bargaining agreement or any common law rights.

Source. 1987, 386:1, eff. Jan. 1, 1988.

275–E:6 Compensation of Employee. This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a governmental entity.

Source. 1987, 386:1, eff. Jan. 1, 1988.

275–E:7 Posting of Notices; Violation. Every employer shall post such notices as are prescribed by the commissioner of labor as a means of keeping such employer's employees informed of their protections and obligations under this chapter. The commissioner of labor shall adopt rules, under RSA 541–A, relative to the form, content, and placement of such notices. Failure to comply with the provisions of this section or rules adopted by the commissioner of labor shall be a violation for each day of noncompliance.

Source. 1987, 386:1, eff. Jan. 1, 1988.

Public Employee Complaint Investigation Process

275–E:8 Complaint Investigation by Department of Labor.

I. The department of labor shall have the authority to receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, or abuse in the expenditure of any public funds, whether state or local, or relating to programs and operations involving the procurement of any supplies, services, or construction by governmental entities within the state.

II. The labor commissioner shall make an initial determination as to whether a complaint received under paragraph I is without merit, unfounded, or in need of further information, in which case, the complaint may be dismissed without further action, or held until such time as additional information is received, or dismissed if no further information is received within the time period specified by the commissioner. If the labor commissioner makes an initial determination that the complaint has merit and warrants further investigation, the labor commissioner may undertake such investigation or refer the matter to the appropriate enforcement authority. The identity of the person who filed the complaint shall not be disclosed without his or her written consent, unless such disclosure is to a law enforcement agency that is conducting a criminal investigation.

III. If the labor commissioner undertakes further investigation of the complaint, the commissioner shall have access to all records, confidential or otherwise, reports, audits, reviews, papers, books, documents, recommendations, and correspondence, including information or data that is deemed necessary by the commissioner to carry out the investigation. The labor commissioner may request such information, cooperation, and assistance from any state, county, or local governmental agency and may coordinate activities with the attorney general's office. In carrying out his or her duties and responsibilities, the labor commissioner shall immediately report to the attorney general and either the United States Attorney or local enforcement agency any suspected violation of state or federal criminal law.

IV. No governmental entity shall take any retaliatory action against a public employee who, in good faith, files a complaint under this section and the public employee shall be afforded all protections under RSA 275–E:2.

V. The labor commissioner shall adopt rules under RSA 541–A relative to the complaint investigation process established in this section, including the administrative procedure used for responding to complaints, gathering additional information, and rendering decisions.

VI. For purposes of this subdivision, the labor commissioner shall include any person designated by the labor commissioner to carry out the investigation authorized by this section. Public employee shall mean any employee of a governmental entity, as defined in RSA 275–E:1, III.

Source. 2010, 340:1, eff. July 20, 2010.

275–E:9 Protection of Public Employees. No governmental entity shall threaten, discipline, demote, fire, transfer, reassign, or discriminate against a public employee who files a complaint with the department of labor under RSA 275–E:8 or otherwise discloses or threatens to disclose activities or information that the employee reasonably believes violates RSA 275–E:2, represents a gross mismanagement or waste of public funds, property, or manpower, or evidences an abuse of authority or a danger to the public health and safety. Notwithstanding this provision of law, public employers may discipline, demote, fire, transfer, or reassign an employee so long as the action is not arbitrary or capricious and is not in retaliation for the filing of a complaint under this chapter. Any public employee who files such a complaint or makes such a disclosure shall be entitled to all rights and remedies provided by this chapter.

Source. 2010, 340:1, eff. July 20, 2010.

CHAPTER 276–A

YOUTH EMPLOYMENT LAW

276–A:1 Statement of Policy. The legislature of the state of New Hampshire declares that it is the policy of the state to foster the employment of young people while, at the same time, providing the necessary safeguards made necessary by their age.

Source. 1969, 243:1, eff. Aug. 12, 1969.

276–A:2 Title. This chapter shall be entitled the "Youth Employment Law".

Source. 1969, 243:1, eff. Aug. 12, 1969.

276–A:3 Definitions. As used in this chapter:

I. The term "certificate" shall mean youth employment certificate.

II. The term "youth" shall mean any person under 18 years of age.

III. The term "commissioner" shall mean the labor commissioner.

IV. The term "department" shall mean the labor department.

V. The term "hazardous occupation" shall mean employment so determined by the Children's Bureau of the United States Department of Labor pursuant to the provisions of the Fair Labor Standards Act, or on determination by the commissioner after all parties have been given an opportunity to be heard thereon.

VI. The term "investigator" shall mean personnel of the department who are authorized to enforce labor laws.

VII. The term "casual work" shall mean employment which is infrequent or of brief duration or productive of little or sporadic income or not commonly held to establish an employer-employee relationship.

VIII. The term "regulation" shall mean the body of administrative rules promulgated by the commissioner, setting forth procedures and prescribing forms by which to carry out the provisions of this chapter.

Source. 1969, 243:1, eff. Aug. 12, 1969.

276–A:4 Prohibitions.

I. No youth shall be employed or permitted to work in any hazardous occupation, except in an apprenticeship, vocational rehabilitation, or training program approved by the commissioner.

II. No youth under 16 years of age shall be employed or permitted to work without a certificate except:

(a) For his or her parents, grandparents, or guardian;

(b) At work defined in this chapter as casual; or

(c) As farm labor.

III. No youth under 16 years of age shall be employed or permitted to work in a dangerous area in manufacturing, construction, and mining and quarrying occupations, or in woods and logging.

IV. No youth under 16 years of age shall be employed or permitted to work earlier than 7 o'clock a.m. or later than 9 o'clock p.m., more than 3 hours per day on school days and 23 hours per week during school weeks, except that on nonschool days he may be employed 8 hours per day and, during vacations, 48 hours per week. Upon application by an employer who employs a youth under 16 years of age in agricultural work, the commissioner of labor may order that the restriction upon hours of work imposed by this paragraph be suspended.

V. No youth under 12 years of age may be employed or permitted to work except for his parents, grandparents, or guardian, or at work defined in this chapter as casual, or in the door-to-door delivery of newspapers.

VI. No youth 16 or 17 years of age who is duly enrolled in school shall be permitted to work more than 6 consecutive days or more than 30 hours during

the school calendar week, which shall be Sunday through Saturday.

VII. No youth 16 or 17 years of age who is duly enrolled in school shall work for more than 6 consecutive days or 48 hours in any one week during school vacations, including summer vacation. For purposes of this paragraph, "summer vacation" means June 1 through Labor Day. This prohibition shall not apply to youths 16 or 17 years of age who reside and work at a summer camp for minors.

VIII. No youth 16 or 17 years of age, except a youth 16 or 17 years of age who has graduated from high school or obtained a general equivalency diploma, shall be employed by an employer unless the employer obtains and maintains on file a signed written document from the youth's parent or legal guardian permitting the youth's employment.

Source. 1969, 243:1. 1971, 412:1, 2. 1988, 274:9. 1989, 385:1, 2. 1997, 300:1. 1998, 189:1, 2. 2007, 68:1, eff. Jan. 1, 2008. 2016, 219:6, eff. June 9, 2016.

276–A:5 Certificate.

I. Certificates shall be issued by principals of schools or persons authorized by them, or by a parent or legal guardian, only after the determination of a satisfactory level of academic performance by the student. Responsibility for supervision and coordination with the department in matters pertaining to this chapter shall rest upon superintendents of schools when the certificate is issued by a principal, and shall rest with a parent or legal guardian when such parent or legal guardian authorizes the issuance of the certificate. If a student does not continue to meet a satisfactory level of academic performance after the issuance of the certificate, the principals of schools or persons authorized by them, or a parent or legal guardian, may revoke the certificate. In the event principals of schools or their designees revoke a certificate, notification of the revocation shall be made to the parent or legal guardian, the employer of the student, and the department of labor within 48 hours. In the event a parent or legal guardian revokes a certificate, notification of the revocation shall be made to the employer of the student and the department of labor within 48 hours. Upon receiving the notice of revocation, the department of labor shall investigate the compliance of the revocation within 90 days.

II. Certificates shall in all cases include a signature line for the parent or legal guardian of the youth and shall show proof of (1) age and (2) adequate health.

III. Certificates shall not be issued unless age and adequacy of health have first been verified except as in paragraph I of this section.

IV. Certificates shall be obtained by an employer within 3 business days of the first day of employment. Copies of certificates shall be kept on file by all employers of youths.

V. Any employer not in compliance with the requirements of RSA 276–A:4 or this section shall be assessed a minimum civil penalty of $100.

Source. 1969, 243:1. 1989, 385:3, 4. 1997, 124:1. 1998, 189:3. 2007, 68:2, eff. Jan. 1, 2008. 2016, 314:1, eff. Aug. 23, 2016.

276–A:6 Enforcement. The commissioner shall have the responsibility for enforcing the provisions of this chapter. Investigators and truant officers shall visit and inspect all places of employment and cause the provisions of this chapter to be enforced as directed by the commissioner. For this purpose they shall have the power to serve warrants.

Source. 1969, 243:1, eff. Aug. 12, 1969.

276–A:7 Penalties. Whoever employs a youth or permits him to work in violation of the provisions of RSA 276–A, or any parent, grandparent, or guardian who allows his child or ward to be so employed or to work, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1969, 243:1. 1973, 528:171, eff. Oct. 31, 1973 at 11:59 p.m.

276–A:7–a Civil Penalties. In addition to other penalties and remedies imposed under this chapter, the commissioner may assess a civil penalty on an employer not to exceed $2,500 for each violation of any provision of this chapter or rule adopted pursuant to this chapter, which shall be deposited into the department of labor restricted fund established in RSA 273:1–b. In assessing this penalty, the commissioner shall consider the nature of the violation, the employer's history of violations, and the employer's good faith.

Source. 1989, 385:5. 2007, 68:3, eff. Jan. 1, 2008. 2011, 224:60, eff. July 1, 2011.

276–A:8 Powers of Commissioner. The commissioner shall promulgate whatever regulations he deems necessary for the administration of this chapter, except that such regulations shall not be inconsistent with any of its provisions. He shall prosecute violations and charge the proper county for the cost of the proceedings.

Source. 1969, 243:1, eff. Aug. 12, 1969.

276–A:9 Limitations. No prosecution pursuant to this chapter shall be undertaken later than one year after the violation has been committed.

Source. 1969, 243:1, eff. Aug. 12, 1969.

276–A:10 Inconsistent Provisions. All prior provisions of law which are inconsistent with any provisions of this chapter shall be held ineffective to the extent of such inconsistency.

Source. 1969, 243:1, eff. Aug. 12, 1969.

Hours of Labor

276–A:11 Certain Labor. In addition to the prohibitions listed in RSA 276–A:4, III, IV, V, VI, and VII no youth shall be employed or permitted to work at manual or mechanical labor in any manufacturing establishment more than 10 hours in any one day, or more than 48 hours in any one week. No youth shall be employed or be permitted to work at manual or mechanical labor in any other employment, except household labor and nursing, domestic, hotel and cabin including dining and restaurant service operated in connection with such service, and boarding house labor, operating in telegraph and telephone offices and farm labor, or canning of perishable vegetables and fruit, or as a laboratory technician, more than 10–¼ hours in any one day, or more than 54 hours in any one week.

Source. 1989, 53:1, eff. June 18, 1989; 385:6, eff. Jan. 1, 1990.

276–A:12 Several Employments. Where a youth is employed in the same day or week by more than one employer in manual or mechanical labor in any employment not included under RSA 276–A:11, the total time of employment shall not exceed that allowed per day or week in a single employment.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:13 Night Work. No such youth shall be employed or permitted to work at night work more than 8 hours in any 24 hours nor more than 48 hours during the week. If any youth is employed or permitted to work more than 2 nights each week, for any time between the hours of 8 o'clock p.m. and 6 o'clock a.m. of the day following, such employment shall be considered night work.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:14 Special Agreement. By mutual agreement between employer and employees, the provisions of RSA 276–A:13 relative to restrictions on night work for youths may be relaxed, if the agreement is approved by the commissioner.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:15 Exceptions. Regular employees of mercantile establishments shall not be affected by this subdivision for the period of 7 days immediately preceding Christmas day in each year; but the total number of hours of labor for any youth regularly employed in such establishment shall not exceed 54 hours a week for the full year.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:16 Special License. Manufacturing establishments may be granted a special license by the labor commissioner excepting them from RSA 276–A:11 and 12 for not over 8 weeks in any 6-month period, but in no case shall the hours of labor exceed 10-¼ hours in any one day or 54 hours in any one week. Before granting such license, a hearing shall be held by the commissioner and he shall be satisfied that such overtime is necessary. A copy of such license shall be posted in a conspicuous place in every room where youths are employed.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:17 Extra Time on Special License. Manufacturing establishments working on government orders for national defense may be granted a special license for a period in excess of 8 weeks in a 6-month period at the discretion of the commissioner.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:18 Laundry Establishments. Laundries may be granted a special license by the commissioner excepting them from RSA 276–A:11 and 12 for not over 3 months of the year, but in no case shall the hours of labor exceed 60 hours in any one week, nor more than 10–¼ hours during any one day. Before granting such license, a hearing shall be held by the commissioner and he shall be satisfied that such overtime is necessary. A copy of such license shall be posted where youths are employed. This section shall not be applied in any way to the disadvantage of any regular employee.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:19 War. The provisions of this subdivision shall not apply to labor performed entirely in the manufacture of munitions or supplies for the United States government, or for the government of the state, while the United States is at war with any other nation.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:20 Notice of Hours. Every employer shall post in a conspicuous place in every room where youths are employed a printed notice stating the hours of work, the time allowed for dinner or other meals, and the maximum number of hours any youth is permitted to work in any one day.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:21 Additional Prohibitions. The prohibitions under this subdivision shall be in addition to

those prohibitions listed in RSA 276–A:4, III, IV, V and VI.

Source. 1989, 53:1, eff. June 18, 1989.

276–A:22 Evidence of Violation. The employment of any youth in any place or establishment defined in RSA 276–A:11 at any time other than the posted hours of labor shall be prima facie evidence of a violation of this subdivision.

Source. 1989, 53:1, eff. June 18, 1989.

Youth Training and Employment in Firefighting

276–A:23 Limitations on Youth Training and Employment.

I. Except when enrolled in an explorer program approved by the New Hampshire department of labor under rules adopted by the commissioner, no youth under 16 years of age shall be employed or permitted to work in firefighting.

II. Fire organizations shall follow the requirements of this subdivision and federal orders regulating youth employment in hazardous occupations, as referenced in rules adopted by the commissioner, when any youth is employed or permitted to work in support of firefighting at all times and in all places.

III. The supervising person responsible for following the requirements of this subdivision shall be the chief authority of the fire organization or his or her designee.

IV. Youths shall not be employed at any task or duty in support of firefighting prior to completing training pursuant to RSA 276–A:24, I.

V. Fire organizations shall follow the requirements of RSA 276–A:4, VIII and RSA 276–A:24 and rules adopted by the commissioner when employing or permitting 16 or 17 year old youths to work in support of firefighting.

Source. 2008, 157:1, eff. June 6, 2008.

276–A:24 Minimum Training Requirements.

I. Youths shall successfully complete an initial course of basic wild land fire training as outlined by the National Fire Protection Association and as offered by the department of natural and cultural resources, division of forest and lands, along with training on the use of communications equipment and fire extinguishers.

II. Upon the successful completion of the training requirements under paragraph I, the youth shall complete the fire standards and training firefighter level 1 course in accordance with rules adopted by the department of safety.

III. Initial training shall qualify a youth to perform non-hazardous firefighting duties such as scouting on the ground, fire line construction, mopping up, and permitted use of non-motorized equipment such as back pack pumps, hand tools, hoses, and radio equipment. This training shall not qualify a youth to perform hazardous duties, including operation of motorized equipment such as motor vehicles, bulldozers, tractors and pumps, or serving as a traffic director.

Source. 2008, 157:1, eff. June 6, 2008. 2017, 156:14, I, eff. July 1, 2017.

276–A:25 Advanced Training. For so long as a youth remains by age subject to this subdivision, advanced training shall be the firefighter level 1 training program as administered by the fire standards and training commission. Youths who have completed this course with at least 70 percent in practical and academic testing shall be certified by the commission as junior firefighters.

Source. 2008, 157:1, eff. June 6, 2008.

276–A:26 Identification Card. A youth employed in support of firefighting shall carry an identification card, signifying completion of training with at least 70 percent in practical and academic testing, and signed by the chief authority within the fire organization.

Source. 2008, 157:1, eff. June 6, 2008.

CHAPTER 277–A

TOXIC SUBSTANCES IN THE WORKPLACE

277–A:1 Name. This chapter shall be known and may be cited as the "Worker's Right to Know Act."

Source. 1983, 466:1, eff. Oct. 26, 1983.

277–A:2 Purpose. The general court hereby finds and declares that the proliferation of toxic substances in the workplace poses a growing threat to the health of employees exposed to these substances; that the number and variety of these substances makes effective monitoring of these potential health hazards by governmental agencies difficult and expensive; that employees themselves are often in

the best position to detect symptoms of toxicity, provided they are aware of the nature of the substances to which they are exposed; that employees have an inherent right to know the dangers to which they are potentially exposed in their workplace so that they may make knowledgeable and reasoned decisions with respect to their continued employment under the circumstances and the need for corrective action; and that the workplace often serves as an early warning mechanism for the outside environment. The general court therefore determines that it is appropriate for employers to provide their employees with all available information concerning the nature of the toxic substances to which such employees may be exposed during the course of their employment and the suspected hazards these substances pose and to take all other practicable and feasible measures to protect their employees from the risks of toxic substances.

Source. 1983, 466:1, eff. Oct. 26, 1983.

277–A:3 Definitions. As used in this chapter:

I. "Employee" means any person who currently works or formerly worked, with or without compensation, in a workplace. The term "employee" does not include domestic workers or casual laborers employed at the place of residence of the employer.

II. "Employee representative" means an individual or organization to which an employee gives written authorization to exercise his rights under this chapter. A recognized or certified collective bargaining agent shall be considered to be an employee representative without regard to written employee authorization.

III. "Employer" means any person, firm, corporation, partnership, association, the state, any political subdivision of the state, or any other entity which is engaged in a business or in providing services and which employs employees in connection with such business or services.

IV. "Safety data sheet" means a written document prepared on a toxic substance containing all of the following information except as provided by RSA 277–A:4, III(c):

(a) Identification including product identifier; manufacturer or distributor name, address, phone number; emergency phone number; recommended use; restrictions on use.

(b) The hazards of the substance.

(c) Composition and information on ingredients, including information on chemical ingredients and trade secret claims.

(d) First aid measures including important symptoms or effects, if acute or delayed, and required treatment.

(e) Firefighting measures including suitable extinguishing techniques and equipment and any chemical hazards from fire.

(f) Accidental release measures including emergency procedures, protective equipment, and proper methods of containment and cleanup.

(g) Handling and storage precautions, including incompatibilities.

(h) Exposure controls and personal protection, including Occupational Safety and Health Administration Permissible Exposure Limits, Threshold Limit Values, appropriate engineering controls, and personal protective equipment.

(i) Physical and chemical properties and characteristics.

(j) Stability, reactivity, and the possibility of hazardous reactions.

(k) Toxicological information including routes of exposure, related symptoms, acute and chronic effects, and numerical measures of toxicity.

(*l*) The date such information was compiled and the name and address of the manufacturer, producer, or formulator responsible for compiling it.

V. "Toxic substance" means any radioactive or other substance which is defined as a toxic substance by a rule adopted pursuant to RSA 541–A by the department of health and human services. The department shall define as a toxic substance:

(a) Any substance which appears on any list of toxic or hazardous substances which is included in any of the following:

(1) The United States Department of Transportation's 1980 Emergency Response Guidebook of Hazardous Waste Materials.

(2) TLV's: Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment, published by the American Conference of Government Industrial Hygienists.

(3) Title 29, Code of Federal Regulations, Section 1910.1000.

(4) Standards issued under Section 6(b)(5) of the Occupational Safety and Health Act of 1970.

(5) The Director of the Department of Industrial Relations' List of Hazardous Substances, published by the State of California.

(b) Any substance which has yielded positive evidence of acute or chronic health hazards in

human, animal or other biological testing which could be applicable to human beings;

(c) Any other substance which the department determines should be so defined consistent with the purposes of this chapter and consistent to the extent possible with the methods and criteria used in compiling the lists of toxic or hazardous substances referred to in subparagraph (a). For the purposes of this chapter, the term "toxic substance" shall not include any liquor or beverage, as those terms are defined in RSA 175:1, VIII and XLII, or any other substance which has been packaged for retail sale or which is contained in a product which has been packaged for retail sale; and

(d) Any substance which is combustible, a compressed gas, explosive, flammable, a health hazard, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water reactive as established by the latest edition of the Fire Protection Guide on Hazardous Materials published by the National Fire Protective Association.

VI. "Trade secret" means any confidential formula, pattern, device or compilation of information which does all of the following:

(a) Is used in the employer's business.

(b) Gives the employer the opportunity to obtain an advantage over competitors who do not know or use it.

(c) Is known only to the employer and to those employees to whom it is necessary to confide.

VII. "Workplace" means any location, permanent or temporary, where an employee performs any work-related duty in the course of his employment.

VIII. "Commissioner" means the commissioner of labor.

Source. 1983, 466:1. 1990, 255:10. 1995, 310:175, 181, eff. Nov. 1, 1995. 2015, 141:1, eff. Jan. 1, 2016.

277–A:4 Safety Data Sheets.

I. Except as provided in paragraph III, no person shall obtain, purchase, manufacture, formulate, transport or distribute any toxic substance within this state unless the substance is accompanied by a complete safety data sheet prepared by the manufacturer, producer, or formulator of such substance no more than one year prior to the obtainment, purchase, manufacture, formulation, transportation or distribution.

II. A manufacturer, producer or formulator may provide a single safety data sheet for a product mixture containing 2 or more toxic substances instead of providing a safety data sheet for each toxic substance component of such mixture if all of the following are applicable:

(a) The product mixture itself has been submitted to sufficient analysis and testing to justify a valid judgment on its hazardous properties.

(b) Each component toxic substance is identified on the product label individually, within the limits of practicability and feasibility.

(c) A safety data sheet on each component toxic substance identified pursuant to subparagraph (b) is available upon request.

III. (a) When a manufacturer, producer, formulator or employer considers the identity of or other information concerning a toxic substance to be a protectable trade secret whose disclosure would compromise his or her competitive advantage, he or she shall register this information as secret with the commissioner of labor provided that such information is already registered as a trade secret pursuant to any provision of federal law or such information is not registered as a trade secret but is related to a proprietary process the disclosure of which would compromise his or her competitive position.

(b) The commissioner of labor shall not release any data which discloses any trade secret or proprietary process unless he or she shall notify, in writing and by certified mail, the submitter of such information of the intent to release the data. The commissioner may not release the information, without the submitter's consent, until the thirtieth day after the submitter has been furnished such notice. Any subsequent release shall be pursuant to applicable provisions relating to trade secrets or the Freedom of Information Act.

(c) In the event that a toxic substance or product mixture containing 2 or more toxic substances is registered by a manufacturer, producer or formulator as a component of a trade secret or otherwise protected as a proprietary process, such manufacturer, producer or formulator shall not be required to divulge the specific identity of the substance, but shall be required to provide a safety data sheet containing the information specified in RSA 277–A:3, IV(b)–(*l*).

(d) In the event that a toxic substance or product mixture containing 2 or more toxic substances is registered as a component of a trade secret or otherwise protected as a proprietary process, the employer shall not be required to divulge the specific identity of the substance but shall otherwise

be subject to all of the duties imposed by RSA 277–A:5.

IV. Notwithstanding the provisions of paragraph III, full and complete information regarding any toxic substance or substances to which an employee has been exposed shall be made available to a licensed physician if the information is needed for the purpose of medical diagnosis or treatment of such person.

Source. 1983, 466:1, eff. Oct. 26, 1983. 2015, 141:2, eff. Jan. 1, 2016.

277–A:5 Employer's Duty to Provide Information. Subject to the limitations of RSA 277–A:4, III, every employer whose employees handle, use, or are otherwise exposed to any toxic substance during the course and scope of their employment shall:

I. Keep on file in a convenient office location and make available for examination and reproduction upon request a safety data sheet for each toxic substance or product mixture containing 2 or more toxic substances to which an employee may be exposed in carrying out his or her duties.

II. Post a notice, written in clearly understandable nontechnical language, in a conspicuous location accessible to the employees and as close to the work area as possible containing the word "Warning" in large letters and all the following information on each toxic substance to which employees may be exposed:

(a) The name or names of the substance.

(b) The acute and chronic hazards of exposure to the substance.

(c) Symptoms of exposure and overexposure, including known behavioral effects.

(d) Appropriate emergency treatment for exposure and overexposure.

(e) Proper conditions for safe use of and exposure to the substance.

(f) Procedures for cleanup of leaks and spills of the substance.

(g) Procedures in case of fire or other environmental changes which would result in increasing the substance's hazardous or toxic properties.

III. Post a notice of the availability of a safety data sheet for each of the toxic substances to which the employee may be exposed and, upon request by an employee for a safety data sheet, supply such data sheet within 72 hours.

IV. Conduct an education and training program within 180 days of October 26, 1983, for all employees routinely exposed to toxic substances, and thereafter during the first month of employment of any such new employee, informing such employees of the nature of the toxic substances to which they will be exposed, prescribing proper and safe procedures for handling under all circumstances, and advising them of the potential risks involved.

V. Make every reasonable effort to obtain from manufacturers, producers, formulators, the Federal Environmental Protection Agency, or any other authoritative source, any new or updated information concerning the toxic substances in his or her workplace and to make such information available to all affected employees immediately.

VI. Notify all employees of their rights under this chapter.

VII. Send a copy of each safety data sheet with details of the specific locations of each toxic substance and available extinguishing agents to the local fire department. Such safety data sheets shall be available for public inspection at such fire departments.

VIII. Maintain on file at the workplace safety data sheets for a period of at least 30 years after discontinuation of the use of each toxic substance. In the event that the employer ceases operations or relocates, all safety data sheets shall be submitted to the department of labor to be maintained on file for the statutorily required 30 year period. All rights of access to safety data sheets provided in this chapter shall apply to the full 30 year period.

Source. 1983, 466:1, eff. Oct. 26, 1983. 2015, 141:2, eff. Jan. 1, 2016.

277–A:6 Employees' Rights if Information Not Provided. Any employee who requests information about a toxic substance required pursuant to RSA 277–A:5, III may, if he does not receive such information within 5 working days, refuse to work with such substance until such time as the employer provides him with such information.

Source. 1983, 466:1, eff. Oct. 26, 1983.

277–A:7 Discharge or Discrimination for Exercise of Rights Forbidden.

I. No employer shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against any employee, prospective employee or employee representative because that person has filed any complaint or has instituted or caused to be instituted any proceeding related to the provisions of this chapter, or has exercised any right provided in this chapter.

II. Any employee, prospective employee or employee representative who believes that he has been discharged, disciplined, or otherwise discriminated against by an employer pursuant to paragraph I

shall, within 30 days of such violation, or 30 days after he first obtains knowledge of such violation, file a complaint with the commissioner of labor alleging such discrimination. Upon receipt of such a complaint, the commissioner shall conduct an investigation as he deems appropriate. If, upon investigation, the commissioner determines the allegation to have substance, he may refer the matter to the attorney general for appropriate action.

Source. 1983, 466:1, eff. Oct. 26, 1983.

277–A:8 Inspection by Department of Labor Permitted.

I. If the commissioner or his designee finds, or has cause to believe, that any provision of this chapter is being violated, he may enter and inspect the premises of any employer's place of business and take samples of any unknown substance in order to ascertain compliance with this chapter. The laboratory services of the department of health and human services shall be made available to the department of labor for purposes related to enforcement of this chapter, subject to the availability of adequate laboratory support.

II. The following persons may, if they so desire, accompany such agent or employee of the department of labor:

(a) The affected employer.

(b) An employee of the affected employer or an employee representative.

III. It shall be a violation of this chapter for any person to interfere with the agent or employee of the department of labor in the discharge of his duties as prescribed by this chapter.

Source. 1983, 466:1. 1995, 310:181, eff. Nov. 1, 1995.

277–A:9 Penalty. Any person who violates any provisions of this chapter shall be liable for a penalty of not more than $2,500 for each such violation, to be collected in a civil action by the commissioner of labor. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

Source. 1983, 466:1, eff. Oct. 26, 1983.

277–A:10 Construction of Chapter. The provisions of this chapter shall be construed as being complementary to and not in lieu of any other law or of any rule adopted under authority of law relative to toxic substances or toxic waste including but not limited to RSA 147–A and RSA 147–B. However, any conflict between this chapter and an existing statute or rule shall be resolved at all times by following the stricter requirement.

Source. 1983, 466:1, eff. Oct. 26, 1983.

CHAPTER 278

APPRENTICESHIP PROGRAMS IN TRADE AND INDUSTRY

278:1 Purposes. The purposes of this chapter are:

I. To encourage employers, associations of employers and organizations of employees to voluntarily establish apprenticeship programs and the making of apprenticeship agreements;

II. To create opportunities for young people to obtain employment and adequate training in trades and industry with parallel instructions in related and supplementary education under conditions that will equip them for profitable employment and citizenship;

III. To cooperate with the promotion and development of apprenticeship programs and systems in other states and with the federal committee on apprenticeship appointed under Public Law No. 308–75th U.S. Congress (Fitzgerald Act);

IV. To recommend to the Office of Apprenticeship, United States Department of Labor (OA) the registration and approval of apprenticeship programs and apprenticeship agreements and the issuance of state certificates of completion of apprenticeship.

Source. 1947, 166:1 par. 1. 2007, 241:1, eff. Aug. 24, 2007.

278:2 Apprenticeship Council. There is hereby created a state apprenticeship advisory council (the council), composed of: the labor commissioner or designee, the commissioner of the department of employment security or designee, the commissioner of education or designee, and 2 members who shall be employers and 2 members who shall be employees or persons who represent said employees. The commissioner of labor, or designee, shall act as chairman. The 2 members who are employers and the 2 members who are employees or who represent said employees shall be appointed by the governor with the

advice and consent of the council. The initial appointment of these 4 members shall be as follows: one member for a term of one year, one member for a term of 2 years, one member for a term of 3 years, and one member for a term of 4 years. Upon the expiration of each of their terms and each year thereafter, one new member shall be appointed for a term of 4 years. The members of the council shall receive no compensation for their services.

Source. 1947, 166:1, par. 2. 1950, 5, part 18:10. RSA 278:2. 1957, 187:15. 1971, 347:1. 2007, 241:2, eff. Aug. 24, 2007.

278:3 Duties. The council shall meet quarterly and as often as may be necessary, and in cooperation with the OA and state departments of education and labor, establish, maintain, and review and recommend approval of consistent standards for on-the-job training programs to be coordinated with related course instruction and included in apprenticeship programs and agreements established in trade or industry by employee organizations, joint employee-employer committees, employers or employer groups; and may request the services of any state or federal agency or department which may be of assistance in carrying out the purposes of this chapter. In addition to the foregoing, the council shall:

I. Encourage and promote the development of apprenticeship programs and the making of apprenticeship agreements;

II. Assist the OA in bringing about the settlement of differences arising out of an apprenticeship agreement when such differences cannot be adjusted locally or in accordance with established trade procedure;

III. Supervise the execution of agreements and maintenance of standards;

IV. Recommend to the OA the registration of apprenticeship programs and agreements which provide equal opportunity for training and employment without regard to race, color, creed or national origin and which incorporate standards consistent with those already established and approved by the council and the OA, or terminate or cancel the registration of apprenticeship programs and agreements when said programs or agreements fail to meet or maintain said registration qualifications;

V. Issue certificates of completion of apprenticeship as shall be authorized by the council;

VI. Keep a record of apprenticeship programs and apprentice agreements and their disposition;

VII. Cooperate with the state department of education and the local school authorities in the organization and establishment of classes of related and supplemental instruction for apprentices employed under approved agreements;

VIII. Render such assistance and submit such information and data as may be requested by employers, employees and joint apprenticeship committees engaged in the formulation and operation of programs of apprenticeship, particularly in regard to work schedules, wages, conditions of employment, apprenticeship records and number of apprentices; and

IX. Review and assist the OA in the adoption of rules and regulations to insure nondiscrimination in all phases of apprenticeship and employment during apprenticeship.

Source. 1947, 166:1 par. 3. RSA 278:3. 1965, 66:1. 1969, 168:1, 2. 2007, 241:3, 4, eff. Aug. 24, 2007.

278:3–a Personnel. For the purpose of carrying out administerial duties the council may employ assistants and clerical personnel as are necessary, who work under the general supervision of the labor commissioner.

Source. 1965, 66:2, eff. June 20, 1965.

278:4 Transfer to Department of Labor. The apprenticeship advisory council as provided in RSA 278:2 shall function within the department of labor as a separate organizational entity, as heretofore constituted, and with all the powers and duties as heretofore provided.

Source. 1950, 5, part 18:12. 2007, 241:5, eff. Aug. 24, 2007.

278:5 Biennial Report. The council shall biennially make a report of its activities and progress to the governor and council and the report shall also be contained in the biennial report of the department of labor.

Source. 1947, 166:1 par. 4. RSA 278:5. 1973, 140:37, eff. Jan. 1, 1974.

278:6 Related and Supplemental Instruction. Related and supplemental instruction for apprentices, coordination of instruction with work experiences, and the selection of teachers and coordinators for such instruction shall be the responsibility of state and local boards of education. The state department of education shall be responsible and make provision subject to the department's decision on the allotment of its funds for related and supplementary instruction for apprentices as may be employed under apprenticeship programs registered and approved by the OA and the council.

Source. 1947, 166:1 par. 5. 2007, 241:6, eff. Aug. 24, 2007.

278:7 Local, Regional and State Joint Apprenticeship Committees. Local and state joint appren-

ticeship committees may be approved, in any trade or group of trades, in cities, regions of the state or trade areas, by the OA and the council, whenever the apprentice training needs of such trade or group of trades or such regions justify such establishment. Such local, regional or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives selected by the respective local or state employer and employee organizations in such trade or group of trades; also such advisory members representing local boards or other agencies as may be deemed advisable. In a trade or group of trades in which there is no bona fide employer or employee organization, a joint committee may be composed of persons known to represent the interests of employers and of employees respectively, or a state joint apprenticeship committee may be approved as, or the council may act itself as, the joint committee in such trade or group of trades. Subject to the review of the OA and the council, and in accordance with the standards established by the Office of Apprenticeship and the council, such committees may devise standards for apprenticeship agreements and give such aid as may be necessary in their operation, in their respective trades and localities.

Source. 1947, 166:1 par. 6. 2007, 241:7, eff. Aug. 24, 2007.

278:8 Minimum Standards for Apprenticeship Agreements. All apprenticeship agreements submitted for approval and registration shall meet the following minimum standards:

I. A statement of the trade or craft to be taught and the required hours for completion of the apprenticeship shall be established by agreement under RSA 278:3 and 278:7, but in no case shall it be less than 2000 hours.

II. A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

III. A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction which instruction shall be not less than 144 hours per year;

IV. A statement that apprentices shall be not less than 16 years of age;

V. Provision for a period of probation, not exceeding 6 months or 1,000 hours, during which period, the council shall terminate or cancel the registration of an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the apprenticeship advisory council shall terminate or cancel the registration of an apprenticeship agreement upon request in writing of both parties or upon just cause shown;

VI. Provision for "an increasing schedule of wages" which shall average, over the required hours or years for completion, not less than approximately ½ of the journeyman's rate;

VII. Provision that the services of the apprenticeship advisory council may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

VIII. Provision that if an employer is unable to fulfill his or her obligations under the apprenticeship agreement he or she may arrange for the transfer of the agreement to another employer after consent by the apprentice and approval by the OA and the council and the new employer;

IX. A statement as to the ratio of apprentices to journeymen or number of apprentices to be employed during any year under the program. Where the apprenticeship standards provide for a workforce ratio of one apprentice for one journeyman for the first 5 apprentices and 3 additional journeymen for each additional apprentice thereafter, no standard shall have the effect of requiring the employment of any greater number of journeymen per apprentice;

X. Provision for the granting of credit to apprentices for previous work experience or related and supplemental training; and

XI. Provision for supervision and the keeping of records.

Source. 1947, 166:1, par. 7. RSA 278:8. 1979, 198:1. 1999, 268:1. 2007, 241:8–10, eff. Aug. 24, 2007.

278:9 Apprenticeship Agreements Defined. For the purposes of this chapter an apprenticeship agreement is an individual written agreement between an employer and an apprentice, or a written agreement between an apprentice and an association of employers, or an organization of employees, or where an approved joint committee exists, a written agreement between an apprentice and such committee.

Source. 1947, 166:1 par. 8, eff. May 29, 1947.

278:10 Applicability of Chapter. The provisions of this chapter shall apply to a person, firm, corporation or organization of employees or an association of employers only after such person, firm, corporation or organization of employees or association of em-

ployers has voluntarily elected to conform with its provisions.

Source. 1947, 166:1 par. 9, eff. May 29, 1947.

CHAPTER 279

MINIMUM WAGE LAW

General Provisions

279:1 Definitions. Terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. "Commissioner," the labor commissioner.

II–IV. [Repealed.]

V. "Occupation," an industry, trade or business or branch thereof or class of work therein in which employees are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm.

VI–IX. [Repealed.]

X. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281–A:2, VI(b)(2), (3), or (4), or RSA 281–A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

XI. "Employer" shall include any individual, partnership, association, joint stock company, trust, corporation, limited liability company, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person.

XII. "Tip" means money given to an employee by a customer, in cash or its equivalent, or transferred to the employee by the employer pursuant to directions from a credit card customer who designates a sum to be added to the bill as a tip, or added as a gratuity or service charge to a customer's bill, in recognition of service performed.

XIII. "Tip pooling" means the voluntary practice by which the tip earnings of directly tipped employees within the same job category are intermingled in a common pool and then redistributed among participating employees.

XIV. "Tip sharing" means the practice by which a directly tipped employee gives a portion of his or her tips to another worker who participated in providing service to customers.

XV. "Coercion" means the threat of or a direct action which results in an adverse effect on an employee's economic or employment status.

XVI. "Ballroom" means an indoor facility which has seating accommodations for at least 500 patrons, provides live entertainment, and is licensed by the New Hampshire liquor commission.

Source. 1933, 87:1. RL 213:1. RSA 279:1. 1967, 440:1–3. 1995, 94:1, 7, I–V. 1999, 279:4. 2007, 263:118, eff. June 29, 2007; 362:5, eff. Jan. 1, 2008. 2012, 79:1, eff. July 22, 2012; 139:4, eff. Aug. 6, 2012. 2015, 1:2, eff. April 10, 2015.

279:2 Prohibition of Substandard Wages.

[Repealed 1995, 94:7, VI, eff. July 15, 1995.]

History

Former RSA 279:2, which was derived from 1933, 87:2; RL 213:2; RSA 279:2; and 1967, 440:4, related to prohibition against oppressive and unreasonable wages.

279:3 Powers of Commissioner. The commissioner or any representative duly authorized by him shall have full power and authority:

I. To investigate and ascertain the wages of employees employed in any occupation in the state;

II. To enter the place of business or employment of any employer of employees in any occupation for the purpose of examining and inspecting any and all books, registers, payrolls, and other records of any employer of employees that in any way appertain to or have a bearing upon the question of wages of any such employees and for the purpose of ascertaining whether the orders of the commissioner have been and are being complied with; and

III. To require from such employer full and correct statements in writing of the wages paid to all employees in his employment.

Source. 1933, 87:3. RL 213:3. RSA 279:3. 1967, 440:5, eff. Feb. 1, 1968.

279:4 Investigations Authorized.

[Repealed 1995, 94:7, VII, eff. July 15, 1995.]

History

Former RSA 279:4, which was derived from 1933, 87:4; RL 213:4; RSA 279:4; and 1967, 440:6, related to investigation upon petition of reported substandard wages.

Minimum Wage Rates for Particular Types of Employment

279:5 Wage Boards; Membership.

[Repealed 1995, 94:7, VIII, eff. July 15, 1995.]

History

Former RSA 279:5, which was derived from 1933, 87:5 and RL 213:5, related to the establishment and composition of wage boards.

279:6 Powers of Board.

[Repealed 1995, 94:7, IX, eff. July 15, 1995.]

History

Former RSA 279:6, which was derived from 1933, 87:6 and RL 213:6, related to powers of wage boards.

279:7 Commissioner to Assist.

[Repealed 1995, 94:7, X, eff. July 15, 1995.]

History

Former RSA 279:7, which was derived from 1933, 87:7; RL 213:7; RSA 279:7; and 1967, 440:7, related to assistance of the commissioner to wage boards.

279:8 Report; Recommendations.

[Repealed 1995, 94:7, XI, eff. July 15, 1995.]

History

Former RSA 279:8, which was derived from 1933, 87:8; RL 213:8; RSA 279:8; and 1967, 440:8, related to reports and recommendations of wage boards.

279:9 Acceptance of Report; Hearing.

[Repealed 1995, 94:7, XI, eff. July 15, 1995.]

History

Former RSA 279:9, which was derived from 1933, 87:9 and RL 213:9, related to approval or disapproval of a wage board's report.

279:10 Approval of Report; Directory Order.

[Repealed 1995, 94:7, XI, eff. July 15, 1995.]

History

Former RSA 279:10, which was derived from 1933, 87:10 and RL 213:10, related to issuance of order defining minimum wage rates and proposing administrative rules.

279:11 Special License in Certain Cases.

[Repealed 1995, 94:7, XII, eff. July 15, 1995.]

History

Former RSA 279:11, which was derived from 1933, 87:11; RL 213:11; RSA 279:11; and 1967, 440:9, related to exceptions from minimum wage rates.

279:12 Non-Observance of Orders.

[Repealed 1995, 94:7, XIII, eff. July 15, 1995.]

History

Former RSA 279:12, which was derived from 1933, 87:12 and RL 213:12, related to failure to observe minimum fair wage orders.

279:13 Mandatory Order; Hearing.

[Repealed 1995, 94:7, XIV, eff. July 15, 1995.]

History

Former RSA 279:13, which was derived from 1933, 87:13 and RL 213:13, related to mandatory minimum fair wage orders.

279:14 Modification of Wage Order.

[Repealed 1995, 94:7, XV, eff. July 15, 1995.]

History

Former RSA 279:14, which was derived from 1933, 87:14 and RL 213:14, related to modification of wage orders.

279:15 Administrative Rules. The commissioner shall adopt rules under RSA 541–A for the purpose of carrying out the provisions of this chapter.

Source. 1933, 87:15. RL 213:15. RSA 279:15. 1995, 94:2, eff. July 15, 1995.

Appeals From Commissioner's Decisions

279:16 Appeals to Court.

[Repealed 1995, 94:7, XVI, eff. July 15, 1995.]

History

Former RSA 279:16, which was derived from 1933, 87:16 and RL 213:16, related to appeals from orders of the commissioner.

279:16–a Appeals. Except as otherwise provided by statute, any party aggrieved by a written decision of the commissioner may appeal such decision to the superior court not later than 20 days from the date thereof by petition setting forth that the decision is erroneous, in whole or in part, and specifying the grounds upon which the decision is claimed to be in error. Upon the filing of an appeal, the commissioner shall transfer to the court the record of the proceeding or a certified copy thereof. The scope of review by the superior court shall be limited to questions of law; however, the court may consider newly discovered evidence. After hearing and upon consideration of the record, the court may affirm, vacate, or modify, in whole or in part, the decision of the commissioner or may remand the same to the commissioner for further findings. In the absence of a seasonable appeal, the decision and order shall be final.

Source. 1995, 94:6, eff. July 15, 1995.

279:17 Procedure.

[Repealed 1995, 94:7, XVII, eff. July 15, 1995.]

History

Former RSA 279:17, which was derived from 1933, 87:17 and RL 213:17, related to appeal procedure.

279:18 Certifying Record.

[Repealed 1995, 94:7, XVIII, eff. July 15, 1995.]

History

Former RSA 279:18, which was derived from 1933, 87:18 and RL 213:18, related to certifying the record.

279:19 Hearing, Etc.

[Repealed 1995, 94:7, XIX, eff. July 15, 1995.]

History

Former RSA 279:19, which was derived from 1933, 87:19 and RL 213:19, related to evidence.

279:20 Costs.

[Repealed 1995, 94:7, XX, eff. July 15, 1995.]

History

Former RSA 279:20, which was derived from 1933, 87:20 and RL 213:20, related to allowance of costs against commissioner.

Hourly Rate

279:21 Minimum Hourly Rate. Unless otherwise provided by statute, no person, firm, or corporation shall employ any employee at an hourly rate lower than that set forth in the federal minimum wage law, as amended.

Tipped employees of a restaurant, hotel, motel, inn or cabin, or ballroom who customarily and regularly receive more than $30 a month in tips directly from the customers will receive a base rate from the employer of not less than 45 percent of the applicable minimum wage. If an employee shows to the satisfaction of the commissioner that the actual amount of wages received at the end of each pay period did not equal the minimum wage for all hours worked, the employer shall pay the employee the difference to guarantee the applicable minimum wage. The limitations imposed hereby shall be subject to the following exceptions:

I. These limitations shall not apply to employees engaged in household labor, domestic labor, farm labor, nor to outside salesmen, nor to employees of summer camps for minors.

II. These limitations shall not apply to employees engaged as newsboys, non-professional ski patrolmen or golf caddies.

III. [Repealed.]

IV. These limitations shall not apply to a person with less than 6 months' experience in an occupation; provided, however, such person shall not be paid less than 75 percent of applicable statutory minimum wage in an occupation, after application is filed by the employer with the labor commissioner within 10 days after hire.

V. These limitations shall not apply to a person 16 years of age or under; provided, however, such person shall not be paid less than 75 percent of applicable statutory minimum wage rate and evidence of such person is kept on file by the employer.

V–a. These limitations shall not apply to an employee of a ski area who exclusively performs welcoming and guest relation services at a ski area which are not essential to the functional operations of a ski area.

VI, VII. [Repealed.]

VIII. Those employees covered by the introductory paragraph of this section, with the following exceptions, shall, in addition to their regular compensation, be paid at the rate of time and one-half for all time worked in excess of 40 hours in any one week:

(a) Any employee employed by an amusement, seasonal, or recreational establishment if:

(1) It does not operate for more than 7 months in any calendar year; or

(2) During the preceding calendar year, its average receipts for any 6 months of such year were not more than 33–⅓ percent of its average receipts for the other 6 months of such year. In order to meet the requirements of this subparagraph, the establishment in the previous year shall have received at least 75 percent of its income within 6 months. The 6 months, however, need not be 6 consecutive months.

(b) Any employee of employers covered under the provisions of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. section 201, et seq.); provided however, employers that pay any delivery drivers or sales merchandisers an overtime rate of compensation for hours worked in excess of 40 hours in any one week shall not calculate such overtime rate of compensation by the fluctuating workweek method of overtime payment under 29 C.F.R. section 778.114.

Source. 1949, 310:1, par. 25. 1953, 232:1, par. 25. RSA 279:21. 1955, 288:1, par. 25. 1957, 311:1. 1959, 275:1. 1963, 203:1. 1967, 440:10. 1971, 494:1, 2; 552:1, 2. 1973, 350:1. 1977, 234:1. 1983, 267:1. 1985, 83:1. 1986, 63:1; 64:1. 1989, 86:1, 4. 1990, 198:3. 1995, 94:7, XXI. 1997, 226:5. 2007, 24:1. 2008, 327:2, eff. Jan. 1, 2009. 2010, 284:1, eff. July 8, 2010; 284:2, eff. Dec. 31, 2011. 2011, 204:1, eff. Aug. 21, 2011; 204:2, eff. Dec. 31, 2011 at 12:01 a.m. 2015, 1:1, eff. April 10, 2015. 2016, 316:3, eff. Nov. 1, 2016.

279:21–a Deductions to Determine Wages. For the purposes of employment in the hotel, motel, cabin, tourist home and restaurant industries, an employer shall be entitled to deduct from the minimum wage pursuant to RSA 279:21 allowances for meals and lodging. The maximum amounts of such deductions shall be as follows:

I.	Full Board and Room (Weekly)	$45.00
	Full Board and Room (Daily)	6.45
II.	Meals (Weekly)	39.45
	Meals (Per Meal)	1.88
III.	Lodging (Weekly)	10.88
	Lodging (Daily)	1.80

Source. 1971, 552:3. 1975, 50:1. 1979, 237:1. 1989, 86:2, eff. Jan. 1, 1990.

279:22 Payment of Subminimum Wages. Except as provided in RSA 279:22–aa and RSA 279:26–a, no person shall employ any individual with a disability as an employee at an hourly rate lower than that set forth in RSA 279:21.

Source. 1949, 310:1, par. 26. 1953, 232:1, par. 26. RSA 279:22. 1955, 288:1, par. 26. 1957, 311:2. 1959, 275:2. 1967, 440:11, eff. Feb. 1, 1968. 2015, 40:1, eff. July 6, 2015.

279:22–a Special Authorization for Sheltered Workshops.

[Repealed 2015, 40:2, eff. July 6, 2015.]

History

Former RSA 279:22–a, which was derived from 1967, 440:12, related to special authorization for sheltered workshops.

279:22–aa High School and Post Secondary Students; Workers with Disabilities.

I. Upon application by a participating employer or proper school authority, the labor commissioner may establish a sub-minimum wage rate, or no rate, for high school or post secondary students working for practical experience, if circumstances warrant. Guidelines shall be established by the labor commissioner to determine whether an employer-employee relationship exists between participating parties for such work in respect to existing labor laws. No such student shall be allowed to replace an existing worker or a laid-off worker.

II. Upon application by a proper post-secondary organization or rehabilitation facility as defined by and in a manner established by the labor commission-

er, the commissioner may establish a practical experience/training program at a sub-minimum wage rate or no wage rate for individuals with disabilities. If such program is established, the commissioner shall establish guidelines to determine whether an employer-employee relationship exits between the parties for work performed through the program that is consistent with state and federal law. No such individual with disabilities, while in the program, shall be allowed to replace an existing worker or a laid-off worker.

Source. 1969, 407:1. 1979, 154:1, eff. Aug. 4, 1979. 2011, 98:1, eff. July 26, 2011.

279:22–b Wage Adjustment. The commissioner of labor is hereby directed to readjust minimum wages for employees insofar as it may be necessary in view of the provisions of RSA 279:21 and 22.

Source. 1967, 440:12, eff. Feb. 1, 1968.

279:23 to 279:25 Repealed.

[Repealed 1967, 440:13, eff. Feb. 1, 1968.]

History

Former RSA 279:23 to 279:25, which were derived from 1949, 310:1, par. 27, 28; 1951, 82:1; and 1957, 187:15, related to penalty for violation of RSA 279:21 and 22, readjustment of minimum wages for women and minors, and records.

279:26 Application.

[Repealed 1995, 94:7, XXII, eff. July 15, 1995.]

History

Former RSA 279:26, which was derived from 1949, 310:1, par. 29; RSA 279:26; and 1965, 202:1, related to the application of RSA 279:21 to 279:25.

279:26–a Application to Parents, Spouses, Etc. The provisions of this chapter shall not apply to a child employed by his parents, grandparents, or a person or persons in place of his parents or grandparents, employing his own child, grandchild or a child in his custody, who furnishes full maintenance to such child. Nor shall the provisions apply to a spouse working for the other spouse on a volunteer basis when the spouse who works does not expect or claim any pay for the work, other than the support derived from the other spouse's profits in the business.

Source. 1965, 202:2, eff. Aug. 27, 1965.

279:26–b Tip Pooling and Sharing.

I. Tips are wages and shall be the property of the employee receiving the tip and shall be retained by the employee, unless the employee voluntarily and without coercion from his or her employer agrees to participate in a tip pooling or tip sharing arrangement.

II. No employer is precluded from administering a valid tip pooling or tip sharing arrangement at the request of the employee, including suggesting reasonable and customary practices, and mediating disputes between employees regarding a valid tip pooling or tip sharing arrangement.

III. Nothing shall preclude employee participants in a tip pool from agreeing, voluntarily and without coercion, to provide a portion of the common pool to other employees, regardless of job category, who participated in providing service to customers.

Source. 2007, 263:119, eff. June 29, 2007. 2012, 79:2, eff. July 22, 2012. 2017, 198:1, eff. Sept. 3, 2017.

Employers' Records

279:27 Records of Hours and Wages. Every employer of employees shall keep a true and accurate record of the hours worked by each, wages paid to each, and classification of employment when necessary, and shall furnish to the commissioner or the commissioner's authorized representative upon demand a sworn statement of the same. Such records shall be open to inspection by the commissioner or the authorized representative at any reasonable time. Every employer subject to a statutory minimum wage shall keep a copy of such statutory minimum wage posted in a conspicuous place in every establishment in which employees are employed. Employers shall be furnished copies of posters on request without charge.

Source. 1933, 87:21. RL 213:21. RSA 279:27. 1967, 440:14. 1995, 94:3, eff. July 15, 1995.

Penalties, Civil Actions, Etc.

279:28 Penalties.

I. [Repealed.]

II. Any employer or the officer or agent of any corporation who pays or agrees to pay to any employee less than the rates applicable to such employee under the statutory minimum wage shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Each week in any day of which such employee is paid less than the rate applicable to him under the statutory minimum wage and each employee so paid less shall constitute a separate offense.

III. Any employer or the officer or agent of any corporation who fails to keep the records required hereunder, or refuses to permit the commissioner or his authorized representative to enter his place of business, or fails to furnish such records to the commissioner or his authorized representative upon request shall be guilty of a violation if a natural

person, or guilty of a misdemeanor if any other person. Each day of such failure to keep the records requested hereunder or to furnish the same to the commissioner or his authorized representative shall constitute a separate offense.

Source. 1933, 87:22. RL 213:22. RSA 279:28. 1967, 440:15. 1973, 529:57. 1995, 94:4, 7, XXIII, eff. July 15, 1995.

279:29 Civil Actions. If any employee is paid by the employer less than the minimum wage to which the employee is entitled under the statutory minimum wage the employee may recover in a civil action the full amount of such minimum wage less any amount actually paid to the employee by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between the employee and the employee's employer to work for less than the statutory minimum wage shall be no defense to such action. At the request of any employee paid less than the minimum wage to which the employee was entitled under the statutory minimum wage the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

Source. 1933, 87:23. RL 213:23. RSA 279:29. 1967, 440:16. 1995, 94:5, eff. July 15, 1995.

CHAPTER 283

PREFERENCE OF RESIDENT LABORERS AND VETERANS

Unskilled Labor

Clerks, Mechanics, Etc.

Unskilled Labor

283:1 Definitions.

I. State, county, or municipal agency shall mean any board, commission, department, officer, agency, or agent of the state or of any county, city, town or political division thereof charged with the duty of making contracts therefor.

II. Contract shall mean any contract for the construction, maintenance, repair, or demolition of any road, bridge, building, public work, project, or any portion of the same, wherein federal funds are not used in whole or in part.

III. Contractor shall include any person, firm, association, or corporation.

Source. 1935, 111:1. RL 219:1.

283:2, 283:3 Repealed.

[Repealed 1971, 399:3, eff. Aug. 27, 1971.]

History

Former RSA 283:2 and 283:3, which were derived from 1935, 111:2, 3 and RL 219:2, 3, related to preference to residents in hiring unskilled labor.

Clerks, Mechanics, Etc.

283:4 Employment of Veterans.

I. In public employment of clerks, office help, mechanics, laborers, inspectors, supervisors, foremen, janitors, peace officers, and relief employees in the construction of public works, public projects and in the conduct of city, town or district departments by a county, city, town, or district, or by persons contracting therewith for such construction, carrying out of relief projects and in the conduct of city, town, or district departments, preference shall be given to citizens of the state who have served in the armed forces of the United States, for not less than 90 days, in times of war, and have been discharged honorably therefrom or released from active duty therein, if equally qualified for said employment and if registered in accordance with the provisions of RSA 283:7. Where such employment is obtained from relief rolls or for persons in need, in cases of equal or greater need preference shall be given to such veterans.

II. When the state is the employer, preference in hiring shall be given to a veteran, as defined in RSA 21:50, if a veteran is one of multiple candidates who are otherwise equally qualified.

Source. 1935, 144:1. RL 219:4. 1943, 190:4. 2009, 217:1, eff. Sept. 13, 2009.

283:5 Widows of Veterans; Wives of Disabled Veterans. The employment preferences provided for veterans under the provisions of RSA 283:4 are extended to include any unremarried widow whose husband at the time of his death was a citizen of this state and who served in the armed forces of the United States during any war in which the United States has been engaged, and also to any wife of a totally disabled veteran who is a citizen of the state and who served in the armed forces of the United States during any war in which the United States has been engaged.

Source. 1947, 148:1. 1949, 41:1, eff. Mar. 3, 1949.

283:6 State and Political Subdivisions. The hiring authority of the state or any political subdivision thereof shall take any necessary action to secure the employment of said veterans in said service of the state or political subdivisions thereof respectively.

Source. 1935, 144:2. RL 219:5. RSA 283:6. 1971, 399:1, eff. Aug. 27, 1971.

283:7 Proof of Entitlement. Veterans, in order to be entitled to preference under this subdivision, shall furnish proof of such entitlement to the hiring authority of the state or political subdivision when applying for employment.

Source. 1943, 190:5 par. 6. RSA 283:7. 1971, 399:2, eff. Aug. 27, 1971.

283:8 Terms Defined. For the purposes of this chapter:

I. The term "armed forces" shall include those forces listed in RSA 72:28, IV.

II. The terms "in time of war" and "during any war" shall include all the terms used in RSA 72:28, V.

Source. 1943, 190:5, par. 7. RSA 283:8. 1969, 370:1. 1971, 399:4. 2003, 299:22, eff. April 1, 2003.

283:9 Penalty. Any person who violates any provision of this subdivision shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

Source. 1943, 190:5 par. 8. RSA 283:9. 1973, 530:45, eff. Oct. 31, 1973 at 11:59 p.m.

TITLE XXIV

GAMES, AMUSEMENTS, AND ATHLETIC EXHIBITIONS

CHAPTER 284

HORSE AND DOG RACING

Lottery

Lottery

284:21–j Establishment.

I. The state treasurer shall credit all moneys received from the lottery commission under RSA 284, RSA 287–D, and RSA 287–E, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and all administration and enforcement expenses of racing and charitable gaming under RSA 284, RSA 287–D, and RSA 287–E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

II. Notwithstanding any other provision of law, if the expenditure of additional funds over budget estimates is necessary for the proper functioning of the lottery commission, the commission may request, with prior approval of the legislative fiscal committee, that the governor and council authorize the transfer of funds from the sweepstakes fund for expenses related to retirement and health benefits.

Source. 1963, 52:1. 1965, 239:15. 1967, 421:1. 1973, 148:1. 1981, 444:3. 1983, 417:3. 1985, 244:9. 1987, 201:1. 1989, 414:2. 1997, 137:1. 1999, 17:45. 2002, 224:1. 2004, 97:6; 257:8. 2006, 311:4. 2008, 25:1. 2011, 224:87. 2015, 276:126, eff. July 1, 2015.

CHAPTER 287–A

RAFFLES

General Provisions

Raffles Held in Conjunction With Bingo Games

General Provisions

287–A:1 Definitions. As used in this chapter:

I. "Raffle" means a lottery in which each participant buys a ticket for an article or articles put up as a prize with the winner being determined by a random drawing.

II. "Charitable organization" means the following:

(a) Any person or entity that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code, as that section now exists or may hereafter be amended; or

(b) Any other person or entity that is or holds itself out to be established, in whole or in part, for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, social, sporting, recreational, or other charitable purpose which has been in existence for at least 2 years, or political committee or political party which has been in existence for at least 2 years, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. "Charitable organization" is not limited to those organizations to which contributions are tax deductible under section 170 of the Internal Revenue Code.

III. "50/50 raffle" means a raffle conducted by a charitable organization whereby moneys collected by sale of raffle tickets are split evenly between the prize winner or winners and the charitable organization after the raffle drawing.

Source. 1971, 43:1. 1973, 270:1. 1999, 306:1. 2000, 115:1, eff. July 7, 2000.

287–A:2 Raffle Authorized. A charitable organization may conduct a raffle to promote the purpose for which it was organized, in the manner hereinafter provided, and not otherwise.

Source. 1971, 43:1, eff. April 5, 1971.

287–A:3 Printed Tickets. All raffle tickets shall be printed with the name of the charitable organization thereon, the date and place of the drawing, and the prize or prizes to be awarded and the amount of the donation.

Source. 1971, 43:1, eff. April 5, 1971.

287–A:4 Distribution of Tickets. Raffle tickets shall be sold only to persons 16 years of age or over and no raffle tickets shall be sold by persons other than the members of the charitable organization or

such person or persons, as may be designated by the organization, and who shall receive no financial remuneration.

Source. 1971, 43:1, eff. April 5, 1971.

287–A:5 Agency Not Permitted. No charitable organization shall act as an agent for conducting a raffle, where it is unlawful for the charitable organization's principal to conduct such a raffle.

Source. 1971, 43:1, eff. April 5, 1971.

287–A:6 Effect on Other Laws. RSA 647 shall not apply to the sale of raffle tickets in the manner provided for in this chapter.

Source. 1971, 43:1. 1973, 40:4, eff. Nov. 1, 1973.

287–A:7 Permit Required. Any charitable organization desiring to conduct a raffle under the provisions of this chapter shall first obtain a permit therefor from the selectmen or designee of the town, or the mayor and aldermen or designee of the city where the drawing for prizes is to be held. Except as otherwise provided in this section, the permit shall expire at the time of the drawing and shall not be transferable. At the request of the charitable organization to conduct more than one raffle, the governing body may extend the permit to one year from the date of issuance.

Source. 1971, 43:1. 2011, 94:1, eff. July 1, 2011.

Raffles Held in Conjunction With Bingo Games

287–A:8 Tickets; Distribution.

I. All raffle tickets sold in conjunction with bingo games shall be numbered sequentially.

II. No ticket or multiple tickets shall be sold for more than $1.

III. Notwithstanding RSA 287–A:4, raffle tickets sold in conjunction with bingo games shall be sold only by members of a charitable organization licensed by the lottery commission to conduct bingo and only at bingo games being operated by the charitable organization.

Source. 1985, 374:1. 2004, 97:8; 257:9. 2008, 25:1. 2015, 276:127, eff. July 1, 2015.

287–A:9 Players.

[Repealed 2009, 228:3, III, eff. July 16, 2009.]

History

Former RSA 287–A:9, which was derived from 1985, 374:1, related to the hall capacity requirements for raffles held in conjunction with bingo games.

287–A:10 Prizes. Prizes awarded at any raffle held in conjunction with a bingo game shall not exceed $500 wholesale cost.

Source. 1985, 374:1. 1991, 276:3, eff. June 10, 1991.

287–A:11 Permit Not Required. The provisions of RSA 287–A:7 shall not apply to raffles held in conjunction with bingo games.

Source. 1985, 374:1, eff. June 18, 1985.

TITLE XXV

HOLIDAYS

CHAPTER 288

HOLIDAYS

288:1 Holidays. January 1; the third Monday in January, known as Martin Luther King, Jr. Civil Rights Day; the third Monday in February, known as Washington's Birthday; the last Monday in May, known as Memorial Day or, on a date to coincide with the federal observance if it is held on a different day; July 4, known as Independence Day; the first Monday in September, known as Labor Day; the second Monday in October, known as Columbus Day; the day on which the biennial election is held; November 11, known as Veterans Day; Thanksgiving Day, whenever appointed; and Christmas Day are legal holidays.

Source. 1899, 11:1. PL 313:2. 1929, 11:1. RL 367:2. 1949, 270:1. RSA 288:1. 1955, 145:1. 1969, 35:1. 1973, 89:1. 1991, 206:2. 1993, 134:2. 1999, 105:2, eff. Aug. 6, 1999; 106:2, eff. Aug. 6, 1999.

288:2 Falling on Sunday; Status of Martin Luther King, Jr. Civil Rights Day. When any holiday listed in RSA 288:1 falls on Sunday, the following day shall be observed as a holiday. For the purposes of state employee contracts, Martin Luther King, Jr. Civil Rights Day shall have the same status as Fast Day.

Source. 1899, 11:1. PL 313:3. 1939, 32:1. RL 367:3. RSA 288:2. 1977, 588:52. 1991, 206:4. 1999, 105:3, eff. Aug. 6, 1999; 106:3, eff. Aug. 6, 1999.

288:3 Banking Organizations, Closing on Saturdays.

[Repealed 2015, 272:52, XXX, eff. Oct. 1, 2015.]

History

Former RSA 288:3, which was derived from 1947, 35:1, related to banking organizations closing on Saturdays.

288:4 School Holidays.

I. Any school, college or university which is supported by money which is appropriated by the state or by any city, town or school district shall not be open for regular instructional purposes on Veterans Day as established in RSA 288:1 and as observed as provided in RSA 288:2. Any person who permits or authorizes such school, college or university to be open in violation of this section shall be guilty of a violation.

II. Notwithstanding the provisions of paragraph I, any school, college or university may observe either the federal Memorial Day or the state holiday on May 30.

Source. 1975, 269:1. 1981, 318:8. 1992, 79:1, eff. Jan. 1, 1993.

TITLE XXVII

CORPORATIONS, ASSOCIATIONS, AND PROPRIETORS OF COMMON LANDS

CHAPTER 292

VOLUNTARY CORPORATIONS AND ASSOCIATIONS

Formation of Corporation

292:1 Incorporators; Purposes. Five or more persons of lawful age may associate together by articles of agreement to form a corporation, for any of the following purposes:

I. The promotion of the cause of temperance and of any charitable or religious cause.

II. The establishment and maintenance of literary and scientific institutions, libraries, lyceums and musical, agricultural, literary, or scientific associations, the promotion of education and the arts and sciences by any other means and for mental improvement.

III. The establishment and maintenance of hospitals, homes for the aged and for invalids, and other charitable institutions.

IV. The provision of suitable grounds and other conveniences for the burial of the dead.

V. The organization and maintenance of lodges of Free Masons, Odd Fellows, and other similar societies, and for social recreation and improvement.

VI. The provision and care of walks, parks, recreational and athletic facilities, commons, roads and streets.

VII. The planting, cultivation, and protection of shade, ornamental, and forest trees.

VIII. The promotion of agriculture.

IX. The promotion of the growth and prosperity of cities, towns, and villages, including provision for recreational and athletic facilities for public use.

X. The promotion of law and order and the better enforcement of existing laws, or to prevent cruelty to animals.

XI. The protection or propagation of fish and game, and for any other purpose not prohibited by law.

XII. To provide industrial, commercial, manufacturing and warehouse facilities for the purpose of developing the growth and prosperity of the state, counties, cities, towns and villages.

XIII. To serve and promote the recreational and athletic interests of the state of New Hampshire or any town or individual group thereof.

XIV. The provision of mental health services.

XV. Any other purpose for which an organization may be exempt from federal taxation under section 501 of the Internal Revenue Code of 1954, and any amendments thereto.

Source. RS 145:1. 1846, 325:1. CS 152:1. 1866, 4224:1. GS 137:1; 138:1. 1872, 6:1. GL 151:1; 152:1. PS 147:1. 1895, 1:1. PL 223:1. RL 272:1. RSA 292:1. 1965, 74:1. 1967, 102:1; 359:2. 1969, 43:1. 1977, 407:1. 1991, 261:1–3, eff. Jan. 1, 1992.

292:1–a Legal Services. Five or more persons of lawful age may associate together by articles of agreement to form a corporation, without a capital stock, for the purpose of providing professional legal services to the poor; provided, however, that no such corporation shall commence business until its articles of agreement and by-laws, and such other information as may be required, have been submitted to the supreme court for approval and such court has authorized it to commence business upon finding that it is a responsible organization. Such authorization may, after hearing, be revoked or suspended by the court for just cause. The actual practice of law by such corporation shall be conducted solely by members of the New Hampshire bar in good standing, and the fact of incorporation shall not in any way be deemed to immunize any attorney employed by the corporation from personal responsibility and liability to the clients whom he serves. The provisions of RSA 311:11 shall not apply to corporations organized under this section.

Source. 1967, 239:1, eff. Aug. 22, 1967.

292:2 Articles of Agreement. The articles of agreement shall contain the following:

I. The name of the corporation.

II. The object for which the corporation is established.

II–a. The provisions for establishing criteria and procedures for membership and participation in the corporation.

III. The provisions for disposition of the corporate assets in the event of dissolution of the corporation, including the prioritization of rights of shareholders and members to corporate assets.

IV. The address at which the business of the corporation is to be carried on.

V. The amount of capital stock, if any, or the number of shares or membership certificates, if any, and provisions for retirement, reacquisition and redemption of those shares or certificates.

V–a. (a) The articles of agreement may contain a provision eliminating or limiting the personal liability of a director, an officer, or both, to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, an officer, or both, except with respect to:

(1) Any breach of the director's or officer's duty of loyalty to the corporation or its shareholders.

(2) Acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law.

(3) Any transaction from which the director, officer, or both, derived an improper personal benefit.

(b) This paragraph shall not be construed to eliminate or limit the liability of a director, an officer, or both, for any act or omission occurring before January 1, 1992.

VI. The signature and post office address of each of the persons associating together to form the corporation.

Source. RS 145:2. CS 152:2. 1866, 4224:2. GS 137:2; 138:2. GL 151:2; 152:2. PS 147:2. PL 223:2. RL 272:2. RSA 292:2. 1971, 73:1. 1991, 261:4. 2010, 105:1, eff. July 25, 2010.

292:2–a Charitable Corporations; Required Provisions. Every charitable corporation established under this chapter which is a private foundation as defined in section 509(a) of the United States

Internal Revenue Code of 1954, and which is in existence on the effective date of this section, or which is thereafter established, is subject to the following provisions, whether they are set forth in the articles of agreement or not:

I. A corporation which is a "private foundation" as defined in section 509(a) of the Internal Revenue Code of 1954, shall not:

(a) Engage in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(b) Retain any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954; nor

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; nor

(d) Make any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

II. Each corporation which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954.

III. The provisions of paragraphs I and II shall apply to any corporation except to the extent that a court of competent jurisdiction determines that to apply these provisions would be contrary to the terms of the articles of agreement or other instrument governing the corporation or the administration of charitable funds held by it, and that the articles or the other instrument cannot properly be changed to conform to these provisions.

IV. Nothing in this section impairs the rights and powers of the courts or of the attorney general with respect to any corporation.

V. All references to sections of the Internal Revenue Code of 1954 include amendments to those sections which are made after the effective date of this section, and include all corresponding provisions of any United States Internal Revenue laws which replace the Internal Revenue Code of 1954.

Source. 1971, 378:1, eff. Aug. 27, 1971; 584:3, 4, eff. Sept. 29, 1971.

292:3 Name.

I. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 292:1 and its articles of agreement.

II. Except as authorized by paragraphs III and IV, a corporation name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293–A, RSA 293–B, RSA 294–A, RSA 301, RSA 301–A, RSA 304–A, RSA 304–B, RSA 304–C, RSA 305–A, RSA 349, or RSA 564–F.

(b) A name reserved under RSA 293–A, RSA 293–B, RSA 304–A, RSA 304–B, RSA 304–C, or RSA 564–F.

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(e) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(f) The name "farmers' market" unless the entity meets the definition of "farmers' market" established in RSA 21:34–a, V.

III. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, one or more of the names described in paragraph II, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph II gives written consent to use the name that is not distinguishable from the name of the applying corporation; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfac-

tory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, the name of the applying corporation; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

IV. A corporation may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user corporation:

(a) Has merged with the other entity;

(b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other entity.

V. This chapter does not control the use of fictitious names.

VI. Nothing in this section shall prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic corporation under the same name as the trade name.

Source. PS 147:3. PL 223:3. RL 272:3. RSA 292:3. 1988, 93:4. 1991, 67:2. 1999, 293:1. 2004, 248:1. 2009, 293:1. 2015, 188:1, 2, eff. Jan. 1, 2016. 2017, 257:51, eff. Oct. 1, 2017.

292:4 Record of Articles of Agreement; Effect. The articles of agreement shall be recorded in the office of the secretary of state. When so recorded, the signers thereof shall be a corporation, and such corporation, its officers, and members shall have all the rights and powers and be subject to all the duties and liabilities of other similar corporations incorporated under this chapter, their officers, and members, except so far as they are limited or enlarged by this chapter. Subsequent to filing with the secretary of state a copy shall be filed in the office of the clerk of the town in which the mailing address of the corporation is located.

Source. 1866, 4224:1. GS 138:1. GL 152:1. PS 147:4. PL 223:4. RL 272:4. RSA 292:4. 1991, 261:5. 2004, 248:2, eff. July 1, 2004.

292:5 Fees for Recording. The fee for recording the articles of agreement in the office of the secretary of state as required in RSA 292:4 shall be $25. The fee for recording any record of amendment in the office of the secretary of state as required in RSA 292:7 shall be $25. The fee for recording the articles of agreement or amendments to such articles in the office of the town or city clerk as required in RSA 292:4 and RSA 292:7 shall be $5.

Source. 1949, 265:1. RSA 292:5. 1955, 171:7. 1989, 408:64. 1991, 252:2, eff. Aug. 9, 1991.

292:5–a Returns, Filing Fee, Penalty.

[Repealed 1957, 32:1, eff. Mar. 16, 1957.]

History

Former RSA 292:5–a, which was derived from 1955, 171:8 and 1955, 448:5, related to annual returns.

292:5–b Foreign Nonprofit Corporations; Registration, Fees. A foreign nonprofit corporation established for any of the purposes set forth in RSA 292:1 or for a substantially similar purpose, desiring to do business in this state in furtherance of such purpose for the benefit of citizens of this state, may register as a foreign corporation by making application as provided in RSA 293–A:15.03, excepting those portions relative to using a form of the words "corporation," "company," "incorporated" or "limited" in the corporate name. Any such foreign nonprofit corporation shall file the return and pay the fee provided in RSA 292:25–29.

Source. 1977, 461:2. 1979, 92:1. 1985, 339:1. 1989, 256:2. 1992, 255:3, eff. Jan. 1, 1993.

292:6 Bylaws; Organization. The initial bylaws of a corporation shall be adopted by a ⅔ majority action of the signers of the articles of agreement. The power to alter, amend or repeal the bylaws or to adopt new bylaws, subject to repeal or change by a ⅔ majority action of the shareholders or holders of membership certificates, shall be vested in the board of directors unless reserved to the shareholders or holders of membership certificates by the articles of agreement. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with the laws of the state or the articles of agreement, including provisions for issuance and reacquisition of membership certificates.

Source. PS 147:5. PL 223:5. RL 272:5. RSA 292:6. 1991, 261:6, eff. Jan. 1, 1992.

292:6–a Board of Directors of Charitable Nonprofit Corporations. In the interest of encouraging diversity of discussion, connection with the public, and public confidence, the board of directors of a charitable nonprofit corporation shall have at least 5 voting members, who are not of the same immediate family or related by blood or marriage. No employee of a charitable nonprofit corporation shall hold the position of chairperson or presiding officer of the board. This section shall not apply to those nonprofit corporations in existence on August 10, 1996, until

one year after August 10, 1996, nor to any organization qualified as a private foundation under the applicable provisions of the United States Internal Revenue Code, nor to religious organizations, churches, or the integrated auxiliaries thereof or to conventions or associations of churches. The provisions of this section may be waived with the approval of the director of charitable trusts after application for such waiver.

Source. 1996, 302:3. 1997, 184:5, eff. Jan. 1, 1998.

292:6–b Voting.

I. A voluntary corporation may have one or more classes of members or may have no members. In the absence of a provision in its articles or bylaws providing for members, a voluntary corporation has no members.

II. If a voluntary corporation has no members, an action for which there is no specific provision of this chapter applicable to a voluntary corporation without members and that would otherwise require approval of the members requires only the approval of the board of directors.

III. Members are of one class unless the articles establish, or authorize the bylaws to establish, more than one class. Members shall have no voting rights, except as specifically provided in the articles or bylaws. The articles or bylaws may fix the term of membership.

IV. Notwithstanding any provision of the articles or bylaws to the contrary, each individual board member and each member of a voluntary corporation entitled to vote shall be entitled to no more than one vote.

Source. 2010, 105:2, eff. July 25, 2010.

Powers of Corporations

292:7 Change of Name; Amending Articles. Any corporation now or hereafter organized or registered in accordance with the provisions of this chapter, and any existing corporation which may have been so organized or registered, may change its name, increase or decrease its capital stock or membership certificates, merge with or acquire any other corporation formed pursuant to this chapter, or amend its articles of agreement, by a majority vote of such corporation's board of directors or trustees, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the office of the secretary of state and in the office of the clerk of the town or city in this state which is its principal place of business. In the case of a foreign nonprofit corporation registered in New Hampshire, a copy of the amendment or plan of merger, certified by the proper officer of the state of incorporation, shall be filed with the secretary of state, together with the fee provided in RSA 292:5. The surviving corporation in a merger shall continue to have all the authority and powers vested in the merging corporations, including any powers previously conferred upon them by the legislature.

Source. 1895, 1:2. 1897, 49:1. PL 223:6. 1931, 69:1. RL 272:6. RSA 292:7. 1971, 73:2. 1983, 112:11. 1988, 93:5. 1991, 261:7, eff. Jan. 1, 1992.

292:8 Capital Structure. The corporation may generate funds through its members, including, but not limited to:

I. Issuance of membership certificates or stock certificates, or both, in the corporation.

II. Receipt of contributions to capital.

III. Assessment of dues and fees on members.

Source. RS 145:9. CS 152:9. GS 137:7. GL 151:7. PS 147:9. PL 223:8. RL 272:7. RSA 292:8. 1971, 73:3. 1991, 261:8, eff. Jan. 1, 1992.

Failure to Make Returns

292:8–a Disposition of Records by Secretary of State.

[Repealed 1975, 95:2, eff. June 21, 1975.]

History

Former RSA 292:8–a, which was derived from 1957, 32:2, related to disposition of records of inactive voluntary corporations.

Higher Education Corporations

292:8–b Terms Defined. The following words as used in this subdivision shall be construed as follows:

I. "Commission" means the higher education commission established in RSA 21–N:8–a.

II. "Higher learning" means studies which are more advanced or difficult than those prevalently offered in a secondary school and which are creditable toward an academic or professional degree.

III. "Degree" means the formal recognition of a stage of progress in the pursuit of higher learning, including the associate, bachelor's, master's, doctorate, professional, or other award, diploma or the equivalent under any other designation.

Source. 1965, 44:1. 1973, 533:4. 2011, 224:143, eff. July 1, 2011.

292:8–c Organization. The articles of agreement for the purpose of organizing a corporation for the establishment of an institution of higher learning shall be submitted to the commission for its consent for said incorporation.

Source. 1965, 44:1. 1973, 533:5. 1977, 407:2. 2011, 224:144. 2013, 164:3, eff. June 28, 2013.

292:8–d Approval. No articles of agreement for the incorporation of institutions of higher learning shall be recorded in the office of the secretary of state unless or until consent for said incorporation has been obtained from the commission.

Source. 1965, 44:1. 1973, 533:6. 1977, 407:3. 2013, 164:3, eff. June 28, 2013.

292:8–e General Statement. The commission shall approve as a corporation of higher learning only such institutions as have been evaluated according to procedures and standards established by the commission. The commission may accept accreditation or program approval by a recognized accrediting body in place of its own independent evaluation.

Source. 1965, 44:1. 1973, 533:7. 2013, 164:3, eff. June 28, 2013.

292:8–ee Freedom From Liability. No employee of the division, member of the commission, or any member of an evaluation committee established under any provision of this subdivision shall be held personally liable, either as an individual or as a member of a group, so long as said employee or member was acting in good faith in the furtherance of duties as an employee of the division or member of the commission or an evaluation committee. All such members shall be entitled to the protections afforded by RSA 99–D.

Source. 1983, 141:1. 2011, 224:146. 2013, 164:3, eff. June 28, 2013.

292:8–f Submission of Plans. Any person or entity desiring to establish an institution of higher learning shall submit to the commission its plans, which shall be evaluated by the commission. Such evaluation shall include among other things the adequacy of the buildings or proposed buildings, instructional facilities and provisions for safety and well-being of its students, the qualifications of the faculty, the character of the program of studies and the adequacy of financial resources. All fees collected by the commission under this section shall be deposited into the higher education fund established in RSA 21–N:8–a, III.

Source. 1965, 44:1. 1967, 288:2. 1973, 533:8. 2013, 164:3, eff. June 28, 2013.

292:8–ff Continuing Review.

I. The commission shall conduct periodic reevaluations of educational institutions incorporated under this chapter.

II. The commission shall conduct a special reevaluation of any educational institution, if:

(a) The institution is sold or transferred to, or merged with, another entity; or

(b) There is a substantial change in the governance of the institution.

III. The commission shall suspend or revoke the approval or degree granting authority of any institution which no longer meets the standards established by rule under RSA 21–N:8–a, II(e).

IV. Any institution which has not conducted regular instruction for 3 consecutive years and whose charter has not been repealed shall, before announcing a resumption of instruction, submit plans to the commission and be evaluated and approved under RSA 292:8–f.

V. Any institution which has not awarded a particular degree for 4 years shall seek and receive approval by the commission before resuming the awarding of that degree.

Source. 1969, 4:2. 1973, 533:9. 1981, 574:4. 2011, 224:147. 2013, 164:3, eff. June 28, 2013.

292:8–g Limitation on Name. Notwithstanding the provisions of RSA 292:3 no person, school, association or corporation shall use in any way the term "junior college" or "college" or "university" in connection with an institution, or use any other name, title or descriptive matter tending to designate that it is an institution of higher learning unless it has been incorporated under the provisions of this chapter. Any person, school, association or corporation authorized by a special act of the legislature shall not change its name to include any of said terms under the provisions of RSA 292:8–*l* unless its amendment therefor shall be submitted to and approved by the commission prior to being filed in the office of the secretary of state.

Source. 1965, 44:1. 1967, 92:2. 1973, 533:10. 2013, 164:3, eff. June 28, 2013.

292:8–h Granting of Degrees.

I. This section shall apply to all educational institutions within the state granting degrees or seeking to do so, except the following:

(a) Any institution now granting degrees which has been in continuous operation since before 1775;

(b) [Repealed.]

(c) Institutions of the university system of New Hampshire pursuant to RSA 187–A and institutions of the community college system of New Hampshire pursuant to RSA 188–F.

II. No educational institution shall grant degrees unless authorized by name to do so by an act of the legislature.

III. The commission shall specify the degrees an institution may grant, and the commission may re-

new, for a set term of years, degree granting authority. The commission shall report its activity by January 31 of each odd-numbered year to both the house and senate standing committees on education.

IV. Any out-of-state institution of higher learning planning to establish a branch campus or offer courses, programs, or degrees in this state, shall apply to the commission for evaluation and approval of its plans. If such plans are not approved or if approval is withdrawn by the commission, all operations and publicity of the out-of-state institution shall cease without delay.

Source. 1965, 44:1. 1971, 540:3. 1973, 533:11. 1981, 574:1. 1983, 239:10. 2011, 224:145. 2013, 164:3, eff. June 28, 2013.

292:8–i Penalty. Any person who shall violate the provisions of RSA 292:8–g or 292:8–h shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1965, 44:1. 1973, 529:61, eff. Oct. 31, 1973 at 11:59 p.m.

292:8–j Injunctive Relief. In addition to the penalty provided by RSA 292:8–i, the commission may institute in any court of competent jurisdiction, an action to prevent or restrain any violation of the provisions of RSA 292:8–g or 8–h and the court shall adjudge to the plaintiff such relief by way of injunction (which may be mandatory) or otherwise as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purpose of this subdivision.

Source. 1965, 44:1. 1973, 533:12, eff. July 1, 1973.

292:8–k Exemption.

[Repealed 1973, 533:15, eff. July 1, 1973.]

History

Former RSA 292:8–k, which was derived from 1965, 44:1, exempted corporations organized under RSA 292–A from the provisions of this subdivision.

292:8–kk Reports Required.

I. When any institution of higher learning ceases the regular conduct of instruction, 2 certified transcripts and an electronic copy of the same for each student who was registered for instruction at the institution shall be forwarded to the commission together with a course catalogue for each year in which the institution operated, and an explanation of the institution's credit and grading system. The commission shall preserve these records and upon request of the individual concerned, shall furnish a certified copy of the individual's record. The fee for each record so furnished to be paid to the commission shall be sufficient to cover related costs.

II. All transcript request fees collected by the commission under this section shall be deposited into the higher education fund established in RSA 21–N:8–a, III and shall be used for managing the storage and retrieval of closed school transcripts.

Source. 1969, 4:1. 1973, 533:13. 1979, 87:1. 2003, 235:4. 2004, 105:1. 2008, 338:9. 2011, 224:148. 2013, 164:5. 2014, 132:2, eff. June 16, 2014.

Special Corporations

292:8–l Powers Extended. Any non-profit corporation heretofore organized by special act of the legislature for purposes as set forth by RSA 292:1 may:

I. Change its name, eliminate any limitation on the assets it is authorized to hold, provide for distribution of its assets upon dissolution of the said corporation, by a majority vote of such corporation, unless otherwise provided by any such special act or the bylaws of any such corporation, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the office of the secretary of state. The fee for recording said certified copy in the office of the secretary of state shall be $25.

II. Change its purpose by a majority vote of said corporation. A written notice of the proposed change shall be provided to the director of charitable trusts, department of justice and the notice of proposed changes shall be published in a newspaper of general circulation by the trustees at least 30 days before the vote is taken. The proposed change shall also be submitted for review by the probate court. If legal cause exists which would prevent the proposed change in purpose, the director of charitable trusts shall have 30 days to notify the corporation of any additional requirements. A certified copy of the vote shall be filed in the office of the secretary of state. The fee for recording said certified copy in the office of the secretary of state shall be $25. Nothing in this paragraph shall be construed to supercede the intent of RSA 7:19–RSA 7:32–a.

Source. 1967, 92:1. 2005, 282:1. 2006, 316:1, eff. July 1, 2006.

Dissolution of Corporation

292:9 Procedure.

I. Any such corporation, or ¼ of the members thereof, may apply by petition to the superior court, or in the case of a charitable corporation to the superior court or the probate court, in the county in which the corporation is located, for a decree of dissolution, or for such other relief as may be just; and the court, after due notice to all parties interested and a hearing, may decree that the corporation be

dissolved, subject to such limitations and conditions as justice may require. The attorney general shall be notified and given an opportunity to be heard in all cases involving charitable corporations.

II. The court shall have the right to appoint a guardian ad litem in the event that any members or shareholders, or both, are unknown or have abandoned a stock interest or membership interest in the corporation. The guardian ad litem shall file a report with the court setting forth its findings with respect to: the attempt to notify the unknown shareholders or members or both; any response from the unknown shareholders or members or both; and the length of time since the date of last contact by the unknown shareholder or member with the corporation.

III. The court shall have the discretion, after reviewing the report of the guardian ad litem, to conclude the extent of the rights and interests of the shareholders or members, or both, who are unknown or have abandoned their interests.

IV. No member or shareholder shall be entitled to receive an amount from a dissolution of assets greater than the member's or shareholder's total contribution to capital or purchase price, or both, of membership certificates. Any and all funds which may be payable to members or shareholders, or both, who have been adjudicated to have abandoned their interests under this section shall revert to the corporation as capital assets.

Source. 1887, 72:1. 1891, 46:1. PS 147:10. PL 223:9. RL 272:8. RSA 292:9. 1991, 261:9. 1992, 284:5, eff. Jan. 1, 1993.

292:10 Filing Order. The corporation shall cause an attested copy of the decree of the court to be filed in the office of the secretary of state forthwith after it is made; and when such copy has been so filed, the corporate existence of the corporation shall terminate in accordance with the terms of such decree.

Source. 1887, 72:3. PS 147:11. PL 223:10. RL 272:9.

292:10–a Dissolution by Vote.

I. Except as provided in paragraph II, whenever ⅔ of the membership or voting stock or both of any such corporation shall have voted to dissolve the corporation, then said corporation shall be automatically dissolved upon the filing with the secretary of state of a statement signed under the penalties of perjury by the treasurer and a majority of the directors or trustees setting forth (a) that at least ⅔ of the members or stockholders voted dissolution; and (b) the plan for distribution of the corporation's assets and satisfaction of its obligations.

II. Whenever the voting membership of a church, organized under this chapter, shall have voted unanimously to dissolve the church, the church shall be automatically dissolved upon the filing with the secretary of state of a statement signed under the penalties of perjury by the treasurer and a majority of the directors or trustees setting forth (a) that all members eligible to vote voted dissolution; and (b) the plan for distribution of the church's assets and satisfaction of its obligations.

Source. 1977, 407:4. 1991, 261:10, eff. Jan. 1, 1992.

292:11 Records.

[Repealed 1985, 339:16, I, eff. June 14, 1985.]

History

Former RSA 292:11, which was derived from 1887, 72:4; PS 147:12; PL 223:11; and RL 272:10, related to records of dissolved corporations.

Fraternal Organizations

292:12 Holding Property. Unincorporated societies or lodges of Elks, Knights of Columbus, Knights of Pythias, Masons, Moose and Odd Fellows, or other similar fraternal organizations shall be corporations so far as may be necessary to take, hold, manage and use any gift or grant made to them as such and any gifts or grants heretofore made to any such societies or lodges are hereby fully ratified and confirmed to them in their aforesaid corporate capacity, and said societies, lodges, and organizations may sue and be sued in regard to such property in said corporate capacity.

Source. 1941, 175:1. RL 272:11.

292:13 Deemed Corporations for What Purposes. The trustees or other similar officers of such societies or lodges shall be deemed bodies corporate for the purpose of taking and holding in succession grants and gifts whether of real or personal estate made either to them and their respective societies or lodges and said trustees or other similar officers with the consent of the societies or lodges may convey the lands or other property of such societies or lodges.

Source. 1941, 175:1. RL 272:12.

292:14 Unincorporated Association Receiving and Using Donations. If a donation, grant or gift be made to any unincorporated association, society, foundation or similar organization, it shall be a corporation so far as may be necessary to take, hold, manage, use and convey any such donation, gift or grant made to it. Any donations, gifts or grants heretofore made to any such association, society, foundation or similar organization are hereby fully ratified and confirmed to them in their aforesaid

corporate capacity, and said association, society, foundation or similar organization may sue and be sued in regard to such property in said corporate capacity. The directors, trustees or other similar officers of such unincorporated association, society, foundation or similar organization, if citizens of the United States, shall have the power of taking, holding and conveying in succession grants, gifts and donations whether real or personal estate made either to them and their successors or to their respective association, society, foundation or similar organization, or to their beneficiaries.

Source. 1953, 142:1, eff. May 8, 1953.

Orthodox Parishes

292:15 Application of Subdivision. This subdivision applies to all churches, parishes, committees and other religious organizations governed by jurisdictions, archdioceses of any Orthodox Patriarchate, Synod or national church of the Orthodox Church (the One Holy Catholic and Apostolic Church), recognized by the apostolic historic Orthodox Patriarchates of Constantinople, Antioch, Moscow and Yugoslavia and in general to all churches, congregations, parishes, committees and other religious organizations founded or established with the intent and for the purpose of adhering to and maintaining the apostolic and historic communion, doctrine, discipline, canon law, tradition, worship and unity of the Orthodox Church.

Source. 1955, 88:1 par. 14, eff. April 21, 1955.

292:16 Application for Incorporation. An unincorporated church, congregation, parish or any other religious organization may apply to the appropriate hierarch, archbishop, bishop or administrator for permission to incorporate under this article. When such permission has been granted in writing, it shall be attached to the certificate of incorporation.

Source. 1955, 88:1 par. 15, eff. April 21, 1955.

292:17 Articles of Agreement. The articles of agreement shall be in the form provided by law for all religious corporations and must in addition recite therein that the purpose and intent of the corporation is to maintain, propagate, practice and forever perpetuate religious worship, services, sacraments and teachings in full accordance and unity with the doctrine, ritual, canon law, faith, practice, discipline, traditions and usages of the Orthodox Church and for the carrying out of the said purpose and intent to maintain a religious organization which will be adherent and obedient to the Orthodox ecclesiastical jurisdiction and authority and which shall recognize and remain subject to the duly appointed and canonical Orthodox hierarch, archbishop, bishop or administrator appropriate for the Orthodox communicant members comprising the same.

Source. 1955, 88:1 par. 16, eff. April 21, 1955.

Common Trust Funds

292:18 Charitable Corporations. Any charitable corporation organized under an act of the legislature or organized or registered in accordance with state law is empowered through its trustees or directors to establish, maintain and operate common trust funds as provided herewith under the appropriate standard of investment applicable to it.

Source. 1955, 160:1 par. 17. RSA 292:18. 1988, 93:6, eff. April 18, 1988.

292:19 Collective Investments. Said charitable corporation may combine money and property belonging to various trusts in its care for the purpose of facilitating investments, providing diversification and obtaining a reasonable income; provided, however, that the participating contributory interest of said trusts shall be properly evidenced by appropriate bookkeeping entries showing on an annual basis the capital contribution of and the profit and income allocable to each trust; and provided, further, that not more than 10 percent of the fund shall be invested in the obligations of any one corporation or organization, excepting deposits in savings banks, obligations of the United States and of the state of New Hampshire and its subdivisions; and provided, further, that nothing herein shall be construed to authorize the investment of funds of a trust in any manner not authorized by law.

Source. 1955, 160:1 par. 18, eff. Jan. 1, 1956.

292:20 Exception. The provisions of RSA 292:19 shall not apply where the instrument creating the particular trust specifically prohibits collective investment or where such an investment shall violate any specific court order made in any particular trust.

Source. 1955, 160:1 par. 20, eff. Jan. 1, 1956.

292:21 Contributions and Withdrawals. Contributions to any common trust fund shall be made on the basis of its market value at the time such contribution is recorded in the books of the trustees. The withdrawal of a particular trust fund from any common trust fund shall be made proportionately on the basis of the market value of said common trust fund at the time such withdrawal is recorded in the books of the trustees.

Source. 1955, 160:1 par. 19, eff. Jan. 1, 1956.

Legislative Amendment

292:22 Legislative Amendment. The legislature may at any time alter, amend or repeal the charter of any voluntary corporation or the laws under which it was established, or may modify or annul any of its franchises, duties and liability; but the remedy against the corporation for any liability previously incurred shall not be impaired thereby.

Source. 1969, 33:1, eff. May 6, 1969.

New Hampshire Charitable Foundation

292:23 Public and Charitable Trust Funds.

I. PUBLIC COMMON TRUST FUNDS. The New Hampshire Charitable Foundation is authorized to establish one or more public common trust funds and to accept funds for investment in such public common trust funds from public trustees including municipal trustees, provided however, that any investment in such public common trust fund may be withdrawn at such times and upon such notice as rules and regulations promulgated by the New Hampshire Charitable Foundation with the approval of the bank commissioner shall provide. The New Hampshire Charitable Foundation shall have full power to invest and reinvest such public common trust fund or funds, only (a) in obligations and securities permitted for investment by depository banks under RSA 383–B:3–303(c) and RSA 383–B:3–303(d)(1), (2), (3), and (6); (b) obligations of the United States; and (c) obligations of the state of New Hampshire and its subdivisions, providing however, that not more than 10 percent of any fund shall be invested in the obligations of any one corporation or organization, excepting deposits in a bank as defined in RSA 383–A:2–201(a)(3) which accepts deposits, and, obligations of the United States and of the state of New Hampshire and its subdivisions.

II. CHARITABLE COMMON TRUST FUNDS. The New Hampshire Charitable Foundation is authorized to establish one or more charitable common trust funds and to accept funds for investment in such charitable common trust funds from the trustees or managers of tax exempt organizations under the provisions of the Internal Revenue Service of the United States, provided however, that any investment in such charitable common trust fund may be withdrawn at such times and upon such notice as rules and regulations promulgated by the New Hampshire Charitable Foundation shall provide. The New Hampshire Charitable Foundation shall have full power to invest and reinvest such charitable common trust funds, subject to the terms, conditions, limitations and restrictions imposed by the laws of the state of New Hampshire upon trustees of estates in making investments providing, however that not more than 10 percent of any fund shall be invested in the obligations of any one corporation or organization, except deposits in savings banks, obligations of the United States, and of the state of New Hampshire and its subdivisions.

III. SECURITIES. Investment securities forming a part of any such common trust fund shall be maintained in a custodian account in a state chartered or national bank doing business in New Hampshire. Any officer or employee of the New Hampshire Charitable Foundation having access to investment securities, bank accounts or cash belonging to any such common trust fund shall be bonded.

IV. AUDITED REPORT. At least annually the New Hampshire Charitable Foundation shall prepare a report, audited by an independent certified public accountant, which shall include for each common trust fund:

(a) Balance sheet showing assets and liabilities together with statements showing:

(1) All investments at the beginning and end of each fiscal year stated at both book and market values,

(2) Changes in investments,

(3) Realized capital gains and losses,

(4) Expenses, including fees, charged to principal,

(5) Capital distributions,

(6) Net asset value of participation units at the beginning and end of the year and at any intermediate valuation date, and

(7) Participation unit capital distributions with the dates thereof.

(b) Income statement showing:

(1) Income received,

(2) Expenses, including fees, charged to income,

(3) Income distributions, and

(4) Participation unit income distributions with the dates thereof.

(c) List of all investors showing each investor's participation units at the beginning and end of each fiscal year together with additions and withdrawals.

Such audited reports shall be a public document and copies shall be submitted to the director of charitable trusts, bank commissioner, and department of revenue administration—municipal and property division.

V. Value of Investments and Withdrawals. Investments in and withdrawals from the common trust

fund or funds shall be at net asset values determined on the basis of market values.

VI. Rules and Regulations. The New Hampshire Charitable Foundation is authorized to issue reasonable rules and regulations with respect to the administration of the fund or funds and such rules and regulations pertaining to public common trust funds shall be subject to the prior approval of the bank commissioner.

Source. 1969, 447:4. 1973, 544:10. 1975, 439:23. 1992, 24:2, VII. 2014, 161:5. 2015, 272:48, eff. Oct. 1, 2015.

Corporations Created by Legislative Act

292:24 Charters of Voluntary Corporations Created by Legislative Act. Every voluntary corporation created by an act of the legislature which is a private foundation as defined in section 509(a) of the United States Internal Revenue Code of 1954, and which is in existence on the effective date of this section, or which is thereafter created by an act of the legislature, is subject to the following provisions, whether they are set forth in the legislative charter or not:

I. A corporation which is a "private foundation" as defined in section 509(a) of the Internal Revenue Code of 1954, shall not:

(a) Engage in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(b) Retain any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; or,

(d) Make any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

II. Each corporation which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in the act of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954.

III. Nothing in this subdivision impairs the rights and powers of the courts or of the attorney general with respect to any corporation.

IV. All references to sections of the Internal Revenue Code of 1954 include amendments to those sections which are made after the effective date of this section, and include all corresponding provisions of any United States internal revenue laws which replace the Internal Revenue Code of 1954.

Source. 1971, 379:1, eff. Aug. 27, 1971.

Renewal of Charter

292:25 Renewal Required.

I. Every corporation organized under this chapter or by act of the legislature shall, during the calendar year 1990, and every 5 years thereafter, make a return in writing to the secretary of state upon blanks to be furnished by him and shall pay a fee of $25. The return shall be signed by the president or other officer of said corporation. The return shall state the corporation's principal address and the names and addresses of all the officers and directors or the governing board of the corporation. Any corporation which does not renew its charter as provided in this subdivision shall have its charter repealed, revoked and annulled; shall lose any right or title to the name under which it was incorporated; and shall be so advised in writing by the secretary of state.

II. The disposition of any corporate assets of any corporation that is dissolved under this section shall be performed in accordance with RSA 292:29.

Source. 1975, 95:1. 1985, 339:2. 1988, 93:7. 1989, 408:65. 1991, 261:11, eff. Jan. 1, 1992.

292:26 Reinstatement.

[Repealed 1988, 93:10, eff. April 18, 1988.]

History

Former RSA 292:26, which was derived from 1975, 95:1, related to reinstatement.

292:27 Publication Notice.

[Repealed 1985, 339:16, II, eff. June 14, 1985.]

History

Former RSA 292:27, which was derived from 1975, 95:1, related to publication of a listing of corporations which failed to file a decennial return.

292:28 Reinstatement Following Publication.

[Repealed 1985, 339:16, III, eff. June 14, 1985.]

History

Former RSA 292:28, which was derived from 1975, 95:1, related to reinstatement of a corporation following publication of its name in the listing of corporations which failed to file a decennial return.

292:29 Disposition of Corporate Assets.

I. Any corporation whose charter is repealed, revoked and annulled pursuant to this subdivision shall, nevertheless, continue as a body corporate for the term of 3 years from the date such charter is repealed, revoked and annulled for the purpose of presenting and defending suits by or against it and of closing and settling its concerns and distributing its assets, including the disposition and transfer of all corporate assets and property, subject to paragraphs II and III.

II. For the purpose of any suit or action by or against any such corporation, pending at the end of said term of 3 years, such corporation shall continue as a body corporate until 90 days after final judgment or decree in such suit or action.

III. The superior court may at any time when it shall be made to appear, upon the petition of any interested party, that the protection of proprietary or other rights requires the doing of any act or thing by or in behalf of any such corporation, order the doing of such acts or things, and for this purpose may appoint and authorize an agent to act for and in the name of such corporation, and any action so ordered and done shall be effective corporate action. The probate court shall have concurrent jurisdiction with the superior court to grant relief in the case of petitions involving charitable corporations brought under this section. The attorney general shall be notified and given an opportunity to be heard in all cases involving charitable corporations.

IV. All corporate assets and property are to be disposed of in accordance with the provisions for dissolution as set forth in the articles of agreement, the bylaws, and in accordance with RSA 292:8 and 292:9.

Source. 1975, 95:1. 1991, 261:12, 13. 1992, 284:6, eff. Jan. 1, 1993.

292:30 Revival of Charter.

I. Any corporation whose charter has been repealed, revoked, and annulled pursuant to this subdivision may at any time apply for revival of its certificate of incorporation, together with all the rights, franchises, privileges, and immunities and subject to all of its duties, debts, and liabilities which have been secured or imposed by its original charter and all amendments thereto; provided, that if the corporation name is no longer available under the terms of RSA 292:3, the corporation shall file with its application for revival an amendment changing its name or a consent to use its original name.

II. The application for revival of the charter may be procured by filing an application for revival in the office of the secretary of state, which application is signed under oath and under penalties of perjury by an officer of the corporation and which certificate states:

(a) The name of the corporation, which shall be the name it bore when its certificate of incorporation expired;

(b) The address at which the business of the corporation is to be carried on;

(c) The names and addresses of all the officers and directors or governing board of the corporation;

(d) That the corporation desiring to be revived and so reviving its charter was organized under the laws of this state;

(e) The facts as may show that the charter has been forfeited pursuant to this subdivision;

(f) That the application is filed by authority of those who were directors or members of the governing body of the corporation at the time its charter was repealed, revoked, and annulled, or who were elected directors or members of the governing body of the corporation as provided in paragraph VI of this section;

(g) [Repealed.]

(h) That the corporation has, as of the date of its application for revival, continued to operate consistent with its charter since such charter was repealed, revoked, and annulled; and

(i) That such revival will be in the public good.

III. Upon the filing of the application for revival, the secretary of state shall determine the completeness and accuracy of the application. When the revival is effective, the corporation shall be revived with the same force and effect as if its charter had not been forfeited pursuant to this subdivision. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its charter by the corporation, its officers and agents during the time when its charter was forfeited pursuant to this subdivision, with the same force and effect and to all intents and purposes as if the charter had at all times remained in full force and effect, except as provided in paragraph IX. All real and personal property, rights and credits, which belonged to the corporation at the time its charter

became forfeited pursuant to this subdivision and which were not disposed of prior to the time of its revival shall be vested in the corporation after its revival as fully and amply as they were held by the corporation at and before the time its charter became forfeited pursuant to this subdivision; and the corporation after its revival shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its charter had at all times remained in full force and effect.

IV. Any corporation seeking to revive its charter under the provisions of this chapter shall pay to the secretary of state a sum equal to all fees in arrears and due at the time its charter became forfeited pursuant to this subdivision plus a fee of $50.

V. If a sufficient number of the last acting officers of any corporation desiring to revive its charter are not available by reason of death or unknown address, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of the corporation available for the purposes aforesaid, the stockholders may elect a full board of directors as provided by the bylaws of the corporation and shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to carry on the business and affairs of the corporation. A special meeting of the stockholders for the purposes of electing directors may be called by any officer, director or stockholder upon notice, which notice shall state the date, place and time of the meeting and the purpose thereof.

VI. After a revival of the charter of the corporation shall have been effected (except where a special meeting of stockholders has been called in accordance with the provisions of paragraph V), the officers who signed the certificate of revival shall, jointly, forthwith call a special meeting of the stockholders of the corporation upon written notice, which notice shall state the date, place and time of the meeting and the purpose thereof. At the special meeting the stockholders shall elect a full board of directors, which board shall then elect such officers as are provided by law, by the charter or by the bylaws to carry on the business and affairs of the corporation.

VII. For the purpose of this section, the term "director" includes the governing body of a corporation which has no board of directors and the term "stockholder" includes members of a corporation entitled to vote for members of the corporation's governing body.

VIII. If the secretary of state is not satisfied that a certificate of revival is authorized by the directors or stockholders of a corporation as required by this section, he may decline to accept the certificate and the revival shall not occur.

IX. Revival of a charter under this section shall not be construed to influence any pending actions or otherwise affect any liabilities or interfere with any course of action against such corporation for the period during which the charter was repealed or revoked.

Source. 1978, 21:1. 1988, 93:8, 9. 1991, 7:7, 8, 11. 2014, 179:1, eff. Sept. 9, 2014. 2017, 171:2, eff. Aug. 27, 2017.

Abandonment of Stock

292:31 Abandonment of Stock or Certificate.

I. Stock or membership certificates in a voluntary corporation, in the absence of bylaws which mandate rules regarding abandonment, which stock or certificates are evidenced by records available to the corporation, are presumed abandoned, and such stock or certificates shall be held by the corporation if the owner within 3 years has not:

(a) Communicated in writing with the corporation regarding the stock or a dividend, distribution or other sum payable as a result of the interest;

(b) Otherwise communicated with the corporation regarding the stock, as evidenced by a memorandum or other record on file with the corporation prepared by an employee of the corporation; or

(c) Has not exercised its ownership rights, including voting rights, regarding the stock.

II. At the expiration of a 3-year period following the failure of the owner to assert its rights under its stock, the stock is not presumed abandoned unless there have been at least 2 notices mailed to the owner's last address as reflected in the corporation's records which do not disclose this address to be inaccurate. These notices shall be sent at least 12 months apart from each other and the last of these 2 notices shall be sent 90 days prior to the termination of the 3-year period.

III. The running of the 3-year period of abandonment ceases immediately upon the occurrence of a communication by the owner to the corporation.

IV. At the time the stock is presumed abandoned under this section, any dividend, distribution, or other sum then held for, or owing to the owner as a result

of the stock and not previously presumed abandoned shall be presumed abandoned.

V. The corporation holding the presumedly abandoned stock shall report to the state treasurer concerning the property.

VI. The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the corporation to be the owner of property of the value of $25 or more presumed abandoned under this chapter.

(b) A description of the property and the place where it is held and where it may be inspected by the state treasurer and any amounts owing to the corporation.

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under $25 each may be reported in the aggregate.

(d) The date of the last transaction with the apparent owner with respect to the property.

(e) Other information the state treasurer prescribes by rules adopted pursuant to RSA 541–A relative to the administration of this section.

VII. The report shall be filed before November 1 of each year for the property presumed to be abandoned as of June 30 of that year. On written request by any corporation required to file a report, the state treasurer may postpone the reporting date.

VIII. Not more than 120 days before filing the report required by this section, the holder in possession of property abandoned and subject to custody as unclaimed property under this section shall send written notice to the apparent owner at his last known address informing him that the corporation is in possession of property subject to this section if:

(a) The corporation has in its records an address for the apparent owner which the corporation's records do not disclose to be inaccurate.

(b) The claim of the apparent owner is not barred by the statute of limitations.

(c) The property has a value of $25 or more.

IX. Within 120 days from the termination of the 3-year abandonment period, the state treasurer, after review of the report submitted by the corporation and the finding that all procedural requirements have been performed, and if the report is deemed to be correct and the procedures are deemed to have been performed properly, the state treasurer shall declare the property abandoned, and the corporation shall have a right to retain the abandoned property as capital assets.

Source. 1991, 261:14, eff. Jan. 1, 1992.

TITLE XXX

OCCUPATIONS AND PROFESSIONS

CHAPTER 318–B

CONTROLLED DRUG ACT

318–B:1 Definitions. The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

I. "Abuse of drugs" means the use of controlled drugs solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment or in a program of research operated under the direction of a physician, pharmacologist, physiologist, chemist, or advanced practice registered nurse.

I–a. "Administer" means an act whereby a single dose of a drug is instilled into the body of or given to a person or animal for immediate consumption or use.

I–aa. "Advanced emergency medical care provider" means a person licensed to provide advanced emergency medical care under RSA 151–B.

I–b. "Advanced practice registered nurse" means a person licensed to practice as an advanced practice registered nurse in this state pursuant to RSA 326–B:18.

II. "Amphetamine-type drugs" means amphetamine, optical isomers thereof, salts of amphetamine and its isomers, and chemical compounds which are similar thereto in physiological effect, and which show a like potential for abuse.

II–a. "Anabolic steroid" includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

(a) Clostebol;
(b) Dehydrochlormethyltestosterone;
(c) Ethylestrenol;
(d) Fluoxymesterone;
(e) Mesterolone;
(f) Methandienone;
(g) Methandrostenolone;
(h) Methenolone;
(i) Methyltestosterone;
(j) Nandrolone;
(k) Norethandrolone;
(*l*) Oxandrolone;
(m) Oxymesterone;
(n) Oxymetholone;
(*o*) Stanozolol; and
(p) Testosterone.

III. "Barbiturate-type drugs" means barbituric acid and its salts, derivatives thereof and chemical compounds which are similar thereto in physiological effect, and which show a like potential for abuse.

IV. "Cannabis-type drug" means all parts of any plant of the Cannabis genus of plants, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plants, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such plants which are incapable of germination.

V. "Cocaine-type drugs" means coca leaves, cocaine, ecgonine, and chemical compounds which are similar thereto in chemical structure or which are similar thereto in physiological effect and which show a like potential for abuse.

V–a. "Commissioner" means the commissioner of the department of health and human services.

VI. "Controlled drugs" means any drug or substance, or immediate precursor, which is scheduled pursuant to RSA 318–B:1–a.

VI–a. "Controlled drug analog" means a substance that has a chemical structure substantially similar to that of a controlled drug and that was specifically designed to produce an effect substantially similar to that of a controlled drug. The term shall not include a drug manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug and Cosmetic Act, 52 Stat. 1052 (21 U.S.C. 355).

VI–b. "Crack cocaine", also known as cocaine base or rock cocaine, means the free base form of cocaine in which the molecule is not chemically combined as an acid salt.

VII. "Dentist" means a person authorized by law to practice dentistry in this state.

VII–a. "Department" means the department of health and human services.

VIII. "Dispense" means to distribute, leave with, give away, dispose of, deliver, or sell one or more doses of and shall include the transfer of more than a single dose of a medication from one container to another and the labelling or otherwise identifying a container holding more than a single dose of a drug.

IX. "Drug dependence" means a state of physical addiction or psychic dependence, or both, upon a drug following use of that drug upon a repeated periodic or continuous basis except:

(a) Upon a morphine-type drug as an incident to current medical treatment of a demonstrable physical disorder, other than produced by the use of the drug itself, or

(b) Upon amphetamine-type, ataractic, barbiturate-type, hallucinogenic or other stimulant and depressant drugs as an incident to current medical treatment of a demonstrable physical or psychological disorder, or both, other than produced by the drug itself.

X. "Drug-dependent person" means any person who has developed a state of psychic or physical dependence, or both, upon a controlled drug following administration of that drug upon a repeated periodic

or continuous basis. No person shall be classified as drug dependent who is dependent:

(a) Upon a morphine-type drug as an incident to current medical treatment of a demonstrable physical disorder other than drug dependence, or

(b) Upon amphetamine-type, ataractic, barbiturate-type, hallucinogenic or other stimulant and depressant drugs as an incident to current medical treatment of a demonstrable physical or psychological disorder, or both, other than drug dependence.

X–a. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use or customarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

(a) Kits used or intended for use or customarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(b) Kits including but not limited to cocaine kits, used or intended for use or customarily intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(c) Isomerization devices used or intended for use or customarily intended for use in increasing the potency of any species of plant which is a controlled substance.

(d) Testing equipment used or intended for use or customarily intended for use in identifying, or analyzing the strength, effectiveness or purity of controlled substances.

(e) Scales and balances used or intended for use or customarily intended for use in weighing or measuring controlled substances.

(f) Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use or customarily intended for use in cutting controlled substances.

(g) Separation gins and sifters used or intended for use or customarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

(h) Blenders, bowls, containers, spoons and mixing devices used or intended for use or customarily intended for use in compounding controlled substances.

(i) Capsules, balloons, envelopes and other containers used or intended for use or customarily intended for use in packaging small quantities of controlled substances.

(j) Containers and other objects used or intended for use or customarily intended for use in storing or concealing controlled substances.

(k) Objects used or intended for use or customarily intended for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(2) Water pipes.

(3) Carburetion tubes and devices.

(4) Smoking and carburetion masks.

(5) Chamber pipes.

(6) Carburetor pipes.

(7) Electric pipes.

(8) Air-driven pipes.

(9) Chillums.

(10) Bongs.

(11) Ice pipes or chillers.

XI. "Federal food and drug laws" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. § 301 et seq.).

XI–a. "Fentanyl class drug" shall mean the following drugs: fentanyl, 3-methylfentanyl, 3-methylthiofentanyl, acetylfentanyl, acetyl-alpha-methylfentanyl, alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyl-3-methylfentanyl, beta-hydroxyfentanyl, para-fluorofentanyl, thiofentanyl, alfentanil, carfentanil, remifentanil, sufentanil, and all optical isomers of these substances. Drugs which become controlled after September 1, 2015, pursuant to RSA 318–B:1–a; and are known or scheduled with a common name that includes the term "fentanyl", or "fentanil" shall also be considered as belonging to this class, along with optical isomers of same. Drugs may be added or removed from this classification by action of the general court.

XII. "Comprehensive Drug Abuse Prevention and Control Act of 1970" means the applicable law of the United States relating to opium, coca leaves and other narcotic drugs.

XIII. "Hallucinogenic drugs" are psychodysleptic drugs which assert a confusional or disorganizing effect upon mental processes or behavior and mimic acute psychotic disturbances. Exemplary of such drugs are mescaline, peyote, psilocybin and d-lysergic acid diethylamide.

XIV. "Laboratory" means a scientific or medical establishment entrusted with the custody of controlled drugs and the use of controlled drugs for scientific and medical purposes and for purposes of instruction, research or analysis.

XIV–a. "Law enforcement officer" means any officer of the state or political subdivision of the state who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter.

XV. "Manufacturer" means a person who, by compounding, mixing, cultivating, growing or other process, produces or prepares controlled drugs, but shall not mean a pharmacist who compounds controlled drugs to be sold or dispensed on prescription.

XVI. "Morphine-type drugs" means morphine and chemical compounds which are similar thereto in physiological effect and which show a like potential for abuse.

XVII. "Narcotic drugs" means cocaine-type and morphine-type drugs, and drugs other than cannabis-type regulated under the Comprehensive Drug Abuse Prevention and Control Act of 1970.

XVIII. "Nurse" means a person licensed to perform nursing as defined in RSA 326–B.

XIX. "Official written order" means an order written on a form provided for that purpose by the United States Attorney General under the laws of the United States making provision therefor, if such order forms are authorized and required by federal law, or conforming to the requirements of such a form and provided by the department of health and human services, or, if no such order form is provided, on an official form provided for that purpose by the department of health and human services.

XIX–a. "Optometrist" means a person authorized by law to practice optometry in this state pursuant to RSA 327.

XX. "Other stimulant and depressant drugs" means controlled drugs other than amphetamine-type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenics and morphine-type which are found to exert a stimulant and depressant effect upon the higher functions of the central nervous system and which are found to have a potential for abuse.

XXI. "Person" means any corporation, association or partnership, or one or more individuals.

XXII. "Pharmacist" means a person authorized by law to practice pharmacy pursuant to RSA 318.

XXIII. "Pharmacy" means an establishment licensed pursuant to RSA 318.

XXIV. "Physician" means a person authorized by law to practice medicine in this state pursuant to RSA 329.

XXIV–a. "Podiatrist" means a person authorized by law to practice podiatry in this state pursuant to RSA 315.

XXV. "Potential for abuse" means that there is a likelihood that a drug will be used solely for its stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system as distinguished from use recommended by a practitioner as a therapeutic agent in a course of medical treatment or in a program of research operated under the direction of a physician, pharmacologist, or advanced practice registered nurse.

XXVI. "Practitioner" means any person who is lawfully entitled to prescribe, administer, dispense or distribute controlled drugs to patients.

XXVI–a. "Practitioner-patient relationship" means a medical connection between a licensed practitioner and a patient that includes an in-person exam, a history, a diagnosis, a treatment plan appropriate for the licensee's scope of practice, and documentation of all prescription drugs including name and dosage. A licensee may prescribe for a patient whom the licensee does not have a practitioner-patient relationship under the following circumstances: for a patient of another licensee for whom the prescriber is taking call; for a patient examined by another New Hampshire licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment. The definition of a practitioner-patient relationship shall not apply to a practitioner licensed in another state who is consulting to a New Hampshire licensed practitioner with whom the patient has a relationship.

XXVII. "Prescribe" means order or designate a remedy or any preparation containing controlled drugs.

XXVIII. "Prescription" means an oral, written, or facsimile or electronically transmitted order for any controlled drug or preparation issued by a licensed practitioner to be compounded and dispensed by a pharmacist and delivered to a patient for a medicinal

or therapeutic purpose arising from a practitioner-patient relationship.

XXIX. "Registry number" means the number assigned to each person registered under the federal narcotic laws.

XXIX–a. "Residual amount" means an unusable amount of a controlled substance in or on a hypodermic syringe or needle.

XXX. "Sale" means barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant, or employee.

XXXI. "State food, drug and cosmetic laws" means RSA 146.

XXXII. "Veterinarian" means a person authorized by law to practice veterinary medicine in this state pursuant to RSA 332–B.

XXXIII. "Wholesaler" means a person who supplies or distributes controlled drugs that he himself has not produced or prepared to hospitals, practitioners, pharmacies, other wholesalers, manufacturers or federal, state and municipal agencies.

Source. 1969, 421:1. 1975, 255:2. 1977, 547:1–4. 1981, 513:1. 1985, 190:98; 293:1, 2; 324:17, 18. 1988, 6:1. 1989, 195:1; 361:1. 1993, 333:3. 1994, 186:1; 333:16–18. 1995, 310:155, 156, 181. 1996, 267:22. 2000, 176:4. 2001, 15:3; 282:8. 2005, 293:8. 2008, 217:3, 4. 2009, 54:5. 2011, 63:4. 2016, 2:1, eff. Jan. 21, 2016. 2017, 117:3, eff. June 16, 2017.

318–B:1–a Scheduling by the Commissioner.

I. The commissioner may add, delete, or reschedule all substances, by rule, pursuant to RSA 541–A, after hearing and after consulting with the pharmacy board. In making a determination regarding a substance, the commissioner shall consider the following:

(a) Actual or relative potential for abuse;

(b) Scientific evidence of its pharmacological effect, if known;

(c) State of current scientific knowledge regarding the substance;

(d) History and current pattern of abuse;

(e) Scope, duration, and significance of abuse;

(f) Risk to the public health;

(g) Potential of the substance to produce psychic or physical dependence liability; and

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

II. After considering the factors in paragraph I, the commissioner shall make findings relative to the substance and adopt a rule controlling the substance if he finds the substance has a potential for abuse.

III. In addition to the provisions of RSA 541–A, the commissioner shall give due notice of the time, place and purpose of all hearings required under this chapter to podiatrists, osteopaths, hospitals, pharmacists, physicians, dentists, veterinarians, advanced registered nurse practitioners, optometrists, laboratories, registered manufacturers, suppliers and to the general public by such means as he shall deem adequate. From and after the hearing date, the sale or dispensation (except by prescription) of a drug or chemical containing any quantity of such substance as is the subject matter of the hearing shall be suspended pending a determination as to whether such substance is to be designated as a controlled drug. Designation as a controlled drug shall result in the continued suspension of the sale or dispensation (except by prescription) of any drug or chemical containing any quantity of such substance until the effective date of the designation. The substance shall thereafter be a controlled drug subject to this chapter. If any substance is so designated, the commissioner shall publish the designation in a newspaper of general circulation in the state once each week for 3 successive weeks.

IV. Substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

V. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the commissioner, the commissioner shall similarly control the substance under this chapter after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless, within that 30 day period, the commissioner objects to inclusion, rescheduling, or deletion. In that case, the commissioner shall publish the reasons for objection and afford all interested persons an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish his decision, which shall be final unless altered by law. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the commissioner, control under this chapter shall be stayed until the commissioner publishes his decision.

VI. Authority to control under this section shall not extend to distilled spirits, wine, malt beverages, or tobacco.

VII. Controlled drugs shall be scheduled by whatever official, common, usual, chemical or trade name designated.

VIII. The commissioner shall revise and republish the schedules in RSA 318–B:1–b semi-annually for 2 years from the effective date of this section, and thereafter annually.

Source. 1985, 293:3. 1993, 333:4. 1994, 333:19. 1995, 310:183, eff. Nov. 1, 1995.

318–B:1–b Schedule Tests.

I. SCHEDULE I TESTS. The commissioner shall place a substance in schedule I if he finds that the substance:

(a) Has high potential for abuse; and

(b) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

II. SCHEDULE II TESTS. The commissioner shall place a substance in schedule II if he finds that:

(a) The substance has high potential for abuse;

(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(c) The abuse of the substance may lead to severe psychic or physical dependence.

III. SCHEDULE III TESTS. The commissioner shall place a substance in schedule III if he finds that:

(a) The substance has a potential for abuse less than the substances listed in schedules I and II of the current chapter 21, Code of Federal Regulations;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

IV. SCHEDULE IV TESTS. The commissioner shall place a substance in schedule IV if he finds that:

(a) The substance has a low potential for abuse relative to substances listed in schedule III of the current chapter 21, Code of Federal Regulations;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III of the current chapter 21, Code of Federal Regulations.

V. SCHEDULE V TESTS. The commissioner shall place a substance in schedule V if he finds that:

(a) The substance has a low potential for abuse relative to substances listed in schedule IV of the current chapter 21, Code of Federal Regulations;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) The substance has limited physical dependence liability or psychological dependence liability relative to the substances in schedule IV of the current chapter 21, Code of Federal Regulations.

Source. 1985, 293:3. 1995, 310:183, eff. Nov. 1, 1995.

318–B:1–c Flunitrazepam.

[RSA 318–B:1–c contingently repealed by 1998, 359:2.]

I. The legislature intends that the provisions of paragraph III of this section shall remain in effect until such time as flunitrazepam is scheduled by the commissioner of the department of human services in accordance with and pursuant to RSA 318–B.

II. The legislature finds that flunitrazepam, marketed under the trade name rohypnol, which has a sedative, hypnotic, and amnesiac effect, has no acceptable medical uses in the United States and carries a high potential for abuse. Therefore, flunitrazepam meets the criteria for placement on schedule I of controlled drugs.

III. Notwithstanding the provisions of RSA 318–B:1–a, relative to scheduling by rulemaking of the commissioner of the department of health and human services, flunitrazepam shall be scheduled as a schedule I controlled drug.

Source. 1998, 359:1. 2005, 177:138, eff. July 1, 2005.

318–B:2 Acts Prohibited.

I. It shall be unlawful for any person to manufacture, possess, have under his control, sell, purchase, prescribe, administer, or transport or possess with intent to sell, dispense, or compound any controlled drug, or controlled drug analog, or any preparation containing a controlled drug, except as authorized in this chapter.

I–a. It shall be unlawful for any person to manufacture, sell, purchase, transport or possess with intent to sell, dispense, compound, package or repackage (1) any substance which he represents to be a controlled drug or controlled drug analog, or (2) any preparation containing a substance which he represents to be a controlled drug or controlled drug analog, except as authorized in this chapter.

I–b. It shall be unlawful for a qualifying patient or designated caregiver as defined under RSA 126–X:1 to sell cannabis to another person who is not a qualifying patient or designated caregiver. A conviction for the sale of cannabis to a person who is not a qualifying patient or designated caregiver shall not preclude or limit a prosecution or conviction of any person for sale of cannabis or any other offense defined in this chapter.

II. It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used or is customarily intended to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled substance.

II–a. It shall be unlawful for any person, at retail, to sell or offer for sale any drug paraphernalia listed in RSA 318–B:1, X–a.

III. It shall be unlawful for any person to place in any newspaper, magazine, handbill,or other publication any advertisement, knowing that the purpose of the advertisement, when viewed as a whole, is to promote the sale of objects intended for use or customarily intended for use as drug paraphernalia.

IV. In determining whether an object is drug paraphernalia under this chapter, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use;

(b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(c) The proximity of the object, in time and space, to a direct violation of this chapter;

(d) The proximity of any residue of controlled substances;

(e) The existence of any residue of controlled substances on the object;

(f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use as drug paraphernalia;

(g) Instructions, oral or written, provided with the object concerning its use;

(h) Descriptive materials accompanying the object which explain or depict its use;

(i) National and local advertising concerning its use;

(j) The manner in which the object is displayed for sale;

(k) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise;

(*l*) Whether the object is customarily intended for use as drug paraphernalia and the existence and scope of other legitimate uses for the object in the community; and

(m) Expert testimony concerning its use.

V. No person shall obtain or attempt to obtain a controlled drug:

(a) By fraud, deceit, misrepresentation, or subterfuge;

(b) By the forgery or alteration of a prescription or of any written order;

(c) By the concealment of a material fact;

(d) By the use of a false name or the giving of a false address; or

(e) By submission of an electronic or on-line medical history form that fails to establish a valid practitioner-patient relationship.

VI. No person shall willfully make a false statement in any prescription, order, report, or record required hereby.

VII. No person shall, for the purpose of obtaining a controlled drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, practitioner, or other authorized person.

VIII. No person shall make or utter any false or forged prescription or false or forged written order.

IX. No person shall affix any false or forged label to a package or receptacle containing controlled drugs.

X. Possession of a false or forged prescription for a controlled drug by any person, other than a pharmacist in the pursuance of his profession, shall be prima facie evidence of his intent to use the same for the purpose of illegally obtaining a controlled drug.

XI. It shall be unlawful for any person 18 years of age or older to knowingly use, solicit, direct, hire or employ a person 17 years of age or younger to manufacture, sell, prescribe, administer, transport or

possess with intent to sell, dispense or compound any controlled drug or any preparation containing a controlled drug, except as authorized in this chapter, or to manufacture, sell, transport or possess with intent to sell, transport or possess with intent to sell, dispense, compound, package or repackage (1) any substance which he represents to be a controlled drug or controlled drug analog, or (2) any preparation containing a substance which he represents to be a controlled drug or controlled drug analog, except as authorized in this chapter. It shall be no defense to a prosecution under this section that the actor mistakenly believed that the person who the actor used, solicited, directed, hired or employed was 18 years of age or older, even if such mistaken belief was reasonable. Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of any other offense defined in this chapter or any other provision of law governing an actor's liability for the conduct of another.

XII. A person is a drug enterprise leader if he conspires with one or more persons as an organizer, supervisor, financier, or manager to engage for profit in a scheme or course of conduct to unlawfully manufacture, sell, prescribe, administer, dispense, bring with or transport in this state methamphetamine, lysergic acid diethylamide, phencyclidine (PCP) or any controlled drug classified in schedule I or II, or any controlled drug analog thereof. A conviction as a drug enterprise leader shall not merge with the conviction for any offense which is the object of the conspiracy. Nothing in this section shall be construed to preclude or limit a prosecution or conviction of any person for conspiracy or any other offense defined in this chapter.

XII–a. It shall be unlawful for any person to knowingly acquire, obtain possession of or attempt to acquire or obtain possession of a controlled drug by misrepresentation, fraud, forgery, deception or subterfuge. This prohibition includes the situation in which a person independently consults 2 or more practitioners for treatment solely to obtain additional controlled drugs or prescriptions for controlled drugs.

XII–b. It shall be unlawful for any person to knowingly obtain, or attempt to obtain, or to assist a person in obtaining or attempting to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship.

XII–c. It shall be unlawful for any person to, by written or electronic means, solicit, facilitate or enter into any agreement or contract to solicit or facilitate the dispensing of controlled substances pursuant to prescription orders that do not meet the federal and state requirements for a controlled drug prescription, and without an established valid practitioner-patient relationship.

XII–d. It shall be unlawful for any pharmacy to ship finished prescription products, containing controlled substances, to patients residing in the state of New Hampshire, pursuant to any oral, written or online prescription order that was generated based upon the patient's submission of an electronic or online medical history form. Such electronic or online medical questionnaires, even if followed by telephonic communication between practitioner and patient, shall not be deemed to form the basis of a valid practitioner-patient relationship.

XII–e. It shall be unlawful for any pharmacist to knowingly dispense a controlled substance pursuant to any oral, written, or electronic prescription order, which he or she knows or should have known, was generated based upon the patient's submission of an electronic or online medical history form. Such electronic or online medical questionnaires, even if followed by telephonic communication between practitioner and patient, shall not be deemed to form the basis of a valid practitioner-patient relationship.

XII–f. It shall be unlawful for any person to prescribe by means of telemedicine a controlled drug classified in schedule II through IV, except as provided in RSA 318–B:2, XVI, (a) and (b).

XIII. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in RSA 637.

XIV. It shall be an affirmative defense to prosecution for a possession offense under this chapter that the person charged had a lawful prescription for the controlled drug in question or was, at the time charged, acting as an authorized agent for a person holding a lawful prescription. An authorized agent shall mean any person, including but not limited to a family member or caregiver, who has the intent to deliver the controlled drug to the person for whom the drug was lawfully prescribed.

XV. Persons who have lawfully obtained a controlled substance in accordance with this chapter or a person acting as an authorized agent for a person holding a lawful prescription for a controlled substance may deliver any unwanted or unused controlled substances to law enforcement officers acting within the scope of their employment and official duties for the purpose of collection, storage, and disposal of such controlled drugs in conjunction with

a pharmaceutical drug take-back program established pursuant to RSA 318–E.

XVI. (a) The prescribing of a non-opioid controlled drug classified in schedule II through IV by means of telemedicine shall be limited to prescribers as defined in RSA 329:1–d, I and RSA 326–B:2, XII(a), who are treating a patient with whom the prescriber has an in-person practitioner-patient relationship, for purposes of monitoring or follow-up care, or who are treating patients at a state designated community mental health center pursuant to RSA 135–C or at a Substance Abuse and Mental Health Services Administration (SAMHSA)-certified state opioid treatment program, and shall require an initial in-person exam by a practitioner licensed to prescribe the drug. Subsequent in-person exams shall be by a practitioner licensed to prescribe the drug at intervals appropriate for the patient, medical condition, and drug, but not less than annually.

(b) The prescribing of an opioid controlled drug classified in schedule II through IV by means of telemedicine shall be limited to prescribers as defined in RSA 329:1–d, I and RSA 326–B:2, XII(a), who are treating patients at a SAMHSA-certified state opioid treatment program. Such prescription authority shall require an initial in-person exam by a practitioner licensed to prescribe the drug and subsequent in-person exams shall be by a practitioner licensed to prescribe the drug at intervals appropriate for the patient, medical condition, and opioid, but not less than annually.

Source. 1969, 421:1. 1977, 547:5. 1981, 513:2. 1983, 36:1; 292:1, 2. 1988, 6:2, 3. 1989, 207:1; 361:2, 3. 1990, 129:2. 2000, 176:5. 2008, 145:1; 217:5, 6. 2011, 63:5. 2013, 242:3. 2015, 246:3, 4. 2016, 221:1, 2, eff. Aug. 8, 2016.

318–B:2–a Exception.

[Repealed 1994, 333:34, eff. Jan. 1, 1995.]

History

Former RSA 318–B:2–a, which was derived from 1977, 547:6 and 1983, 292:3, related to conditions for possession of controlled drugs by advanced registered nurse practitioners.

318–B:2–b Counterfeit Drugs; Affirmative Defense. It is an affirmative defense to prosecution under RSA 318–B:2, I–a that the actor is:

I. A physician or advanced practice registered nurse who sells, dispenses, or prescribes a substance which he represents to be or contain a controlled drug, but which in fact neither is nor contains a controlled drug, to a patient under his care for a bona fide therapeutic purpose; or

II. A pharmacist who sells or dispenses a substance which he represents to be or contain a controlled drug, but which in fact neither is nor contains a controlled drug, to a person at the direction of and upon the written prescription of an attending physician or advanced practice registered nurse, provided any written prescription is properly executed, dated, and signed by the person prescribing on the day when issued and bears the full name and address of the patient for whom the drug is dispensed; or

III. A nurse or intern who, at the explicit direction of and under the supervision of an attending physician, administers a substance which he represents to be or contain a controlled drug, but which in fact neither is nor contains a controlled drug, to a patient for a bona fide therapeutic purpose; or

IV. An advanced emergency medical care provider who, upon receipt directly or by phone or by radio or by other communication medium of directions to do so from the supervising physician or an emergency/trauma advanced practice registered nurse, administers a substance which he represents to be or to contain a controlled drug, but which in fact neither is nor contains a controlled drug, to a patient for a bona fide therapeutic purpose.

Source. 1983, 36:2. 1992, 48:7. 1994, 333:20. 2009, 54:5, eff. July 21, 2009.

318–B:2–c Personal Possession of Marijuana.

I. In this section:

(a) "Marijuana" includes the leaves, stems, flowers, and seeds of all species of the plant genus cannabis, but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture, or preparation from such resin including hashish, and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(b) "Personal-use amount of a regulated marijuana-infused product" means one or more products that is comprised of marijuana, marijuana extracts, or resins and other ingredients and is intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures, which was obtained from a state where marijuana sales to adults are legal and regulated under state law, and which is in its original, child-resistant, labeled packaging when it is being stored, and which contains a total of no more than 300 milligrams of tetrahydrocannabinol.

II. Except as provided in RSA 126–X, any person who knowingly possesses ¾ of an ounce or less of marijuana, including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided in paragraph V.

III. Except as provided in RSA 126–X, any person who knowingly possesses 5 grams or less of hashish, including adulterants or dilutants, shall be guilty of a violation, and subject to the penalties provided in paragraph V.

IV. Except as provided in RSA 126–X, any person 21 years of age or older possessing a personal-use amount of a regulated marijuana-infused product shall be guilty of a violation, and subject to the penalties provided in paragraph V. Persons 18 years of age or older and under 21 years of age who knowingly possess marijuana-infused products shall be guilty of a misdemeanor.

V. (a) Except as provided in this paragraph, any person 18 years of age or older who is convicted of violating paragraph II or III, or any person 21 years of age or older who is convicted of violating paragraph IV shall be subject to a fine of $100 for a first or second offense under this paragraph, or a fine of up to $300 for any subsequent offense within any 3-year period; however, any person convicted based upon a complaint which alleged that the person had 3 or more prior convictions for violations of paragraph II, III or IV, or under reasonably equivalent offenses in an out-of-state jurisdiction since the effective date of this paragraph, within a 3-year period preceding the fourth offense shall be guilty of a class B misdemeanor. The offender shall forfeit the marijuana, regulated marijuana-infused products, or hashish to the state. A court shall waive the fine for a single conviction within a 3-year period upon proof that person has completed a substance abuse assessment by a licensed drug and alcohol counselor within 60 days of the conviction. A person who intends to seek an assessment in lieu of the fine shall notify the court, which shall schedule the matter for review after 180 days. Should proof of completion of an assessment be filed by or before that time, the court shall vacate the fine without a hearing unless requested by a party.

(b) Any person under 18 years of age who is convicted of violating paragraph II or III shall forfeit the marijuana or hashish and shall be subject to a delinquency petition under RSA 169–B:6.

VI. (a) Except as provided in this section, no person shall be subject to arrest for a violation of paragraph II, III, or IV and shall be released provided the law enforcement officer does not have lawful grounds for arrest for a different offense.

(b) Nothing in this chapter shall be construed to prohibit a law enforcement agency from investigating or charging a person for a violation of RSA 265–A.

(c) Nothing in this chapter shall be construed as forbidding any police officer from taking into custody any minor who is found violating paragraph II, III, or IV.

(d) Any person in possession of an identification card, license, or other form of identification issued by the state or any state, country, city, or town, or any college or university, who fails to produce the same upon request of a police officer or who refuses to truthfully provide his or her name, address, and date of birth to a police officer who has informed the person that he or she has been found to be in possession of what appears to the officer to be ¾ of an ounce or less of marijuana, a personal-use amount of a regulated marijuana-infused product, or 5 grams or less of hashish, may be arrested for a violation of paragraph II, III, or IV.

VII. All fines imposed pursuant to this section shall be deposited into the alcohol abuse prevention and treatment fund established in RSA 176–A:1 and utilized for evidence-informed substance abuse prevention programs.

VIII. (a) No record that includes personally identifiable information resulting from a violation of this section shall be made accessible to the public, federal agencies, or agencies from other states or countries.

(b) Every state, county, or local law enforcement agency that collects and reports data for the Federal Bureau of Investigation Uniform Crime Reporting Program shall collect data on the number of violations of paragraph II, III, or IV. The data collected pursuant to this paragraph shall be available to the public. A law enforcement agency may update the data annually and may make this data available on the agency's public Internet website.

Source. 2017, 248:2, eff. Sept. 16, 2017.

318–B:2–d Plea by Mail.

I. Any person 18 years of age or older who is charged with a violation of RSA 318–B:2–c, II, III, or IV may enter a plea of guilty, nolo contendere, or not guilty, by mail in a circuit court, district division.

II. Such defendant shall receive, in addition to the summons, a fine notice entitled "Notice of Fine" which shall contain the amount of the fine for a violation of RSA 318–B:2–c, II, III, or IV. A defen-

dant who is issued a summons and notice of fine and who wishes to plead guilty or nolo contendere shall enter his or her plea on the summons and return it with payment of the fine within 30 days of the date of the summons. Payment by credit card may be accepted in lieu of cash payment.

III. If the defendant wishes to enter a plea of not guilty, he or she shall enter such plea on the summons and return it within 30 days of the date of the summons. The circuit court, district division shall schedule a trial.

IV. Whenever a defendant willfully fails to pay a fine in connection with a conviction for a violation of RSA 318–B:2–c, II, III, or IV or payment of such fine cannot be collected, the defendant shall be defaulted and the court may impose an additional fine of $100.

Source. 2017, 248:2, eff. Sept. 16, 2017.

318–B:2–e Negligent Storage of Marijuana-Infused Products.

I. In addition to any other penalties provided for by law, any person who negligently stores marijuana-infused products, where the negligent storage causes such products to be possessed by a person under 18 years of age, shall be guilty of a misdemeanor. The storing of marijuana-infused products obtained legally in any state in an original childproof container shall be prima facie evidence that a person did not act negligently. Failure to store marijuana-infused products obtained legally in any state in an original childproof container shall be prima facie evidence of negligence.

II. As used in this section, "marijuana-infused products" means products that are comprised of marijuana, marijuana extracts, or resins that have been combined with other ingredients and are intended for use or consumption, including but not limited to, edible products, drinks, ointments, and tinctures.

Source. 2017, 248:2, eff. Sept. 16, 2017.

318–B:3 Licensing of Manufacturers and Wholesalers Required. No person shall manufacture controlled drugs, and no person as a wholesaler shall supply the same, without first having obtained a license to do so as provided in RSA 318:51–a.

Source. 1969, 421:1. 1973, 198:1. 1985, 324:19. 1990, 129:3, eff. June 18, 1990.

318–B:4 Licenses.

[Repealed 1985, 324:25, eff. Jan. 1, 1986.]

History

Former RSA 318–B:4 which was derived from 1969, 421:1; 1977, 563:56; and 1982, 42:6, related to the issuing of licenses and applicable requirements.

318–B:5 Sale by Manufacturer or Wholesaler. A duly licensed manufacturer or wholesaler may sell and dispense controlled drugs only to any of the following persons, and only on official written orders:

I. To a manufacturer, wholesaler, or pharmacist.

II. To a practitioner.

III. To that person in each hospital designated as in charge of controlled drugs, but only for use by that hospital, pursuant to the restrictions of the board of pharmacy license.

IV. To that person in each laboratory designated as in charge of controlled drugs, but only for use in that laboratory for scientific and medical purposes.

V. To a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government purchasing, receiving, possessing, or dispensing controlled drugs by reason of his official duties, upon an exempt official order form as required by the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended.

VI. To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon, duly licensed in some state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft for the medical needs of persons on board such ship or aircraft, or to a physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by the Attorney General of the United States.

VII. To a person in a foreign country if the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, are complied with.

Source. 1969, 421:1. 1977, 547:7, 8. 1983, 292:4, eff. Aug. 17, 1983.

318–B:6 Possession Lawful. Possession of or control of controlled drugs obtained as authorized shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor. A person who obtains controlled drugs under the provisions of RSA 318–B:5 or otherwise shall not administer, dispense, or otherwise use such

drugs within the state, except within the scope of his employment or official duty, and then only for scientific or medical purposes and subject to the provisions of this chapter.

Source. 1969, 421:1. 1983, 292:5, eff. Aug. 17, 1983.

318–B:7 Written Orders. An official written order for any controlled drug in schedule II shall be signed in triplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the controlled drug or drugs named therein. In the event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of 2 years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be deemed compliance with this section if the parties to the transaction have complied with the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, or the federal food and drug laws, respecting the requirements governing the use of order forms.

Source. 1969, 421:1. 1977, 547:9. 1983, 292:6. 1985, 293:4, eff. Aug. 13, 1985.

318–B:8 Limitation on Use. A person in charge of controlled drugs in a hospital or of a laboratory, or in the employ of this state or of any other state or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia to practice his profession, or a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft who obtains controlled drugs under the provisions of RSA 318–B:5, or otherwise, shall not administer, nor dispense, nor otherwise use such drugs within the state, except within the scope of his employment or official duty, and then only for scientific or medical purposes and subject to the provisions of this chapter.

Source. 1969, 421:1, eff. Aug. 31, 1969.

318–B:9 Sale by Pharmacists.

I. A pharmacist, in good faith and in the course of his or her professional practice, may sell and dispense controlled drugs exempt under the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, and federal food and drug laws from prescription requirements. A pharmacist, in good faith, may sell and dispense controlled drugs requiring prescriptions to any person upon the written or electronically transmitted prescription of a practitioner, provided it is properly executed, dated and when required by law, manually or electronically signed by the person prescribing on the day when issued and bears the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, or upon oral prescription, in pursuance of regulations promulgated by the Department of Justice of the United States, under the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended where applicable, provided said oral prescription is promptly reduced to writing by the pharmacist or authorized technician, stating the name of the practitioner so prescribing, the date, the full name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed, and, in all instances, the full name, address and registry number under the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, or federal food and drug laws of the person so prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall indicate the date of filling and his or her name on the face or record of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 4 years so as to be readily accessible for the inspection of any officers engaged in the enforcement of this chapter. The prescription as to a controlled drug may be refilled pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. The person refilling a prescription for a controlled drug shall record on the prescription record the date of refill, the quantity dispensed, and his or her initials.

II. The legal owner of any stock of controlled drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or registered pharmacy but only upon an official written order, and in accordance with the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, and regulations where applicable. A licensed pharmacy only upon an official written order may sell controlled drugs in schedule II to a practitioner to be used for medical purposes.

III. Prescriptions issued by practitioners for controlled drugs shall be executed in clear, concise, readable form. Each prescription shall contain the following information and comply with the following requirements:

(a) The full name and complete address of the patient or of the owner of the animal for which the drug is prescribed.

(b) The day, month, and year the prescription is issued.

(c) The name of the controlled drug prescribed. Only one controlled drug shall appear on a prescription blank.

(d) The strength of the controlled drug prescribed.

(e) The specific directions for use of the controlled drug by the patient.

(f) No refills shall be authorized for controlled drugs in schedule II of the current chapter 21, Code of Federal Regulations.

(g) The federal Drug Enforcement Administration registration number of the practitioner.

(h) The practitioner shall manually or electronically sign the prescription on the date of issuance.

(i) The practitioner's full name shall be printed, rubber stamped, or typewritten above or below the manual or electronic signature.

(j) A practitioner shall not issue a prescription in order to obtain controlled substances for the purpose of general dispensing to his or her patients.

(k) A practitioner shall not issue a prescription to himself or herself or his or her immediate family which includes a spouse, children or parents.

(*l*) A prescription shall be deemed invalid if it is not filled within 6 months from the date prescribed.

IV. No prescription shall be filled for more than a 34-day supply upon any single filling for controlled drugs of schedules II or III; provided, however, that for controlled drugs, in schedules II or III, that are commercially packaged for dispensing directly to the patient, such as metered sprays and inhalers, liquids packaged in bottles with calibrated droppers, and certain topical preparations packaged with metered dispensing pumps may be filled for greater than a 34-day supply, but not more than 60 days, utilizing the smallest available product size, in order to maintain the dosing integrity of the commercially packaged containers; and, provided that with regard to amphetamines and methylphenidate hydrochloride, a prescription may be filled for up to a 60-day supply if either such prescription specifies it is being used for the treatment of attention deficit disorder, attention deficit disorder with hyperactivity, or narcolepsy.

V. Notwithstanding the provisions of RSA 318–B:26, it shall be a misdemeanor for a practitioner to issue or a pharmacist to fill a prescription that does not meet the requirements of this section.

VI. A pharmacist employed by a pharmacy located in a hospital may dispense cannabis-type drugs prescribed under RSA 318–B:10, VI, to any person upon the written prescription of an attending physician, provided it is properly executed, dated, and signed by the person prescribing on the day when issued and bears the full name and address of the patient for whom the drug is dispensed. The pharmacist filling the prescription shall write the date of filling and his own signature on the face of the prescription.

Source. 1969, 421:1. 1977, 547:10. 1979, 398:5. 1981, 107:2; 226:1–3. 1983, 292:7. 1985, 293:5, 6. 1997, 30:1. 2005, 177:136, 137. 2008, 222:1, eff. Jan. 1, 2009.

318–B:10 Professional Use of Narcotic Drugs.

I. A practitioner other than a veterinarian, in good faith, in the course of his professional practice, and for a legitimate medical purpose, may administer and prescribe controlled drugs, or the practitioner may cause the same to be administered by a nurse or intern under his direction and supervision. In a bona fide emergency situation, the practitioner may dispense a controlled drug to a patient under his care but only in a quantity not to exceed a 48-hour supply for all schedule II substances or a 7-day supply of schedule III, IV, or V substances.

II. A veterinarian, in good faith, in the course of his professional practice only, and not for use by a human being, may administer and prescribe controlled drugs, and the veterinarian may cause them to be administered to an animal under his care, but only in a quantity not to exceed a 48-hour supply of a schedule II substance or a 7-day supply of schedule III, IV, or V substances.

III, IV. [Repealed.]

V. An advanced emergency medical care provider licensed under RSA 153–A may possess, for emergency use only, such controlled prescription drugs as are specified by the state emergency medical services medical control board, with the concurrence of the pharmacy board, provided that there has been prior establishment of medical control for the possession of such drugs. The advanced emergency medical care provider may only administer such controlled prescription drugs upon receipt of orders to do so from a supervising physician or an emergency trauma advanced practice registered nurse, practicing within such nurse practitioner's specialty. Such orders may be transmitted either directly or by telephone or by radio or by other communication medium, or by standing order of local medical control delineated in a protocol as defined in RSA 153–A.

VI. Notwithstanding any other law to the contrary, an attending physician, in good faith and in the

course of the attending physician's professional practice only, may prescribe and administer federal Food and Drug Administration approved and classified cannabis-type drugs, or the attending physician may cause such drugs to be administered by a nurse or intern under such physician's direction and supervision.

VII. (a) The department of health and human services is hereby declared to be the state methadone authority.

(b) The commissioner of the department of health and human services shall adopt and have in effect rules, pursuant to RSA 541–A, relative to methadone detoxification and maintenance programs as follows:

(1) Application procedure and standards for approval for certification and re-certification of providers to operate methadone detoxification and maintenance programs, including certification period, for each type of certification. The department shall utilize accreditation reports obtained from national accreditation bodies that are approved by the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration in certifying methadone detoxification and maintenance programs in New Hampshire.

(2) Eligibility of individuals for admission to such programs.

(3) Qualifications of program personnel.

(4) Program content, including, but not limited to, services to be offered by the program.

(5) Mandatory records and reports to the department.

(6) Security measures to prevent diversion of methadone to illegal use.

(7) Confidentiality and disclosure of identifying information, records and reports.

(8) Financial responsibility.

(9) Any other provisions necessary to implement the purposes of this paragraph.

(c) Providers may operate a methadone detoxification or methadone maintenance program, or both, in the state of New Hampshire only if the providers are certified to operate pursuant to rules adopted under subparagraph VII(b).

(d) For the purposes of this paragraph:

(1) "Heroin" means an illegal semi-synthetic drug produced from the morphine contained in sap of the opium poppy, and known to have the potential for devastating addictive properties in vulnerable individuals.

(2) "Methadone" means a legal drug, methadone hydrochloride, which is a synthetic opioid that has been demonstrated to be an effective treatment agent for heroin abuse and dependence.

(3) "Methadone detoxification treatment" means the dispensing of methadone or similar substance in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to the withdrawal from the sustained use of heroin.

(4) "Methadone maintenance program" means a substance abuse treatment program substituting methadone or any of its derivatives, over time, to relieve withdrawal symptoms of heroin dependence, to reduce craving, and to permit normal functioning and engagement in rehabilitative services.

(e) Nothing in this paragraph shall prohibit a licensed health care practitioner from administering, prescribing, or dispensing a controlled drug under paragraph I.

(f) The department shall assess a fee to be paid by providers of methadone detoxification and maintenance programs for certification and administration by the department. The fee shall be $8 per client based on the annual client census of the previous calendar year. If the provider had no clients in the previous calendar year, then the fee shall be $1,000. All moneys collected by the department from fees authorized under this subparagraph shall be deposited into the general fund.

(g) The commissioner of the department of health and human services shall report by July 31, 2010, and each July 31 thereafter, to the chairpersons of the house and senate ways and means committees, the house and senate committees having jurisdiction over health and human services, and the oversight committee on health and human services under RSA 126–A:13, on the number of methadone detoxification and maintenance program clinics certified under RSA 318–B:10, VII, the number of clients, the average annual census data, the amount of fees assessed providers, and any recommendations for changes to the fee structure.

VIII. (a) Notwithstanding paragraph VII or any other law to the contrary, methadone may be administered, prescribed, and dispensed to pregnant and postpartum heroin addicts and administered as part of an alcohol and drug abuse treatment program, which may include extended detoxification and which

is approved by the commissioner of health and human services.

(b) The commissioner of health and human services shall adopt rules pursuant to RSA 541–A, relative to:

(1) Eligibility for the program.

(2) Length of time in the program.

(3) Requirements for participation in prenatal and postnatal care.

(4) Security measures to prevent diversion of methadone to illegal use.

(5) Any other provisions necessary to implement the purposes of this paragraph.

IX. If, in the judgment of a physician licensed under RSA 329, appropriate pain management warrants a high dosage of controlled drugs and the benefit of the relief expected outweighs the risk of the high dosage, the licensed physician may administer or cause to be administered such a dosage, even if its use may increase the risk of death, so long as it is not furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it falls within rules of the board of medicine.

Source. 1969, 421:1. 1973, 392:3. 1977, 106:2; 547:11, 12. 1981, 107:1. 1983, 292:8, 9, 21, I, II. 1985, 293:7; 324:20. 1992, 48:8. 1994, 186:2; 333:21. 1995, 286:25. 1996, 252:1, 2; 267:23. 1998, 149:1. 1999, 345:8. 2000, 268:2; 271:1. 2009, 54:5, eff. July 21, 2009; 205:1, 2, eff. July 15, 2009. 2017, 156:157, eff. July 1, 2017.

318–B:11 Preparations Exempted.

I. NOT DEPENDENCE FORMING OR OF SUSTAINING CHARACTER. The department of health and human services may by rule exempt from the application of this chapter, to such extent as it determines to be consistent with the public welfare, pharmaceutical preparations found by the department of health and human services after due notice and hearing:

(a) Either to possess no physiological or psychological dependence forming or sustaining character, or to possess physiological or psychological dependence forming or sustaining character not sufficient to warrant imposition of all the requirements of this chapter, and,

(b) Not to permit recovery of the minute quantity of a controlled drug from the pharmaceutical preparation having such a physiological or psychological dependence forming or sustaining character, with such relative technical chemical separation simplicity and degree of quantitative yield as to create a risk of improper use.

II. EXEMPT UNDER FEDERAL LAW. In exercising the authority granted in paragraph I, the commissioner of the department of health and human services by rule and without special findings, may grant exempt status to such pharmaceutical preparations as are or may be determined to be exempt under the Comprehensive Drug Abuse Prevention and Control Act of 1970 and regulations and permit the administering, dispensing, or selling of such preparations under the same conditions as permitted by the Comprehensive Drug Abuse Prevention and Control Act of 1970 and regulations and the federal food and drug laws and regulations.

III. REVOCATION. If the department of health and human services shall find after due notice and a hearing, as required by RSA 318–B:1, VI, that any exempt pharmaceutical preparation does possess a degree of physiological or psychological dependence character that results in material abusive use, it shall by designation publish, once each week for 3 successive weeks, the findings in a newspaper of general circulation in the state. The findings shall be effective, and the exempt status shall cease to apply to such pharmaceutical preparation, 7 days after the date of the publication of the findings. The suspension procedure specified in RSA 318–B:1, VI, shall also apply to such exempt preparation after the hearing date.

Source. 1969, 421:1. 1977, 547:13. 1985, 190:99, 100. 1995, 310:181, 182, eff. Nov. 1, 1995.

318–B:12 Records to be Kept; Confidentiality.

I. Practitioners, including physicians, podiatrists, dentists, veterinarians, optometrists, advanced practice registered nurses, manufacturers, wholesalers, pharmacists, clinics, hospitals, and laboratories, shall keep separate records, so as not to breach the confidentiality of patient records, to show the receipt and disposition of all controlled drugs. Such records shall meet the requirements of the department of health and human services and federal laws and regulations relative to the receipt, manufacture, inventory, distributions, sale, dispensing, loss, theft, and any other disposition of controlled drugs. The records shall indicate at least the name, dosage form, strength, and quantity of the controlled drug; the name and address of any person to whom the drug was administered, dispensed, sold or transferred and the date of any and all transactions involved with the controlled drug.

II. Prescription orders and records required by this chapter and stocks of controlled drugs shall be open for inspection only to federal, state, county and municipal law enforcement officers; all officers, agents, inspectors, and representatives of the board

of pharmacy who are charged with the responsibility to enforce this chapter; all peace officers within the state; the attorney general; and all county attorneys whose duty it is to enforce the laws of this state or of the United States relating to controlled drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

III. Practitioners including physicians, podiatrists, dentists, veterinarians, optometrists, advanced practice registered nurses, manufacturers, wholesalers, pharmacies, clinics, hospitals, laboratories, and any other person required by federal law to conduct biennial controlled substance inventories, shall do so beginning May 1, 1991, and thereafter on May 1 of every odd-numbered year.

IV. Records relative to prescription information containing patient-identifiable and prescriber-identifiable data shall not be licensed, transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary compliance; care management; utilization review by a health care provider, the patient's insurance provider or the agent of either; health care research; or as otherwise required by law. Commercial purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force. Nothing in this paragraph shall prohibit the dispensing of prescription medications to a patient or to the patient's authorized representative; the transmission of prescription information between an authorized prescriber and a licensed pharmacy; the transfer of prescription information between licensed pharmacies; the transfer of prescription records that may occur in the event a pharmacy ownership is changed or transferred; care management educational communications provided to a patient about the patient's health condition, adherence to a prescribed course of therapy or other information about the drug being dispensed, treatment options, or clinical trials. Nothing in this section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-identified data by zip code, geographic region, or medical specialty for commercial purposes. In addition to other appropriate remedies under this chapter, a violation of this paragraph is an unfair or deceptive act or practice within the meaning of RSA 358–A:2. Any right or remedy set forth in RSA 358–A may be used to enforce the provisions of this paragraph.

Source. 1969, 421:1. 1977, 547:14. 1983, 292:10. 1985, 324:21. 1990, 129:4. 1993, 333:5, 6. 1994, 333:22, 23. 1995, 310:181. 2006, 328:2, eff. June 30, 2006.

318–B:12–a Treatment for Drug Abuse. Any minor 12 years of age or older may voluntarily submit himself to treatment for drug dependency as defined in RSA 318–B:1, IX, or any problem related to the use of drugs at any municipal health department, state institution or facility, public or private hospital or clinic, any licensed physician or advanced practice registered nurse practicing within such nurse practitioner's specialty, or other accredited state or local social welfare agency, without the consent of a parent, guardian, or any other person charged with the care or custody of said minor. Such parent or legal guardian shall not be liable for the payment for any treatment rendered pursuant to this section. The treating facility, agency or individual shall keep records on the treatment given to minors as provided under this section in the usual and customary manner, but no reports or records or information contained therein shall be discoverable by the state in any criminal prosecution. No such reports or records shall be used for other than rehabilitation, research, or statistical and medical purposes, except upon the written consent of the person examined or treated. Nothing contained herein shall be construed to mean that any minor of sound mind is legally incapable of consenting to medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof.

Source. 1971, 136:1. 1994, 333:24. 2009, 54:5, eff. July 21, 2009.

318–B:13 Labels.

I. Whenever a manufacturer sells or dispenses a controlled drug, and whenever a wholesaler sells or dispenses a controlled drug in a package prepared by him, he shall securely affix to each package in which the drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of controlled drug contained therein. If any controlled drug is determined by rule of the department of health and human services to be habit forming, the container label shall show clearly the statement "Warning—May be Habit Forming".

No person, except a pharmacist for the purpose of filling a prescription under this chapter, shall alter, deface, or remove any label so affixed.

II. Whenever a pharmacist dispenses any controlled drug on prescription issued by a practitioner, he or she shall affix to the container in which such drug is dispensed a label showing the name, address, and registry number of the pharmacy and name or the initials of the pharmacist; the name of the prescribing practitioner; the prescription identification number; the name of the patient; the date dispensed; any directions as may be stated on the prescription; and the name and strength and quantity of the drug dispensed. All drugs dispensed to a patient that have been filled using a centralized prescription processing system shall bear a label containing an identifiable code that provides a complete audit trail of the dispensing of the drug and pharmaceutical care activities. No person shall alter, deface, or remove any label so affixed.

III. Whenever a practitioner other than a pharmacist, but including a physician, dentist, podiatrist, optometrist, veterinarian, or advanced practice registered nurse dispenses a controlled drug, he shall indicate on the container in which such drug is dispensed at least the name of the practitioner; the name and address of the patient, or, in the case of an animal, the name and address of the owner and the species of animal; the date dispensed; the name, strength, and quantity of drug dispensed; and the directions for administering the medication.

IV. A compounded drug product shall also be labeled as provided in RSA 318:14–a.

Source. 1969, 421:1. 1977, 547:15, 16. 1983, 292:11. 1985, 324:22. 1993, 333:7. 1994, 333:25. 1995, 310:181. 2002, 281:6. 2009, 54:5. 2013, 121:7, eff. Jan. 1, 2014.

318–B:14 Authorized Possession of Controlled Drugs by Individuals.

[Repealed 2010, 173:2, eff. Jan. 1, 2011.]

History

Former RSA 318–B:14, which was derived from 1969, 421:1; 1979, 244:1; 1983, 292:12; and 2002, 281:8, related to the authorized possession of controlled drugs by individuals.

318–B:15 Persons and Corporations Exempted. The provisions of this chapter restricting the possession and having control of controlled drugs shall not apply to:

I. Common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to an employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of controlled drugs; or to temporary incidental possession by employees or agents or persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

II. Persons possessing prescription drugs dispensed to them pursuant to a lawful prescription or who are acting as an authorized agent for a person holding a lawful prescription. For purposes of this section, an authorized agent shall mean any person, including but not limited to a family member or caregiver, who has the intent to deliver the prescription drug to the person to whom the prescription drugs are lawfully prescribed. This exemption does not extend to persons possessing drugs with an intent to sell.

III. Law enforcement officers engaged in the collection, storage, and disposal of controlled drugs in conjunction with a pharmaceutical drug take-back program established under RSA 318–E.

IV. (a) A health care professional authorized to prescribe an opioid antagonist may prescribe, dispense, or distribute, directly or by standing order, an opioid antagonist to a person at risk of experiencing an opioid-related overdose or a family member, friend, or other person in a position to assist a person at risk of experiencing an opioid-related overdose. Any such prescription shall be regarded as being issued for a legitimate medical purpose in the usual course of professional practice.

(b) A person or organization may, if acting pursuant to the provisions of subparagraph (a), store and possess an opioid antagonist, dispense or distribute an opioid antagonist, and administer an opioid antagonist to another person who the person believes is suffering an opioid-related overdose.

(c) No health care professional who, acting in good faith and with reasonable care, prescribes, dispenses, or distributes an opioid antagonist directly or by standing order and no person who, acting in good faith and with reasonable care, stores, dispenses, or distributes an opioid antagonist or administers an opioid antagonist to another person who the person believes is suffering an opioid-related drug overdose shall be subject to any criminal or civil liability, or any professional disciplinary action, for any action authorized by this paragraph or any outcome resulting from an action authorized by this paragraph.

(d) In this paragraph:

(1) "Opioid antagonist" means any drug that binds to opioid receptors and blocks or disinhibits the effects of opioids acting on those receptors.

(2) "Opioid-related drug overdose" means a condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death resulting from the consumption or use of an opioid, or another substance with which an opioid was combined, or that a layperson would reasonably believe to be an opioid-related drug overdose that requires medical assistance.

Source. 1969, 421:1. 2010, 173:1. 2011, 63:6. 2015, 65:1, eff. June 2, 2015.

318–B:16 Common Nuisances. Any store, shop, warehouse, dwellinghouse, building, vehicle, boat, aircraft, or any place whatever which is resorted to by drug-dependent persons for the purpose of using controlled drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. No person shall knowingly keep or maintain such a common nuisance.

Source. 1969, 421:1, eff. Aug. 31, 1969.

318–B:17 Disposal of Controlled Drugs in Possession of Law Enforcement Officer. All controlled drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a law enforcement officer shall be forfeited and disposed of as follows:

I. The superior court shall order such controlled drugs forfeited and destroyed. A record of the place where the drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction shall be kept, and return under oath, reporting said destruction, shall be made to the superior court and to the Drug Enforcement Administration, if controlled drugs are involved, by the officer who destroys them.

I–a. The circuit court having jurisdiction over a misdemeanor or violation controlled drug offense may order such controlled drugs forfeited and destroyed upon written motion. Such order shall not be entered until after the period for appeal of the offense has expired.

I–b. The circuit court shall require the same record and reporting of the officer who is destroying the controlled drugs as is required under paragraph I for the superior court, with the exception of notification to the Drug Enforcement Administration.

I–c. All unwanted or unused controlled drugs which have come into the custody of a law enforcement officer, pursuant to a pharmaceutical drug take-back program, shall be disposed of in accordance with the disposal requirements for controlled drugs set forth under RSA 318–E.

II, III. [Repealed.]

Source. 1969, 421:1. 1983, 292:13. 1995, 310:181. 1998, 362:1, 2. 2003, 80:1. 2011, 63:7, 8. 2013, 222:1, eff. Jan. 1, 2014.

318–B:17–a Disposal of Controlled Drugs in Possession of Practitioner. No person other than the pharmacy board, its officers, agents, and inspectors is authorized to destroy any out-dated, deteriorated, excessive or otherwise unwanted or confiscated controlled drugs which are in the possession of a practitioner, veterinarian, pharmacy, peace officer, nursing home, manufacturer, wholesaler, clinic, or laboratory or hospital. No payment shall be made to any person or institution for any drug surrendered for destruction. A record shall be maintained which indicates the name, strength, and quantity of all drugs destroyed; the place and manner of destruction; the date and time destroyed; the name of the practitioner or institution surrendering the drugs; and the signature and title of the person witnessing destruction. Such records shall conform to any federal requirements and shall be open to inspection by all federal or state officers charged with the enforcement of federal or state controlled drug laws. This section shall not apply to residual amounts in hypodermic syringes and needles.

Source. 1977, 547:17. 1983, 292:14, eff. Aug. 17, 1983. 2017, 117:4, eff. June 16, 2017.

318–B:17–b Forfeiture of Items Used in Connection With Drug Offense.

I. Interests in the following property, upon petition of the attorney general, shall be subject to forfeiture to the state and said property interest shall be vested in the state:

(a) All materials, products and equipment of any kind, including, but not limited to, firearms, scales, packaging equipment, surveillance equipment and grow lights, which are used or intended for use in procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

(b) Property interest in any conveyance, including but not limited to aircraft, vehicles, or vessels, which is used or intended for use in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a

controlled drug in felonious violation of this chapter.

(c) Any moneys, coin, currency, negotiable instruments, securities or other investments knowingly used or intended for use in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter and all proceeds, including moneys, coin, currency, negotiable instruments, securities or other investments, and any real or personal property, traceable thereto. All moneys, coin, currency, negotiable instruments, securities and other investments found in proximity to controlled substances are presumed to be forfeitable under this paragraph. The claimant of the property shall bear the burden of rebutting this presumption.

(d) Any books, records, ledgers and research material, including formulae, microfilm, tapes and any other data which are used or intended for use in felonious violation of this chapter.

(e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

I–a. The state shall have a lien on any property subject to forfeiture under this section upon seizure thereof. Upon forfeiture, the state's title to the property relates back to the date of seizure.

I–b. Property may be seized for forfeiture by any law enforcement agency designated by the department of justice, as follows:

(a) Upon process issued by any justice, associate justice or special justice of the municipal, district or superior court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The application for process and the issuance, execution and return of process shall be subject to applicable state law. The court may order that the property be seized and secured on such terms and conditions as are reasonable in the discretion of the court. Such order may include an order to a financial institution or to any fiduciary or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. The order may be made on or in connection with a search warrant;

(b) Physically, without process on probable cause to believe that the property is subject to forfeiture under this chapter; or

(c) Constructively, without process on probable cause to believe that the property is subject to forfeiture under this chapter, by recording a notice of pending forfeiture in the registry of deeds in the county where the real property is located or at the town clerk's office where the personal property is located stating that the state intends to seek forfeiture of the identified property pursuant to this chapter.

(d) A seizure for forfeiture without process under subparagraph (b) or (c) is reasonable if made under circumstances in which a warrantless seizure or arrest would be valid in accordance with state law.

I–c. Upon seizure of any items or property interests the property shall not be subject to alienation, sequestration or attachment but is deemed to be in the custody of the department of justice subject only to the order of the court.

II. (a) Upon the seizure of any personal property under paragraph I, the person making or directing such seizure shall inventory the items or property interests and issue a copy of the resulting report to any person or persons having a recorded interest, or claiming an equitable interest in the item within 7 days of said seizure.

(b) Upon seizure of any real property under paragraph I, the person making or directing such seizure shall notify any person having a recorded interest or claiming an equitable interest in the property within 7 days of said seizure.

(c) The seizing agency shall cause an appraisal to be made of the property as soon as possible and shall promptly send to the department of justice a written request for forfeiture. This request shall include a statement of all facts and circumstances supporting forfeiture of the property, including the names of all witnesses then known, and the appraised value of the property.

(d) The department of justice shall examine the facts and applicable law of the cases referred pursuant to subparagraph (c), and if it is probable that the property is subject to forfeiture, shall cause the initiation of administrative or judicial proceedings against the property. If upon inquiry and exami-

nation, the department of justice determines that such proceedings probably cannot be sustained or that the ends of justice do not require the institution of such proceedings, the department shall make a written report of such findings and send a copy to the seizing agency, and, if appropriate, shall also authorize and direct the release of the property.

(e) The department of justice shall, within 60 days of the seizure, file a petition in the superior court having jurisdiction under this section. If no such petition is filed within 60 days, the items or property interest seized shall be released or returned to the owners.

II–a. Pending forfeiture and final disposition, the law enforcement agency making the seizure shall:

(a) Place the property under seal; or

(b) Remove the property to a storage area for safekeeping; or

(c) Remove the property to a place designated by the court; or

(d) Request another agency to take custody of the property and remove it to an appropriate location within the state; or

(e) In the case of moneys, file a motion for transfer of evidence under RSA 595–A:6. Upon the court's granting of the motion the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general. Upon resolution of the forfeiture proceeding the moneys deposited shall be transferred to the drug forfeiture fund or returned to the owners thereof as directed by the court. Unless otherwise ordered by a court in a specific case, interest on all moneys deposited in the seized asset escrow account shall be deposited annually into the drug forfeiture fund established under RSA 318–B:17–c.

III. The court may order forfeiture of all items or property interests subject to the provisions of paragraph I, except as follows:

(a) No item or property interest shall be subject to forfeiture unless the owner or owners thereof were consenting parties to a felonious violation of this chapter and had knowledge thereof.

(b) No items or property interests shall be subject to forfeiture unless involved in an offense which may be charged as a felony.

IV. (a) The department of justice may petition the superior court in the name of the state in the nature of a proceeding in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. Such petition shall be filed in the court having jurisdiction over any related criminal proceedings which could be brought under this chapter.

(b) Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by a preponderance of the evidence and in which the owners or other persons claiming an exception pursuant to paragraph III shall have the burden of proving such exception.

(c) The court shall issue summonses to all persons who have a recorded interest or claim an equitable interest in said items or property interests seized under this chapter and shall schedule a hearing on the petition to be held within 90 days of the date specified by the court on the summonses.

(d) At the request of any party to the forfeiture proceeding, the court may grant a continuance until the final resolution of any criminal proceedings which were brought against a party under this chapter and which arose from the transaction which gave rise to the forfeiture proceeding. No asset forfeiture may be maintained against a person's interest in property if that person has been found not guilty of the underlying felonious charge.

(e) At the hearing, the court shall hear evidence and make findings of fact and rulings of law as to whether the property is subject to forfeiture under this chapter. Except in the case of proceeds, upon a finding that the property is subject to forfeiture the court shall determine whether the forfeiture of the property is not excessive in relation to the underlying criminal offense. In making this determination the court shall consider whether in addition to any other pertinent considerations:

(1) There is a substantial connection between the property to be forfeited and the underlying drug offense;

(2) Criminal activities conducted by or through the use of the property were extensive; and

(3) The value of the property to be forfeited greatly outweighs the value of the drugs that were or would have been likely to be distributed, the costs of the investigation and prosecution, and the harm caused by the criminal conduct.

The court shall, thereupon, make a final order, from which all parties shall have a right of appeal.

V. Final orders for forfeiture of property under this section shall be implemented by the department

of justice and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including retention for official use by law enforcement or other public agencies or sale at public auction. The department of justice shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs, and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items. The balance remaining shall be distributed by the department of justice as follows:

(a) Of the first $500,000:

(1) Forty-five percent shall be returned to the fiscal officer or officers of the municipal, county, state, or federal government which provided the law enforcement agency or agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a special account and shall be used primarily for meeting expenses incurred by law enforcement agencies in connection with drug-related investigations. Except as provided in RSA 31:95–b, such funds shall be available for expenditure without further appropriation by the legislative body of the municipal, county, state or federal government, and shall not be transferred or expended for any other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special nonlapsing account established within the office of the state treasurer and shall be in addition to all other state appropriations to such agency;

(2) Ten percent shall be deposited into a special nonlapsing account established within the office of the state treasurer for the department of health and human services; and

(3) Forty-five percent shall be deposited in a revolving drug forfeiture fund, administered by the department of justice pursuant to RSA 318–B:17–c; and

(b) Of any balance remaining:

(1) Ten percent shall be deposited in the manner prescribed in subparagraph V(a)(2) of this section; and

(2) Ninety percent shall be deposited in the manner prescribed in subparagraph V(a)(3) of this section.

The total amount of payments made to the special account for the department of health and human services pursuant to subparagraphs V(a)(2) and V(b)(1) of this section shall not exceed $400,000 in any fiscal year and any excess over $400,000 which would otherwise be paid to such special account under this section shall be deposited in the general fund. The revolving drug forfeiture fund shall at no time exceed $1,000,000. All sums in the revolving drug forfeiture fund in excess of $1,000,000 shall be credited to the general fund.

Source. 1981, 166:2. 1983, 292:15. 1985, 327:1–4. 1986, 232:1. 1988, 94:1. 1989, 380:1, 2. 1992, 182:1. 1994, 343:1–3. 1995, 310:177. 2014, 204:11. 2016, 329:5, 7, eff. Jan. 1, 2017.

318–B:17–c Drug Forfeiture Fund.

I. There is hereby established within the office of the state treasurer a special revolving fund to be designated as the drug forfeiture fund. This fund shall be administered by the attorney general and may be used to pay the costs of local, county and state drug related investigations, as well as drug control law enforcement programs within New Hampshire. The fund may also be used to pay extraordinary costs of local, county and state drug prosecutions and trial expenses.

II. Law enforcement agencies may apply to the department of justice for grants from the forfeiture fund. Such grants shall be utilized exclusively for meeting expenses associated with drug related investigations. The attorney general shall report 60 days after the close of each fiscal year to the governor and council and to the fiscal committee of the general court a detailed accounting of the grants provided to law enforcement agencies under this paragraph by agency, including the department of safety, and the amount forwarded to the department of health and human services, bureau of drug and alcohol services, for the preceding fiscal year. The attorney general's report shall also include a detailed accounting of the costs of investigations, enforcement programs, and prosecutions paid under paragraph I.

III. The attorney general shall adopt rules, pursuant to RSA 541–A, relative to:

(a) The administration of the drug forfeiture fund.

(b) The grant application procedures and forms to be used by law enforcement agencies.

Source. 1985, 327:5. 1986, 232:2. 1989, 380:3. 2012, 247:29. 2016, 329:8, eff. June 24, 2016.

318–B:17–d Administrative Forfeiture of Items Used in Connection With Drug Offenses.

[Repealed 2016, 329:9, eff. Jan. 1, 2017.]

History

Former RSA 318–B:17–d, which was derived from 1988, 94:2; 1989, 207:6; and 1992, 182:2, related to administrative forfeiture of items used in connection with drug offenses.

318–B:17–e Drug Asset Forfeiture Guidelines Required. The department of justice shall adopt and maintain drug asset forfeiture guidelines. The attorney general shall submit the guidelines and any proposed amendments to such guidelines to the house judiciary and family law committee and to the senate judiciary committee for review and comment at least as often as annually. The attorney general shall submit any proposed amendments to the guidelines for legislative review and comment prior to their becoming effective.

Source. 1994, 343:4. 1995, 9:39, eff. June 11, 1995.

318–B:17–f Forfeiture Reports. The attorney general shall submit a biennial report to the governor, senate president, and speaker of the house relative to the seizure of any items or property interests under RSA 318–B:17–b. Such report shall include:

I. A full and complete description of any items or property interests seized including the property's location and value.

II. The name and address of all known persons having a legal or equitable interest in the property.

III. Any findings of fact relative to the justice of the forfeiture as determined under RSA 318–B:17–b, IV(e).

The attorney general has the authority to exclude any information which would reveal the identity of an informant or compromise an ongoing investigation.

Source. 1994, 343:5, eff. Aug. 7, 1994.

318–B:18 Notice of Conviction to be Sent to Licensing Board. On the conviction of any person for violation of any provision of this chapter, a copy of the judgment and sentence, and of the opinion of the superior court if any opinion is filed, shall be sent by the clerk of the court to the board by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. The board may summarily suspend, limit or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business.

Source. 1969, 421:1. 1983, 292:17, eff. Aug. 17, 1983.

318–B:19, 318–B:20 Repealed.

[Repealed 1983, 292:21, eff. Aug. 17, 1983.]

History

Former RSA 318–B:19, which was derived from 1969, 421:1, related to inspection and confidentiality of prescriptions, orders, records, etc. See now RSA 318–B:12.

Former RSA 318–B:20, which was derived from 1969, 421:1, related to prohibited acts. See now RSA 318–B:2

318–B:21 Certain Communications Not Privileged. Information communicated to a practitioner in an effort unlawfully to procure a controlled drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

Source. 1969, 421:1. 1983, 292:18, eff. Aug. 17, 1983.

318–B:22 Exceptions and Exemptions Not Required to be Negatived. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

Source. 1969, 421:1, eff. Aug. 31, 1969.

318–B:23 Enforcement and Cooperation. It is hereby made the duty of the department of health and human services, its officers, agents, inspectors, and representatives; the pharmacy board, its officers, agents, inspectors and representatives; and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled drugs.

Source. 1969, 421:1. 1977, 547:18. 1995, 310:181, eff. Nov. 1, 1995.

318–B:24 Rulemaking.

I. The commissioner of the department of health and human services, in conjunction with the pharmacy board, shall adopt rules, pursuant to RSA 541–A, relative to:

(a) Investigations and hearings on controlled drugs under RSA 318–B:1, VI.

(b) Official forms required by RSA 318–B:1, XIX.

(c) Licenses under RSA 318–B:4.

(d) Revocation procedures under RSA 318–B:11.

(e) Labels under RSA 318–B:13.

(f) [Repealed.]

II. The commissioner of the department of health and human services and the pharmacy board are hereby required to adopt rules under this chapter to conform with regulations promulgated by the Secretary of the Treasury of the United States, his delegate, the Secretary of Health and Human Services of

the United States, or the United States Attorney General under the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the federal food and drug laws.

Source. 1969, 421:1. 1977, 547:19. 1985, 190:101; 324:23. 1995, 310:182. 2012, 171:26, XIII, eff. Aug. 10, 2012.

318–B:25 Authority for Inspection. All officers, agents, inspectors and representatives of the department of health and human services who are charged with the responsibility to enforce this chapter; all officers, agents, inspectors, and representatives of the pharmacy board who are charged with the responsibility to enforce this chapter; all peace officers within the state; the attorney general and all county attorneys; and federal, state, county and municipal law enforcement officers are authorized to enter during normal business hours upon the premises used by a practitioner for the purpose of his practice and to inspect such original records or prescriptions or both for controlled drugs as defined herein. Every practitioner, his clerk, agent, or servant shall exhibit to such person on demand every such original record or prescription or both so kept on file.

Source. 1969, 421:1. 1977, 547:20. 1983, 292:19. 1985, 324:24. 1995, 310:181, eff. Nov. 1, 1995.

318–B:26 Penalties.

I. Any person who manufactures, sells, prescribes, administers, or transports or possesses with intent to sell, dispense, or compound any controlled drug, controlled drug analog or any preparation containing a controlled drug, except as authorized in this chapter; or manufactures, sells, or transports or possesses with intent to sell, dispense, compound, package or repackage (1) any substance which he represents to be a controlled drug, or controlled drug analog, or (2) any preparation containing a substance which he represents to be a controlled drug, or controlled drug analog, shall be sentenced as follows, except as otherwise provided in this section:

(a) In the case of a violation involving any of the following, a person shall be sentenced to a maximum term of imprisonment of not more than 30 years, a fine of not more than $500,000, or both. If any person commits such a violation after one or more prior offenses as defined in RSA 318–B:27, such person may be sentenced to a maximum term of life imprisonment, a fine of not more than $500,000, or both:

(1) Five ounces or more of a mixture or substance containing any of the following, including any adulterants or dilutants:

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; or

(B) Cocaine other than crack cocaine, its salts, optical and geometric isomers, and salts of isomers; or

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(2) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or phencyclidine (PCP), or its analog, in a quantity of 10 grams or more including any adulterants or dilutants.

(3) Heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of 5 grams or more, including any adulterants or dilutants.

(4) Methamphetamine or its analog, in a quantity of 5 ounces or more, including adulterants or dilutants.

(b) In the case of a violation involving any of the following, a person may be sentenced to a maximum term of imprisonment of not more than 20 years, a fine of not more than $300,000, or both. If any person commits such a violation after one or more prior offenses as defined in RSA 318–B:27, such person may be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than $500,000, or both:

(1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other than crack cocaine, in a quantity of ½ ounce or more, including any adulterants or dilutants;

(2) A substance classified in schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of one ounce or more including any adulterants or dilutants;

(3) Lysergic acid diethylamide, or its analog, in a quantity of less than 100 milligrams including any adulterants or dilutants, or where the amount is undetermined, or phencyclidine (PCP) or its analog, in a quantity of less than 10 grams, including any adulterants or dilutants, or where the amount is undetermined;

(4) Heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of one gram or more, including any adulterants or dilutants;

(5) Methamphetamine or its analog, in a quantity of one ounce or more including any adulterants or dilutants;

(6) Marijuana in a quantity of 5 pounds or more including any adulterants or dilutants, or

hashish in a quantity of one pound or more including any adulterants and dilutants;

(7) Flunitrazepam in a quantity of 500 milligrams or more.

(c) In the case of a violation involving any of the following, a person may be sentenced to a maximum term of imprisonment of not more than 7 years, a fine of not more than $100,000, or both. If any person commits such a violation after one or more prior offenses as defined in RSA 318–B:27, such person may be sentenced to a maximum term of imprisonment of not more than 15 years, a fine of not more than $200,000, or both:

(1) A substance or mixture referred to in subparagraph I(a)(1) of this section, other than crack cocaine, in a quantity less than ½ ounce including any adulterants or dilutants;

(2) A substance or mixture classified as a narcotic drug in schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of less than one ounce including any adulterants or dilutants;

(3) Methamphetamine, or its analog in a quantity of less than one ounce including any adulterants or dilutants;

(4) Heroin or its analog, crack cocaine, or a fentanyl class drug in a quantity of less than one gram, including any adulterants or dilutants;

(5) Marijuana in a quantity of one ounce or more including any adulterants or dilutants, or hashish in a quantity of 5 grams or more including any adulterants or dilutants;

(6) Flunitrazepam in a quantity of less than 500 milligrams;

(7) Any other controlled drug or its analog, other than those specifically covered in this section, classified in schedules I, II, III or IV.

(d) In the case of a violation involving any of the following, a person may be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior offenses as defined in RSA 318–B:27, such person may be sentenced to a maximum term of imprisonment of not more than 6 years, a fine of not more than $50,000, or both:

(1) Marijuana in a quantity of less than one ounce including any adulterants or dilutants, or hashish in a quantity of less than 5 grams including any adulterants or dilutants;

(2) Any schedule V substance or its analog.

II. Any person who knowingly or purposely obtains, purchases, transports, or possesses actually or constructively, or has under his or her control, any controlled drug or controlled drug analog, or any preparation containing a controlled drug or controlled drug analog, except as authorized in this chapter, shall be sentenced as follows, except as otherwise provided in this section:

(a) In the case of a controlled drug or its analog, classified in schedules I, II, III, or IV, other than those specifically covered in this section, the person shall be guilty of a class B felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than $25,000 may be imposed. If any person commits such a violation after one or more prior offenses as defined in RSA 318–B:27, such person shall be guilty of a class A felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of up to $50,000 may be imposed.

(b) In the case of a controlled drug or its analog classified in schedule V, the person shall be sentenced to a maximum term of imprisonment of not more than 3 years, a fine of not more than $15,000, or both. If a person commits any such violation after one or more prior offenses as defined in RSA 318–B:27, such person shall be guilty of a class B felony, except that notwithstanding the provisions of RSA 651:2, IV(a), a fine of not more than $25,000 may be imposed.

(c) In the case of more than ¾ ounce of marijuana or more than 5 grams of hashish, including any adulterants or dilutants, the person shall be guilty of a misdemeanor. In the case of marijuana-infused products possessed by persons under the age of 21 or marijuana-infused products as defined in RSA 318–B:2–e, other than a personal-use amount of a regulated marijuana-infused product as defined in RSA 318–B:2–c, I(b), that are possessed by a person 21 years of age or older, the person shall be guilty of a misdemeanor.

(d) In the case of ¾ ounce or less of marijuana or 5 grams or less of hashish, including any adulterants or dilutants, the person shall be guilty of a violation pursuant to RSA 318–B:2–c. In the case of a person 21 years of age or older who possesses a personal-use amount of a regulated marijuana-infused product as defined in RSA 318–B:2–c, I(b), the person shall be guilty of a violation pursuant to RSA 318–B:2–c.

(e) In the case of a residual amount of a controlled substance, as defined in RSA 318–B:1, XXIX–a, a person shall be guilty of a misdemeanor

if the person is not part of a service syringe program under RSA 318–B:43.

III. A person shall be guilty of a misdemeanor who:

(a) Except as provided in RSA 318–B:2–c, controls any premises or vehicle where he or she knows a controlled drug or its analog is illegally kept or deposited;

(b) Aids, assists or abets a person in his presence in the perpetration of a crime punishable under paragraph II of this section, knowing that such person is illegally in possession of a controlled drug or its analog.

(c) Manufactures with the intent to deliver, delivers or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or possessed for one or more of the uses set forth in RSA 318–B:2, II.

(d) Places an advertisement in violation of RSA 318–B:2, III.

III–a. [Repealed.]

IV. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or a fine or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

V. Any person who violates this chapter by manufacturing, selling, prescribing, administering, dispensing, or possessing with intent to sell, dispense, or compound any controlled drug or its analog, in or on or within 1,000 feet of the real property comprising a public or private elementary, secondary, or secondary vocational-technical school, may be sentenced to a term of imprisonment or fine, or both, up to twice that otherwise authorized by this section. Except to the extent a greater minimum sentence is otherwise provided by this chapter, a sentence imposed under this paragraph shall include a mandatory minimum term of imprisonment of not less than one year. Neither the whole nor any part of the mandatory minimum sentence imposed under this paragraph shall be suspended or reduced.

VI. Except as otherwise provided in this paragraph, a person convicted under RSA 318–B:2, XII as a drug enterprise leader shall be sentenced to a mandatory minimum term of not less than 25 years and may be sentenced to a maximum term of not more than life imprisonment. The court may also impose a fine not to exceed $500,000 or 5 times the street value of the controlled drug or controlled drug analog involved, whichever is greater. Upon conviction, the court shall impose the mandatory sentence unless the defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the defendant and the state have entered into a post-conviction agreement which provides for a lesser sentence. The negotiated plea or post-conviction agreement may provide for a specified term of imprisonment within the range of ordinary or extended sentences authorized by law, a specified fine, or other disposition. In that event, the court at sentencing shall not impose a lesser term of imprisonment or fine than that expressly provided for under the terms of the plea or post-conviction agreement.

VII. Any person who violates RSA 318–B:2, XI may be sentenced to a maximum term of imprisonment of not more than 20 years, a fine of not more than $300,000, or both. If any person commits such a violation after one or more prior offenses, as defined in RSA 318–B:27, such person may be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than $500,000, or both.

VIII. Any person who knowingly or purposely obtains or purchases (1) any substance which he represents to be a controlled drug or controlled drug analog, or (2) any preparation containing a substance which he represents to be a controlled drug or controlled drug analog, except as authorized in this chapter, shall be guilty of a misdemeanor. If any person commits such a violation after one or more prior offenses as defined in RSA 318–B:27, such person shall be guilty of a class B felony.

IX. Any person who manufactures, sells, or dispenses methamphetamine, lysergic acid, diethylamide phencyclidine (PCP) or any other controlled drug classified in schedules I or II, or any controlled drug analog thereof, in violation of RSA 318–B:2, I or I–a, is strictly liable for a death which results from the injection, inhalation or ingestion of that substance, and may be sentenced to imprisonment for life or for such term as the court may order. For purposes of this section, the person's act of manufacturing, dispensing, or selling a substance is the cause of a death when:

(a) The injection, inhalation or ingestion of the substance is an antecedent but for which the death would not have occurred; and

(b) The death was not:

(1) Too remote in its occurrence as to have just bearing on the person's liability; or

(2) Too dependent upon conduct of another person which was unrelated to the injection, inhalation or ingestion of the substance or its effect, as to have a just bearing on the person's liability. It shall not be a defense to a prosecution under this section that the decedent contributed to his own death by his purposeful, knowing, reckless or negligent injection, inhalation or ingestion of the substance or by his consenting to the administration of the substance by another. Nothing in this section shall be construed to preclude or limit any prosecution for homicide. A conviction arising under this section shall not merge with a conviction of one as a drug enterprise leader or for any other offense defined in this chapter.

IX–a. A qualifying patient or designated caregiver as defined in RSA 126–X:1 who sells cannabis to a person who is not a qualifying patient or a designated caregiver shall be guilty of a class B felony and shall be sentenced to a maximum term of imprisonment of not more than 7 years, a fine of not more than $300,000, or both.

X. Any penalty imposed for violation of this chapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

XI. Any person who violates any provision of this chapter for which a penalty is not provided by paragraphs I through IX shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.

XII. The penalty categories set forth in this section based upon the weight of the drug involved are material elements of the offense; however, the culpability requirement shall not apply to that element of the offense.

XIII. Any person who violates any provision of this chapter shall be fined a minimum of $350 for a first offense and $500 for a second or subsequent offense, except that any person who violates the provisions of RSA 318–B:26, II(c) or RSA 318–B:26, II(d) shall be fined $350. This paragraph shall not apply to violations of RSA 318–B:2–c.

Source. 1969, 421:1. 1970, 48:3. 1973, 528:204. 1977, 547:21. 1981, 114:2; 513:3, 4. 1988, 6:4. 1989, 195:2; 207:2–5. 1991, 364:2. 1993, 291:1. 1994, 186:3–11. 1998, 359:3, 4. 2005, 177:52. 2006, 241:2. 2013, 242:4. 2016, 2:2–4, eff. Jan. 21, 2016; 307:1–3, eff. Aug. 20, 2016. 2017, 117:5, eff. June 16, 2017; 248:3–5, eff. Sept. 16, 2017.

318–B:26–a Chemical Analyses.

I. Upon the request of the attorney general, a county attorney or any law enforcement agency, the laboratory employee performing the chemical analysis shall prepare a certificate. The employee shall sign the certificate subject to the penalties under this paragraph and shall include in the certificate an attestation as to the result of the analysis. The presentation of this certificate to a court by any party to a proceeding shall be evidence that all of the requirements and provisions of this section have been complied with. This certificate shall contain a statement establishing the following: the type of analysis performed; the result achieved; any conclusions reached based upon that result; that the subscriber is the person who performed the analysis and made the conclusions; the subscriber's training or experience to perform the analysis; and the nature and condition of the equipment used. When properly executed, the certificate shall, subject to paragraph II of this section and notwithstanding any other provision of law, be admissible evidence of the composition, quality, and quantity of the substance submitted to the laboratory for analysis, and the court shall take judicial notice of the signature of the person performing the analysis and of the fact that he or she is that person. A person shall be guilty of a class B felony if he or she knowingly makes any false entry in any certificate required under this paragraph.

II. Whenever a party intends to proffer in a criminal proceeding a certificate executed pursuant to this section, notice of an intent to proffer that certificate and all reports relating to the analysis in question, including a copy of the certificate, shall be conveyed to the opposing party or parties at least 25 days before the proceeding begins. An opposing party who intends to object to the admission into evidence of a certificate shall give notice of objection and the specific grounds for the objection within 10 days upon receiving the adversary's notice of intent to proffer the certificate. Whenever a notice of objection is filed, admissibility of the certificate shall be determined not later than 10 days before the beginning of the trial. A proffered certificate shall be admitted in evidence unless it appears from the notice of objection and specific grounds for that objection that the composition, quality, or quantity of the substance submitted to the laboratory for analysis will be contested at trial. A failure to comply with the time limitations regarding the notice of objection required by this section shall constitute a waiver of any objection to the admission of the certificate. The time limitations set forth in this section shall not be relaxed except upon a showing of good cause.

Source. 1981, 207:1. 1983, 19:2. 1988, 6:5, eff. July 1, 1988. 2017, 253:1, eff. July 1, 2017.

318–B:26–b Commission on Hypodermic Syringes and Needles.

[Repealed 2016, 212:2, eff. Nov. 1, 2016.]

History

Former RSA 318–B:26–b, which was derived from 2016, 212:1, related to a commission on hypodermic syringes and needles.

318–B:27 Prior Offenses. In the case of any person charged with a violation of any provision of this chapter or RSA 318–D, who has previously been convicted of a misdemeanor or felony level violation of the laws of the United States or any state, territory or the District of Columbia relating to controlled drugs as defined in this chapter, such previous conviction shall be deemed a prior offense. A prior conviction for a violation level offense shall not be deemed a prior offense, except as provided in RSA 318–B:2–c, V(a).

Source. 1969, 421:1. 2006, 241:3, eff. Jan. 1, 2007. 2017, 248:6, eff. Sept. 16, 2017.

318–B:28 Recording of Sentences as Misdemeanors or Felonies.

[Repealed 1988, 6:6, eff. July 1, 1988.]

History

Former RSA 318–B:28 which was derived from 1969, 421:1 and 1973, 370:21, related to the recording of sentences as misdemeanors or felonies as a function of the fines imposed and disposition of time imposed and served.

318–B:28–a Annulments of Criminal Records. No court shall order an annulment, pursuant to RSA 651:5 or any other provision of law, of any record of conviction for a felony under RSA 318–B until 7 years after the date of conviction.

Source. 1985, 205:1. 1988, 238:5, eff. Jan. 1, 1989.

318–B:28–b Immunity From Liability.

I. As used in this section:

(a) "Drug overdose" means an acute condition resulting from or believed to be resulting from the use of a controlled drug which a layperson would reasonably believe requires medical assistance.

(b) "Medical assistance" means professional services provided to a person experiencing a drug overdose by a health care professional licensed, registered, or certified under state law who, acting within his or her lawful scope of practice, may provide diagnosis, treatment, or emergency services for a person experiencing a drug overdose.

(c) "Requests medical assistance" shall include a request for medical assistance as well as providing care to someone who is experiencing a drug overdose while awaiting the arrival of medical assistance to aid the overdose victim.

II. It shall be a defense to an offense of possessing or having under his or her control, a controlled drug in violation of RSA 318–B:2 that a person in good faith and in a timely manner requests medical assistance for another person who is experiencing a drug overdose. A person who in good faith and in a timely manner requests medical assistance for another person who is experiencing a drug overdose shall not be arrested, prosecuted, or convicted for possessing, or having under his or her control, a controlled drug in violation of RSA 318:B–2, if the evidence for the charge was gained as a proximate result of the request for medical assistance.

III. It shall be a defense to an offense of possessing or having under his or her control, a controlled drug in violation of RSA 318–B:2 that a person who is experiencing a drug overdose, in good faith and in a timely manner, requests medical assistance for himself or herself. A person who in good faith requests, or is the subject of a good faith request for medical assistance, shall not be arrested, prosecuted, or convicted for possessing, or having under his or her control, a controlled drug in violation of RSA 318–B:2, if the evidence for the charge was gained as a proximate result of the request for medical assistance.

IV. (a) Nothing in this section shall be construed to limit the admissibility of evidence in connection with the investigation or prosecution of a crime involving a person who is not protected as provided in paragraphs II or III.

(b) Nothing in this section shall be construed to limit the lawful seizure of any evidence or contraband.

(c) Nothing in this section shall be construed to limit or abridge the authority of a law enforcement officer to detain or place into custody a person as part of a criminal investigation, or to arrest a person for an offense not protected by the provisions of paragraphs II or III.

V. No later than January 1, 2016, the commissioner of the department of health and human services shall develop and make available on the department's public Internet website, information for the public explaining the meaning and applicability of the provisions of this section.

Source. 2015, 218:2, eff. Sept. 6, 2015.

318–B:29 Effect of Acquittal or Conviction Under the Comprehensive Drug Abuse Prevention and Control Act of 1970. No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under

the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, or under the federal food and drug laws of the same act or omission which it is alleged constitutes a violation of this chapter.

Source. 1969, 421:1. 1977, 547:22. 1983, 292:20, eff. Aug. 17, 1983.

318–B:30 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Source. 1969, 421:1, eff. Aug. 31, 1969.

Controlled Drug Prescription Health and Safety Program

318–B:31 Definitions. In this subdivision:

I. "Board" means the pharmacy board, established in RSA 318:2.

II. "Controlled substance" means controlled drugs as defined in RSA 318–B:1, VI.

III. "Dispense" means to deliver a controlled substance by lawful means and includes the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

IV. "Dispenser" means a person who is lawfully authorized to deliver a schedule II–IV controlled substance, but does not include:

(a) A licensed hospital pharmacy that dispenses less than a 48-hour supply of a schedule II–IV controlled substance from a hospital emergency department or that dispenses for administration in the hospital;

(b) A practitioner, or other authorized person who administers such a substance;

(c) A wholesale distributor of a schedule II–IV controlled substance or its analog;

(d) A prescriber who dispenses less than a 48-hour supply of a schedule II–IV controlled substance from a hospital emergency department to a patient; or

(e) A veterinarian who dispenses less than a 48-hour supply of a schedule II–IV controlled substance to a patient.

V. "Patient" means the person or animal who is the ultimate user of a controlled substance for whom a lawful prescription is issued and for whom a controlled substance or other such drug is lawfully dispensed.

VI. "Practitioner" means a physician, dentist, podiatrist, veterinarian, pharmacist, APRN, physician assistant, naturopath, or other person licensed or otherwise permitted to prescribe, dispense, or administer a controlled substance in the course of licensed professional practice. "Practitioner" shall also include practitioners with a federal license to prescribe or administer a controlled substance.

VII. "Prescribe" means to issue a direction or authorization, by prescription, permitting a patient to lawfully obtain controlled substances.

VIII. "Prescriber"means a practitioner or other authorized person who prescribes a schedule II, III, and/or IV controlled substance.

IX. "Program" means the controlled drug prescription health and safety program that electronically facilitates the confidential sharing of information relating to the prescribing and dispensing of controlled substances listed in schedules II–IV, established by the board pursuant to RSA 318–B:32.

Source. 2012, 196:2. 2015, 48:1, 2. 2016, 309:1, eff. Jan. 1, 2017.

318–B:32 Controlled Drug Prescription Health and Safety Program Established.

I. The board shall design, establish, and contract with a third party for the implementation and operation of an electronic system to facilitate the confidential sharing of information relating to the prescribing and dispensing of schedule II–IV controlled substances, by prescribers and dispensers within the state.

II. Any costs incurred by the board for the implementation and operation of the program may be supported through grants, gifts, or user contributions. The board may charge a fee to individuals who request their own prescription information. The amount charged for an individual's request for his or her prescription information shall not exceed the actual cost of providing that information.

III. Prescription information relating to any individual, which information does not meet the level established to suggest possible drug abuse or diversion shall be deleted within 36 months after the initial prescription was dispensed. All other information shall be deleted after 3 years.

Source. 2012, 196:2. 2015, 48:8. 2016, 2:5, eff. Jan. 21, 2016.

318–B:33 Controlled Drug Prescription Health and Safety Program Operation.

I. The board shall develop a system of registration for all prescribers and dispensers of schedule II–IV controlled substances within the state. The sys-

tem of registration shall be established by rules adopted by the board, pursuant to RSA 541–A.

II. All prescribers and dispensers authorized to prescribe or dispense schedule II–IV controlled substances within the state shall be required to register with the program as follows:

(a) Practitioners who prescribe but do not dispense schedule II–IV controlled substances shall register with the program as a prescriber;

(b) Practitioners who dispense but do not prescribe schedule II–IV controlled substances shall register with the program as a dispenser unless exempted pursuant to RSA 318–B:31, IV; and

(c) Practitioners who prescribe and dispense schedule II–IV controlled substances shall register with the program as both a prescriber and a dispenser unless exempted pursuant to RSA 318–B:31, IV.

II–a. Only registered prescribers, dispensers, or their designees, and federal health prescribers and dispensers working in federal facilities located in New Hampshire, Massachusetts, Maine, and Vermont shall be eligible to access the program.

III. Each dispenser shall submit to the program the information regarding each dispensing of a schedule II–IV controlled substance. Any dispenser located outside the boundaries of the state of New Hampshire and who is licensed and registered by the board shall submit information regarding each prescription dispensed to a patient who resides within New Hampshire.

IV. Each dispenser required to report under paragraph III of this section shall submit to the program by electronic means information for each dispensing that shall include, but not be limited to:

(a) Dispenser's Drug Enforcement Administration (DEA) registration number.

(b) Prescriber's DEA registration number.

(c) Date of dispensing.

(d) Prescription number.

(e) Number of refills granted.

(f) National Drug Code (NDC) of drug dispensed.

(g) Quantity dispensed.

(h) Number of days supply of drug.

(i) Patient's name.

(j) Patient's address.

(k) Patient's date of birth.

(*l*) Patient's telephone number, if available.

(m) Date prescription was written by prescriber.

(n) Whether the prescription is new or a refill.

(*o*) Source of payment for prescription.

V. (a) Except as provided in subparagraphs (b) and (c), each dispenser shall submit the required information in accordance with transmission methods daily by the close of business on the next business day from the date the prescription was dispensed.

(b) Veterinarians shall submit the information required under subparagraph (a) no more than 7 days from the date the prescription was dispensed.

(c) Dispensers who have a federal Drug Enforcement Administration license, but who do not dispense controlled substances may request a waiver from the requirements of subparagraph (a) from the board.

VI. The program may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required by paragraph IV is submitted in this alternative format and within the established time limit.

VII. The program may grant a reasonable extension to a dispenser that is unable, for good cause, to submit all the information required by paragraph IV within the established time limits.

VIII. Any dispenser who in good faith reports to the program as required by paragraphs III and IV shall be immune from any civil or criminal liability as the result of such good faith reporting.

Source. 2012, 196:2. 2015, 48:3. 2016, 2:6, eff. Jan. 21, 2016; 2:7, eff. Sept. 1, 2016.

318–B:34 Confidentiality.

I. Information contained in the program, information obtained from it, and information contained in the records of requests for information from the program, is confidential, is not a public record or otherwise subject to disclosure under RSA 91–A, and is not subject to discovery, subpoena, or other means of legal compulsion for release and shall not be shared with an agency or institution, except as provided in this subdivision. This paragraph shall not prevent a practitioner from using or disclosing program information about a patient to others who are authorized by state or federal law or regulations to receive program information.

II. The board shall establish and maintain procedures to ensure the privacy and confidentiality of patients and patient information.

III. The board may use and release information and reports from the program for program analysis and evaluation, statistical analysis, public research, public policy, and educational purposes, provided that the data are aggregated or otherwise de-identified.

Source. 2012, 196:2. 2015, 48:4, 5, eff. July 20, 2015.

318–B:35 Providing Controlled Drug Prescription Health and Safety Information.

I. The program may provide information in the prescription health and safety program upon request only to the following persons:

(a) By electronic or written request to prescribers and dispensers within the state who are registered with the program:

(1) For the purpose of providing medical or pharmaceutical care to a specific patient; or

(2) For reviewing information regarding prescriptions issued or dispensed by the requester.

(b) By written request, to:

(1) A patient who requests his or her own prescription monitoring information.

(2) The board of dentistry, the board of medicine, the board of nursing, the board of registration in optometry, the board of podiatry, the board of veterinary medicine, and the pharmacy board; provided, however, that the request is pursuant to the boards' official duties and responsibilities and the disclosures to each board relate only to its licensees and only with respect to those licensees whose prescribing or dispensing activities indicate possible fraudulent conduct.

(3) Authorized law enforcement officials on a case-by-case basis for the purpose of investigation and prosecution of a criminal offense when presented with a court order based on probable cause. No law enforcement agency or official shall have direct access to the program.

(4) [Repealed.]

(c) By electronic or written request on a case-by-case basis to:

(1) A controlled prescription drug health and safety program from another state; provided, that there is an agreement in place with the other state to ensure that the information is used or disseminated pursuant to the requirements of this state.

(2) An entity that operates a secure interstate prescription drug data exchange system for the purpose of interoperability and the mutual secure exchange of information among prescription drug monitoring programs, provided that there is an agreement in place with the entity to ensure that the information is used or disseminated pursuant to the requirements of this state.

(3) The office of the chief medical examiner for the purpose of investigating the death of an individual.

II. The program shall notify the appropriate regulatory board listed in subparagraph I(b)(2) and the prescriber or dispenser at such regular intervals as may be established by the board if there is reasonable cause to believe a violation of law or breach of professional standards may have occurred. The program shall provide prescription information required or necessary for an investigation.

III. The program shall review the information to identify information that appears to indicate whether a person may be obtaining prescriptions in a manner that may represent misuse or abuse of schedule II–IV controlled substances. When such information is identified, the program shall notify the practitioner who prescribed the prescription.

Source. 2012, 196:2. 2015, 48:6, 11. 2016, 2:8, eff. Jan. 21, 2016.

318–B:36 Unlawful Act and Penalties.

I. Any person who fails to submit the information required in RSA 318–B:33 or knowingly submits incorrect information shall be subject to a warning letter and provided with an opportunity to correct the failure. Any person who subsequently fails to correct or fails to resubmit the information may be subject to discipline by the board.

II. Any person whose failure to report the dispensing of a schedule II–IV controlled substance that conceals a pattern of diversion of controlled substances into illegal use shall be guilty of a violation and subject to the penalties established under RSA 318–B:26 and the board's rules as applicable. In addition, such person may be subject to appropriate criminal charges if the failure to report is determined to have been done knowingly to conceal criminal activity.

III. Any person who engages in prescribing or dispensing of controlled substances in schedule II–IV without having registered with the program may be subject to discipline by the appropriate regulatory board.

IV. Any person authorized to receive program information who knowingly discloses such information in violation of this subdivision shall be subject to discipline by the appropriate regulatory board and to

all other relevant penalties under state and federal law.

V. Any person authorized to receive program information who uses such information for a purpose in violation of this subdivision shall be subject to disciplinary action by the appropriate regulatory board and to all other relevant penalties under state and federal law.

VI. Unauthorized use or disclosure of program information shall be grounds for disciplinary action by the relevant regulatory board.

VII. Any person who knowingly accesses, alters, destroys, or discloses program information except as authorized in this subdivision or attempts to obtain such information by fraud, deceit, misrepresentation, or subterfuge shall be guilty of a class B felony.

Source. 2012, 196:2, eff. June 12, 2012.

318–B:37 Rulemaking. By June 30, 2013, the board shall adopt rules, pursuant to RSA 541–A, necessary to implement the program including:

I. The criteria for registration by dispensers and prescribers.

II. The criteria for a waiver pursuant to RSA 318–B:33, VI for dispensers with limited electronic access to the program.

III. The criteria for reviewing the prescribing and dispensing information collected by the program.

IV. The criteria for reporting matters to the applicable health care regulatory board for further investigation.

V. The criteria for notifying practitioners of individuals that are engaged in obtaining controlled substances from multiple practitioners or dispensers.

VI. Content and format of all forms required under this subdivision.

Source. 2012, 196:2. 2015, 48:7, eff. July 20, 2015.

318–B:38 Advisory Council Established.

I. There is hereby established an advisory council to assist the board in carrying out its duties under this subdivision. The members of the council shall be as follows:

(a) A representative of the board of medicine, appointed by such board.

(b) A representative of the pharmacy board, appointed by such board.

(c) A representative of the board of dental examiners, appointed by such board.

(d) A representative of the New Hampshire board of nursing, appointed by such board.

(e) A representative of the board of veterinary medicine, appointed by such board.

(f) The attorney general, or designee.

(g) The commissioner of the department of health and human services, or designee.

(h) A representative of the New Hampshire Medical Society, appointed by the society.

(i) A representative of the New Hampshire Dental Society, appointed by the society.

(j) A representative of the New Hampshire Association of Chiefs of Police, appointed by the association.

(k) A representative of a retail pharmacy, appointed jointly by the New Hampshire Pharmacists Association, the New Hampshire Independent Pharmacy Association, and the New Hampshire Association of Chain Drug Stores.

(*l*) Two public members appointed by the governor's commission on alcohol and drug abuse prevention, treatment, and recovery, one of whom may be a member of the commission.

(m) A representative of the New Hampshire Hospital Association, appointed by the association.

II. The council shall:

(a) Develop criteria for reviewing the prescribing and dispensing information collected.

(b) Develop criteria for reporting matters to the applicable health care regulatory board for further investigation.

(c) Develop criteria for notifying practitioners who are engaged in obtaining controlled substances from multiple prescribers or dispensers.

(d) Collect information on the outcomes and impact of the program including: satisfaction of users of the program, impact on prescribing patterns, impact on referrals to regulatory boards, and other relevant measures.

(e) Assist the board in meeting its responsibilities in RSA 318–B:32, I to implement and operate the program.

(f) Assist the board in adopting and revising the rules under RSA 541–A to implement the program.

III. The council may meet as often as necessary to effectuate its goals. The first meeting shall be called by the representative of the pharmacy board within 45 days of the effective date of this subdivision. At the first meeting, a chairman shall be elected by the members.

Source. 2012, 196:2. 2013, 79:1. 2014, 18:4, eff. July 22, 2014.

318–B:39 Prescribers Required to Query the Program Prior to Prescribing Controlled Substances.

[Repealed 2016, 213:9, eff. Jan. 1, 2017.]

History

Former RSA 318–B:39, which was derived from 2016, 2:9, related to prescribers being required to query the program prior to prescribing controlled substances.

318–B:40 Competency Requirements. Except for veterinarians who shall complete continuing education requirements in accordance with RSA 332–B:7–a, XV, all prescribers required to register with the program who possess a United States Drug Enforcement Administration (DEA) license number shall complete 3 contact hours of free appropriate prescriber's regulatory board-approved online continuing education or pass an online examination, in the area of pain management and addiction disorder or a combination, as a condition for initial licensure and license renewal. Verification of successful completion of the examination or of the required continuing education shall be submitted to the prescriber's regulatory board with the licensee's application for initial licensure or renewal. A list of the prescriber's regulatory boards' approved continuing education courses and online examinations in pain management and addiction disorder, shall be available on the office of professional licensure and certification's Internet website.

Source. 2016, 2:9, eff. Sept. 1, 2016. 2017, 128:3, eff. Aug. 15, 2017.

318–B:41 Rulemaking for Prescribing Controlled Drugs.

I. (a) Before September 1, 2016, the following boards shall submit to the joint legislative committee on administrative rules final proposed rules for prescribing schedule II, III, and IV opioids, for the management or treatment of pain:

(1) The board of medicine, concerning physicians and physician assistants.

(2) The board of dental examiners, concerning dentists.

(3) The board of nursing, concerning advanced practice registered nurses.

(4) The board of registration in optometry, concerning optometrists.

(5) The board of registration in podiatry, concerning podiatrists.

(6) The naturopathic board of examiners, concerning naturopaths.

(b) The rules required under paragraph I shall, at a minimum, contain mandatory standards for the practice components established in paragraph II.

II. The rules shall, at a minimum, contain mandatory standards for the following practice components:

(a) Standards for the use of opioids for the management or treatment of all pain:

(1) Conducting and documenting a detailed history and a physical exam in response to a complaint of pain or anticipated pain.

(2) Completing a board-approved risk assessment tool to determine whether a patient is an appropriate candidate for a schedule II, III, or IV opioid.

(3) Establishing and documenting an appropriate pain treatment plan that includes consideration of nonpharmacological modalities and nonopioid therapy.

(4)(A) Querying the program database when writing an initial schedule II, III, or IV opioid prescription for the management or treatment of a patient's pain and then periodically, at least twice a year. Such rules shall include exceptions for:

(i) Controlled substances administered to a patient in a health care setting;

(ii) The program is inaccessible or not functioning properly, due to an internal or external electronic issue; or

(iii) An emergency department is experiencing a higher than normal patient volume, and to query the program database would materially delay care.

(B) When a situation falling under exception (A)(ii) or (iii) is applicable, such exception shall be documented in the patient's medical record.

(5) Establishing procedures for informed consent outlining the risks and benefits of opioid use.

(6) Requiring the lowest effective dosage for the fewest number of days with specific dose limits be prescribed for a medical condition or specialty.

(7) Providing for the enforcement of the prescribing rules by specifying that noncompliance with the rules may constitute unprofessional conduct under the board's practice act.

(b) Standards for the use of opioids for the management or treatment of acute pain:

(1) Limiting the amount of days for an opioid prescription issued in an emergency department,

urgent care setting, or walk-in clinic. This specific duration limit shall be set by each board no later than August 1, 2016 taking into consideration the recommendation from a majority vote of a policy group consisting of the chief medical officer of the department of health and human services, a physician designated by the New Hampshire chapter of the American College of Emergency Physicians, a physician designated by the New Hampshire Hospital Association, an advanced practice registered nurse designated by the New Hampshire Nurse Practitioner Association, a physician or advanced practice registered nurse designated by the governor, a board certified surgeon designated by the New Hampshire Medical Society, and an oral surgeon designated by the New Hampshire Dental Society. Five members of the policy group shall constitute a quorum. All policy group meetings shall be open to the public and noticed in the house and senate calendars.

(2) In settings where continuity of care is anticipated, each board shall establish finite limits considering dose and duration of opioid prescriptions for treatment of acute pain and appropriate timing of office follow up for persistent, unresolved acute pain.

(c) Standards for the use of opioids for the management or treatment of chronic pain:

(1) Mandatory use of written treatment agreements, such as the agreement developed by the American Academy of Pain Medicine. Treatment agreements shall include conduct that triggers the discontinuation or tapering of opioid prescriptions.

(2) Establishing a requirement for periodic review conducted at reasonable intervals to reevaluate treatment plans and use of opioids.

(3) Establishing a procedure for, and documenting consideration of, consultation with, or referral to a specialist for patients receiving a high morphine equivalent dose for longer than 90 days.

(4) Creating exemptions to the prescribing rules for situations in which an opioid is being prescribed for the management of chronic pain for:

(A) Patients with cancer pain;

(B) Patients with a terminal condition;

(C) Long-term, nonrehabilitative, residents of a nursing home facility.

III. [Repealed.]

IV. [Repealed.]

V. At a minimum, each board's Internet website shall include online links to board approved:

(a) Continuing education on the prescribing of opioids.

(b) Screening tools.

(c) Treatment agreements.

(d) Risks and benefits of opioid use.

(e) Proper storage of opioids.

(f) Proper disposal of unused opioids.

Source. 2016, 213:1, eff. June 7, 2016 except for RSA 318–B:41, pars. II(a)(4) and IV(a)(4) eff. Jan. 1, 2017. 2017, 128:4, eff. Aug. 15, 2017.

318–B:42 Commission Established; Membership; Duties.

[Repealed 2016, 309:3, eff. Nov. 1, 2016.]

History

Former RSA 318–B:42, which was derived from 2016, 309:2, related to a commission established to study requiring controlled drugs to be provided in abuse-deterrent formulation.

Syringe Service Programs

318–B:43 Syringe Service Programs Authorized.

I. (a) The following entities, if self-funded, may operate a syringe service program in New Hampshire to prevent the transmission of disease and reduce morbidity and mortality among individuals who inject drugs, and those individuals' contacts:

(1) Federally qualified health centers.

(2) Community health centers.

(3) Public health networks.

(4) AIDS service organizations.

(5) Substance misuse support or treatment organizations.

(6) Community based organizations.

(b) The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541–A, further defining the entities in subparagraph (a).

II. Any entity operating a syringe service program in New Hampshire shall:

(a) Provide referral and linkage to HIV, viral hepatitis, and substance use disorder prevention, care, and treatment services, as appropriate.

(b) Coordinate and collaborate with other local agencies, organizations, and providers involved in comprehensive prevention programs for people who inject drugs to minimize duplication of effort.

(c) Attempt to be a part of a comprehensive service program that may include, as appropriate:

(1) Providing sterile needles, syringes, and other drug preparation equipment and disposal services.

(2) Educating and counseling to reduce sexual, injection, and overdose risks.

(3) Providing condoms to reduce risk of sexual transmission of viral hepatitis, HIV, or other STDs.

(4) Screening for HIV, viral hepatitis, STDs, and tuberculosis.

(5) Providing naloxone to reverse opioid overdoses.

(6) Providing referral and linkage to HIV, viral hepatitis, STD and tuberculosis prevention, treatment, and care services, including antiretroviral therapy for hepatitis C virus (HCV) and HIV, pre-exposure prophylaxis (PrEP), post-exposure prophylaxis (PEP), prevention of mother-to-child transmission, and partner services.

(7) Providing referral and linkage to hepatitis A virus (HAV) and hepatitis B virus (HBV) vaccination.

(8) Providing referral and linkage to and provision of substance use disorder treatment including medication assisted treatment for opioid use disorder which combines drug therapy such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapy.

(9) Providing referral to medical care, mental health services, and other support services.

(d) Post its address, phone number, program contact information, if appropriate, hours of operation, and services offered on its Internet website.

(e) Register with the department of health and human services and confirm registration annually on or before November 1 of each subsequent year; provided however, the registration process shall be limited to notification to the department for data collection purposes only.

(f) Report quarterly to the department, which report shall include the following information regarding the program's activities:

(1) Number of needles/syringes distributed.

(2) Number of needles/syringes taken back.

(3) Number of HIV tests performed or delivered by the program.

(4) Number of HCV tests performed/delivered by program.

(5) Delivery of substance misuse treatment/care.

(6) Delivery of HIV care.

(7) Delivery of HCV care.

(8) Number of referrals to substance misuse treatment/services.

(9) Number of referrals to HIV testing.

(10) Number of referrals to HCV testing.

(11) Number of referrals to HIV care.

(12) Number of referrals to HCV care.

Source. 2017, 117:7, eff. June 16, 2017.

318–B:44 Syringe Service Programs; Affirmative Defense. It is an affirmative defense, as provided in RSA 626:7, to prosecution for possession of a hypodermic syringe or needle that the item was obtained through participation in a syringe service program. Nothing in this section shall be construed as an affirmative defense for any offense other than as set forth under RSA 318–B:26, II(f).

Source. 2017, 117:7, eff. June 16, 2017.

318–B:45 Syringe Service Programs in Drug-Free School Zones Prohibited. No syringe service program shall be located within a drug-free school zone as defined in RSA 193–B:1, II.

Source. 2017, 117:7, eff. June 16, 2017.

Commission to Study the Legalization, Regulation, and Taxation of Marijuana

318–B:46 Commission to Study the Legalization, Regulation, and Taxation of Marijuana Established.

[RSA 318–B:46 repealed by 2017, 235:2, effective November 2, 2018.]

I. There is established a commission to study the legalization, regulation, and taxation of marijuana. The members of the commission shall be as follows:

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

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

(c) The attorney general, or designee.

(d) The commissioner of the department of safety, or designee.

(e) The commissioner of the department of health and human services, or designee.

(f) The commissioner of the department of revenue administration, or designee.

(g) The commissioner of the department of agriculture, markets, and food, or designee.

(h) The banking commissioner, or designee.

(i) A representative of the New Hampshire Bar Association, appointed by the association.

(j) A representative of the New Hampshire Association of Chiefs of Police, appointed by that organization.

(k) A representative of the New Hampshire Medical Society, appointed by that organization.

(*l*) A representative of New Futures, appointed by that organization.

(m) A representative of the public, appointed by the governor.

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

III. The commission shall examine the possible impacts of changing state policy to treat marijuana in a manner similar to the way the state deals with alcohol and shall study the legalization, regulation, and taxation of marijuana including the specific issues related to growing, selling, taxing, limiting use, advertising, promoting, and otherwise regulating marijuana and marijuana-infused edible products. The commission shall also study the experiences of New Hampshire and other states regarding the use of marijuana for medical purposes and for recreational purposes. The commission shall also study the experiences of states that have or are in the process of legalizing and regulating the recreational use of marijuana by adults, with particular attention to be given to the ways the changes in marijuana laws in Maine and Massachusetts, as well as Canada, impact our state. The commission shall study any other issue that the commission deems relevant to its objective. The commission may solicit the advice or testimony of any organization or individual with information or expertise relevant to its study.

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

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

Source. 2017, 235:1, eff. July 18, 2017.

CHAPTER 318–D

METHAMPHETAMINE-RELATED OFFENSES

318–D:1 Definitions. In this chapter:

I. "Anhydrous ammonia" means ammonia that has been cooled, pressurized, or both so that it exists in liquid form. Water may be present in varying degrees, if at all. This definition shall not include commercially available water solutions of ammonia such as glass cleaners.

II. "Clandestine lab site" means any structure or conveyance or location occupied or affected by conditions or chemicals typically associated with the manufacturing of methamphetamine.

III. "Emergency response" includes, but is not limited to, removing and collecting evidence, securing the site, removal, remediation, and hazardous chemical assessment or inspection of the site where the relevant offense or offenses took place, regardless of whether these actions are performed by a public entity, a private contractor paid by a public entity, or the property owner.

IV. "Remediation" means proper cleanup, treatment, or containment of hazardous substances or methamphetamine at or in a clandestine lab site, and may include demolition or disposal of structures or other property.

V. "Removal" means the removal from the clandestine lab site of precursor or waste chemicals, chemical containers, or equipment associated with the manufacture, packaging, or storage of illegal drugs.

Source. 2006, 241:1, eff. Jan. 1, 2007.

318–D:2 Manufacture of Methamphetamine.

I. It shall be unlawful for any person to knowingly manufacture or attempt to manufacture methamphetamine. A person is guilty of an attempt to manufacture methamphetamine if the person:

(a) With the purpose that the crime of manufacturing methamphetamine be committed, the person engages in any conduct that, under the circumstances as the person believes them to be, is an act

constituting a substantial step toward the commission of the crime; or

(b) Possesses one or more of the following substances or their salts or isomers, with the intent to manufacture methamphetamine:

(1) Acetic acid.
(2) Acetic anhydride.
(3) Aluminum.
(4) Ammonium nitrate.
(5) Anhydrous ammonia.
(6) Benzaldehyde.
(7) Benzyl chloride.
(8) Benzyl cyanide.
(9) Chloroephedrine.
(10) Chloropseudoephedrine.
(11) Elemental phosphorous.
(12) Ephedrine.
(13) Ethylamine.
(14) Formic acid.
(15) Hydriodic acid.
(16) Hydrochloric acid.
(17) Hydrogen.
(18) Hydrogen peroxide.
(19) Hypophosphorus acid.
(20) Iodine.
(21) Lithium metal.
(22) Mercuric chloride.
(23) Methylamine.
(24) N-methyl formamide.
(25) Nitroethane.
(26) Palladium.
(27) Perchloric acid.
(28) Phenylacetic acid.
(29) Phosphorous pentachloride.
(30) Platinum.
(31) Raney nickel.
(32) Sodium acetate.
(33) Sodium hydroxide.
(34) Sodium hypochlorite.
(35) Sodium hypophosphite.
(36) Sodium metal.
(37) Sodium/potassium cyanide.
(38) Sulfuric acid.
(39) Thionyl chloride.
(40) Tincture of iodine.

(c) Possesses one or more of the following organic solvents with the intent to manufacture methamphetamine:

(1) Acetone.
(2) Chloroform.
(3) Cyclohexane.
(4) Ethanol.
(5) Ether.
(6) Light petroleum distillates.
(7) Methanol.
(8) Methyl isobutyl ketone.
(9) Phenyl-2 porpanone.
(10) Tetrachloroethylene.
(11) Toluene.

II. Notwithstanding the provisions of RSA 318–B:26, I, a person convicted under this section may be sentenced to imprisonment for not more than 30 years, a fine of not more than $500,000, or both. A person convicted under this section who has one or more prior offenses as defined in RSA 318–B:27, shall be sentenced to imprisonment for not less than 5 years and not more than life imprisonment, a fine of not more than $500,000, or both.

III. A court may require a person convicted of manufacturing or attempting to manufacture methamphetamine, where the response to the crime involved an emergency response or a hazardous substance cleanup operation, to pay restitution to all public entities, or private entities under contract to a public entity, that participated in the response or the cleanup. The restitution ordered shall cover the reasonable costs of the entities' participation in the response and the reasonable costs of the site cleanup.

IV. In addition to the restitution authorized in paragraph III, a court may require a person convicted of manufacturing or attempting to manufacture methamphetamine to pay restitution to a property owner who incurred removal or remediation costs as a result of the crime.

Source. 2006, 241:1, eff. Jan. 1, 2007.

318–D:3 Injury Resulting From the Manufacture of Methamphetamine.

I. A person shall be guilty of an offense if that person recklessly causes serious bodily injury to a law enforcement officer, firefighter, emergency medical technician, ambulance operator, ambulance attendant, or social worker, civilian government employee, or hazardous material contractor acting in his or her official duties, as a result of the hazards posed by the person's conduct in manufacturing or attempting to manufacture methamphetamine. For purposes of this section, a person who takes any substantial step towards the manufacture of methamphetamine acts recklessly.

II. A person convicted of an offense under this section may be sentenced to imprisonment for not

more than 20 years, or a fine of not more than $300,000 or both.

Source. 2006, 241:1, eff. Jan. 1, 2007.

318–D:4 Sale, Transfer, Lease, or Rental of Real Property on Which Methamphetamine Has Been Produced. Any sale, transfer, lease, or rental of real property on which methamphetamine has been produced shall be subject to the provisions of RSA 477:4–g.

Source. 2006, 241:1, eff. Jan. 1, 2007.

318–D:5 Anhydrous Ammonia; Prohibited Conduct.

I. In this section, "tamper" means action taken by a person not authorized to take that action by law, or by the owner or authorized custodian of an anhydrous ammonia container, or of equipment where anhydrous ammonia is used, stored, distributed, or transported.

II. No person shall:

(a) Steal or unlawfully take or carry away any amount of anhydrous ammonia.

(b) Purchase, possess, transfer, or distribute any amount of anhydrous ammonia, knowing, or having reason to know, that it will be used to unlawfully manufacture a controlled substance or explosive device.

(c) Place, have placed, or possess anhydrous ammonia in a container that is not designed, constructed, maintained, and authorized to contain or transport anhydrous ammonia.

(d) Transport anhydrous ammonia in a container that is not designed, constructed, maintained, and authorized to transport anhydrous ammonia.

(e) Use, deliver, receive, sell, or transport a container designed and constructed to contain anhydrous ammonia without the express consent of the owner or authorized custodian of the container.

(f) Tamper with any equipment or facility used to contain, store, or transport anhydrous ammonia.

III. The department of safety shall adopt rules, pursuant to RSA 541–A, in order to implement and enforce the provisions of this section.

IV. Except as provided in paragraph V, a person who tampers with anhydrous ammonia containers or equipment under this section shall have no cause of action for damages arising out of the tampering against:

(a) The owner or lawful custodian of the container or equipment;

(b) A person responsible for the installation or maintenance of the container or equipment; or

(c) A person lawfully selling or offering for sale the anhydrous ammonia.

V. Paragraph IV shall not apply to a cause of action against a person who unlawfully obtained the anhydrous ammonia or anhydrous ammonia container or who possesses the anhydrous ammonia or anhydrous ammonia container for any unlawful purpose.

VI. A person who knowingly violates paragraph II may be sentenced to imprisonment for not more than 5 years or a fine of not more than $50,000, or both.

Source. 2006, 241:1, eff. Jan. 1, 2007.

CHAPTER 326–B

NURSE PRACTICE ACT

326–B:2 Definitions. In this chapter:

I. "Advanced practice registered nurse" or "APRN" means a registered nurse currently licensed by the board under RSA 326–B:18.

I–a. "Advanced practice registered nurse-patient relationship" means a medical connection between a licensed APRN and a patient that includes an in-person or face-to-face 2-way real-time interactive communication exam, a history, a diagnosis, a treatment plan appropriate for the licensee's medical specialty, and documentation of all prescription drugs including name and dosage. A licensee may prescribe for a patient whom the licensee does not have an APRN-patient relationship under the following circumstances: writing admission orders for a newly hospitalized patient; for a patient of another licensee for whom the prescriber is taking call; for a patient examined by another licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment.

II. "Board" means the New Hampshire board of nursing established in RSA 326–B:3.

III. "Continuing competence" means integrated learning by which a licensee gains, maintains, or refines practice knowledge, skills, and abilities. This development may occur through a formal education program, continuing education, and clinical practice, and is expected to continue throughout the practitioners' career.

IV. "Licensed nursing assistant" or "LNA" means an individual who holds a current license to

provide client care under the direction of a registered nurse or licensed practical nurse.

V. "Licensed practical nurse" or "LPN" means an individual who holds a current license to practice practical nursing as defined in paragraph IX.

VI. "Medication nursing assistant" means a licensed nursing assistant holding a currently valid certificate authorizing the delegation to the nursing assistant of tasks of medication administration.

VII. "Nursing" means assisting clients or groups of clients to attain or maintain optimal health by implementing a strategy of care to accomplish defined goals and by evaluating responses to nursing care and medical treatment. Nursing includes basic health care that helps both clients and groups of clients cope with difficulties in daily living associated with their actual or potential health or illness status and also those nursing activities that require a substantial amount of scientific knowledge or technical skill.

VII–a. "Nurse" means a person authorized to practice nursing and who holds a current license to provide care as an APRN, RN, or LPN.

VIII. "Nursing-related activities" means client care provided by a licensed nursing assistant directed by an APRN, an RN, or an LPN.

IX. "Practical nursing" means the practice of nursing as defined in paragraph VII by a person who:

(a) Uses sound nursing judgment based on preparation, knowledge, skills, understanding, and past nursing experience.

(b) Works under the direction of a registered nurse, advanced practice registered nurse, dentist, or physician.

(c) Functions as a member of a health care team and contributes to the assessment, planning, implementation, and evaluation of client care.

X. "Registered nurse" or "RN" means an individual who holds a current license to practice registered nursing as defined in paragraph XI.

XI. "Registered nursing" means the application of nursing knowledge, judgment, and skill drawn from broad in-depth education in the biological, psychological, social, and physical sciences in assessing and diagnosing the health status of a client, and in planning, implementing, and evaluating client care which promotes the optimum health, wellness, and independence of the individual, the family, and the community.

XII. (a) "Telemedicine" means the use of audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment. "Telemedicine" shall not include the use of audio-only telephone or facsimile.

(b) An out-of-state APRN providing services by means of telemedicine shall be deemed to be in the practice of medicine and shall be required to be licensed under this chapter.

(c) It shall be unlawful for any person to prescribe by means of telemedicine a controlled drug classified in schedule II through IV.

(d)(1) The prescribing of a non-opioid controlled drug classified in schedule II through IV by means of telemedicine shall be limited to prescribers as defined in RSA 329:1–d, I and RSA 326–B:2, XII(a), who are treating a patient with whom the prescriber has an in-person practitioner-patient relationship, for purposes of monitoring or follow-up care, or who are treating patients at a state designated community mental health center pursuant to RSA 135–C or at a Substance Abuse and Mental Health Services Administration (SAMHSA)-certified state opioid treatment program, and shall require an initial in-person exam by a practitioner licensed to prescribe the drug. Subsequent in-person exams shall be by a practitioner licensed to prescribe the drug at intervals appropriate for the patient, medical condition and drug, but not less than annually.

(2) The prescribing of an opioid controlled drug classified in schedule II through IV by means of telemedicine shall be limited to prescribers as defined in RSA 329:1–d, I and RSA 326–B:2, XII(a), who are treating patients at a SAMHSA-certified state opioid treatment program. Such prescription authority shall require an initial in-person exam by a practitioner licensed to prescribe the drug and subsequent in-person exams shall be by a practitioner licensed to prescribe the drug at intervals appropriate for the patient, medical condition, and opioid, but not less than annually.

(e) An APRN providing services by means of telemedicine directly to a patient shall:

(1) Use the same standard of care as used in an in-person encounter;

(2) Maintain a medical record; and

(3) Subject to the patient's consent, forward the medical record to the patient's primary care or treating provider, if appropriate.

(f) Under this section, Medicaid coverage for telehealth services shall comply with the provisions of 42 C.F.R. section 410.78 and RSA 167:4–d.

Source. 2005, 293:1. 2009, 54:4, 5. 2011, 245:1. 2015, 246:7, 8. 2016, 221:4, eff. Aug. 8, 2016.

CHAPTER 326–G

ATHLETIC TRAINERS

326–G:1 Definitions. In this chapter and RSA 328–F:

I. "Board" means the governing board of athletic trainers established in RSA 328–F.

II. "Athletic trainer" means a person licensed under this chapter to practice athletic training.

III. "Athletic training" means the practice, with respect to injuries or conditions incurred by participants in organized or recreational sports, of:

(a) Prevention;

(b) Assessment and evaluation;

(c) Acute care, management, treatment and disposition;

(d) Rehabilitation and reconditioning; and

(e) Education, counseling and program administration,

Provided such care is within the professional preparation and education of athletic trainers and under the direction of a physician licensed in any state or in Canada.

Source. 2003, 310:4, eff. July 1, 2003.

CHAPTER 326–I

INTERPRETERS FOR THE DEAF AND HARD OF HEARING

326–I:1 Findings and Statement of Purpose.

I. The general court finds that while there is no census count, as many as 10,000 New Hampshire citizens live with hearing loss; that of this number perhaps 3,000 men, women, and children are unable to readily understand speech due to the extent of their hearing loss, but instead rely on a visual mode of communication.

II. The general court finds that a significant number of New Hampshire's deaf and hard of hearing, its broad array of public agencies and institutions, and its medical and legal professions share a unique challenge: the necessity to hire professional interpreters licensed to provide ready and reliable communications to and for those who use a visual mode of communication.

III. The general court further finds the mandates of federal and state statutes which require funding of interpreter's services, by the same public agencies and institutions, medical and legal professions, and others of those interpreters requested by the deaf and hard of hearing, is a mandate in itself to the legislature to ensure the availability of a skilled cadre of professional, licensed interpreters.

IV. The purpose of this legislation is:

(a) To provide standards for the licensing and regulation of interpreters for the deaf and hard of hearing.

(b) To ensure interpreters for the deaf and hard of hearing meet rigorous standards, and that by power of revoking their licenses are held accountable for the quality and timeliness of their work.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:2 Definitions. In this chapter:

I. "Board" means the board of licensure of interpreters for the deaf and hard of hearing.

II. "Deaf person" means a person whose sense of hearing is nonfunctional for the purpose of communication and whose primary communication is visual.

III. "Hard-of-hearing person" means a person who has a hearing loss, who may or may not primarily use visual communication, and who may or may not use assistive devices.

IV. "Interpreting" means the process of providing accessible communication between and among persons who are deaf, oral deaf, hard-of-hearing, and who can hear, who do not share a common means of communication. This process includes, without limi-

tation, interpreting and transliterating and visual, gestural, auditory, and tactile communication.

V. "Interpreting agency" means an agency whose function is to provide qualified interpreter services for a fee, usually including a fee for travel time, and who access interpreters licensed under this chapter.

VI. "Interpreter" means a person who provides any of the following services:

(a) English-based transliterating, which includes but is not limited to conveying a message via visible representations of the English language such as manually coded English and oral transliteration. This process conveys information from one mode of English to another mode of English;

(b) American Sign Language-based interpreting, which is the process of conveying information between American Sign Language and English; and

(c) Intermediary interpreting, which means interpreting services rendered by a deaf person to facilitate communication between another deaf person and another licensed interpreter or between 2 or more deaf persons.

VII. "Oral deaf" means a person whose sense of hearing is nonfunctional for the purpose of communication and whose primary communication is by speech reading and spoken English.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:3 Board of Licensing for Interpreters for the Deaf and Hard of Hearing; Administrative Attachment.

I. There shall be a board of licensing for interpreters for the deaf and hard of hearing, each member to be appointed by the governor, with the approval of the council.

II. The board shall consist of 9 members as follows:

(a) Four licensed interpreters, at least 2 of whom are national level licensees, from a list of names submitted by the New Hampshire Registry of Interpreters for the Deaf in conjunction with the New Hampshire Association of the Deaf.

(b) Five consumers, including 3 deaf persons from a list of names submitted by the New Hampshire Association of the Deaf, one consumer of oral interpreting services, and a non-deaf member of the public not licensed under this chapter.

III. No member of the board shall serve concurrently in an elected, appointed, or employed position in any other state-level organization representing interpreters for the deaf, if it would present a direct conflict of interest.

IV. (a) Appointments to the board shall be for 3 years, except that one of the initial interpreter members and one of the initial consumer members shall serve one-year terms, and one of the initial interpreter members and one of the initial consumer members shall serve 2-year terms. A member shall hold office until a successor has been appointed and qualified. No member may serve more than 2 consecutive terms. Initial interpreter member appointments to the board shall be required to be licensed under this chapter, as of January 1, 2003.

(b) The governor and council may remove any member of the board for malfeasance, misfeasance, or nonfeasance pertaining to the duties of the board.

(c) The board shall review and take action on all applications for licensure, renewal, and reinstatement licenses for interpreters for the deaf and hard of hearing.

V. Members of the board shall receive mileage incurred while conducting the business of the board.

VI. A quorum of the board shall be 5 members.

VII. The board shall be an administratively attached agency, under RSA 21–G:10, to the department of education.

Source. 2001, 232:1. 2006, 31:1, eff. July 1, 2006.

326–I:4 Powers and Duties of the Board. The powers and duties of the board include:

I. Accepting applications for licensure under this chapter, and approving or denying such applications.

II. Approving and enforcing performance requirements, including education and examination standards, for interpreters for the deaf and hard of hearing.

III. Suspending or revoking licenses and conducting investigations and hearings regarding the denial, suspension, revocation, and renewal of licenses.

IV. Adopting a code of professional conduct for licensees.

V. Renewing licenses for interpreters for the deaf and hard of hearing.

VI. Maintaining a directory of all licensed interpreters for the deaf and hard of hearing. The directory shall be updated, published, and shall be offered for sale to the public at a fee to be equal to the cost of reproduction.

VII. Accepting written complaints from the public against licensees, conducting necessary investigations of such complaints, and publicizing the complaint procedure.

VIII. Accepting funds from federal and other non-state sources to be used for the purposes of this chapter.

IX. Cooperating with the New Hampshire Registry of Interpreters for the Deaf, the New Hampshire Association of the Deaf, Self Help for the Hard of Hearing of New Hampshire, the New Hampshire League for the Hard of Hearing, the department of education, division of vocational rehabilitation, and interpreting agencies to provide access to the services of interpreters to persons communicating with deaf and hard of hearing persons.

X. Reporting to the governor and council annually on the activities conducted under this chapter.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:5 Rulemaking. The board shall adopt rules, pursuant to RSA 541–A, relative to:

I. The form and content of license applications for each license level authorized in RSA 326–I:7, II. For national level licensure such rules shall include application criteria including examinations and examiners used by the Registry of Interpreters for the Deaf or the National Association for the Deaf. For state level licensure such rules shall include the use of the New Hampshire classification test administered by the program for the deaf and hard of hearing under the division of adult learning and rehabilitation, department of education.

II. License and application fees, renewal fees, and any other fees required under this chapter which shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year.

III. The conditions under which an applicant from another jurisdiction may be issued a license.

IV. Requirements for continuing professional education and competency of interpreters for the deaf and hard of hearing.

V. The contents of the code of professional conduct, and the application of the code to the provision of services by interpreters.

VI. Expiration of licenses.

VII. The conduct of investigations and hearings under this chapter, consistent with due process requirements.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:6 Application for Licensure. An application for licensure under this chapter shall be filed with the board in such form and detail as required in accordance with rules adopted under RSA 541–A, shall be duly signed and verified, and shall be available for public inspection.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:7 Licensure Required; Exemptions.

I. No person shall receive remuneration as an interpreter for the deaf or hard of hearing or represent oneself as an interpreter for the deaf or hard of hearing in this state after January 1, 2003, unless such person is licensed in accordance with the provisions of this chapter.

II. The board shall license each applicant who satisfies the requirements of the board at either a national level license or a state level license. Upon payment of a license fee for each license level, the board shall issue to such person a certificate of licensure which shall be evidence of the right to practice at the appropriate level as an interpreter for the deaf and hard of hearing.

III. An interpreter for the deaf and hard of hearing certified by the Registry of Interpreters for the Deaf, the National Association of the Deaf, or the New Hampshire Interpreter classification process prior to the effective date of this chapter shall be accepted for licensure by the board, at the appropriate license level, without examination, provided that all such certified persons comply with all other requirements of the board under this chapter.

IV. The following persons shall be exempt from the license requirements of this chapter:

(a) Nonresident interpreters certified by the National Registry of Interpreters of the Deaf (RID) or the American Consortium of Certified Interpreters (ACCI), levels IV and V, who have completed RID-approved legal training or who hold a legal specialty certificate (RID SC:L) when working in court settings, provided that such interpreter shall be subject to disciplinary proceedings of the board.

(b) Interpreters for the deaf and hard of hearing working in religious settings.

(c) Interpreters working in emergency situations where the parties determine that the delay to obtain a licensed interpreter is likely to cause injury or loss.

(d) Students exempted under RSA 326–I:8.

(e) Interpreters employed by a school district for a K–12 program.

(f) Court reporters licensed under RSA 310–A:161—RSA 310–A:181 while employed as court reporters as defined in RSA 310–A:162, II.

V. The recipient of services shall have the right to apply to the department of education for, and to receive, a waiver in writing from using a licensed interpreter and shall accept all responsibility for such action.

Source. 2001, 232:1. 2006, 31:3; 76:21. 2007, 300:2, eff. July 1, 2007.

326–I:8 Persons or Practices Affected.

I. Nothing in this chapter shall be construed to prohibit a student enrolled in a school or courses in interpreting for the deaf and hard of hearing from interpreting for the deaf which is incidental to a course of study of supervised field work.

II. Nothing in this chapter shall prohibit persons registered or otherwise licensed in this state under any other law from engaging in the practice for which they are registered or licensed.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:9 License Requirements; Fees.

I. To be eligible for licensure by the board as an interpreter for the deaf and hard of hearing at either the national level license or the state level license, an applicant shall:

(a) Be at least 18 years of age and make application to the board, upon a form prescribed by the board.

(b) Pay to the board the appropriate license application fee.

(c) Possess the minimum standards of performance and training pursuant to rules adopted by the board under RSA 541–A and RSA 326–I:5.

(d) Demonstrate sufficient evidence of good professional character and reliability to satisfy the board that the applicant shall faithfully and conscientiously avoid professional misconduct and otherwise adhere to the requirements of this chapter.

(e) If applicable, submit proof of licensure in another state in which the licensure requirements are equivalent to or greater than those in this chapter.

II. (a) A license shall be restored after a period of nonrenewal of less than 2 years, if the person pays to the board a restoration fee consisting of the current renewal fee plus any late fee established by rules adopted by the board pursuant to RSA 541–A and submits such evidence of continued professional competence and eligibility for licensure as the board may require.

(b) Any person who fails to renew a license within 3 years after its expiration date may apply for and obtain a new license upon meeting the requirements of this chapter and paying to the board the appropriate fee.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:10 Persons From Other Jurisdictions; Licensure. The board may waive licensure requirements for an applicant who is licensed by another jurisdiction where the requirements for licensure are greater than or equal to those required in this state.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:11 Prohibited Acts. No person shall:

I. Practice as an interpreter for the deaf and hard of hearing after January 1, 2003 without holding a license issued pursuant to this chapter.

II. Fail to comply with an order of the board issued pursuant to this chapter.

III. Fail to comply with a rule adopted pursuant to this chapter.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:12 Reinstatement After Suspension. An interpreter for the deaf and hard of hearing seeking reinstatement of a suspended license shall submit the following to the board:

I. A written request to the board explaining the appropriateness of reinstatement of the license or registration.

II. The required license or application fee.

III. Evidence of competency to practice as established by the board, which shall include continuing education or training, passage of an examination, and practice under the supervision of another licensed interpreter for a period of time set by the board.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:13 License Renewal; Continuing Education. A license issued by the board shall expire on the September 1 following 3 years from the date of issuance. Every person licensed under this chapter who wishes to renew a license shall, on or before the expiration date, pay a fee for renewal of license to the board. The board shall notify each person licensed under this chapter of the date of expiration of such person's license and the renewal fee required. The notice shall be mailed to such person's last known address as provided to the board at least 60 days in

advance of the expiration of such license. Renewals are contingent upon evidence of completing the number of continuing education units established by the board. The continuing education units may be earned by attending professional training or completing approved independent studies and regional in-service programs, as determined by the board.

Source. 2001, 232:1. 2006, 31:2, eff. July 1, 2006.

326–I:14 Disciplinary Actions.

I. The board may undertake disciplinary proceedings:

(a) Upon its own initiative; or

(b) Upon written complaint of any person which charges that a person licensed by the board, or an unlicensed person under RSA 326–I:7, IV(a), has committed misconduct under paragraph II and which specifies the grounds for the misconduct.

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

(a) The practice of fraud or deceit in procuring or attempting to procure a license to practice under this chapter.

(b) Conviction of any crime which demonstrates unfitness to practice as an interpreter for the deaf and hard of hearing

(c) Violation of the standards adopted under RSA 326–I:4, II and IV, including violations which demonstrate exceeding the level of the licensee's skills commensurate with his or her experience or training.

(d) Demonstrable gross incompetence of the licensee.

(e) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders the licensee unfit to practice under this chapter.

(f) A legal finding of mental incompetence.

(g) Willful or repeated violation of the provisions of this chapter.

(h) Suspension or revocation without subsequent reinstatement of a license, similar to one issued under this chapter, in another jurisdiction.

III. (a) The board may take disciplinary action in any one or more of the following ways:

(1) By public or private reprimand.

(2) By suspension, limitation, or restriction of license.

(3) By revocation of license.

(4) By requiring the person to participate in a program of continuing education supervision, or treatment in the area the person is deficient.

(5) By removing an exemption for an unlicensed person under RSA 326–I:7, IV(a).

(b) Disciplinary action taken under this paragraph may be ordered by the board in a decision made after a hearing in the manner provided by the rules adopted by the board and reviewed in accordance with RSA 541.

(c) No person licensed under this chapter shall continue to practice as an interpreter for the deaf and hard of hearing while the person's license is suspended or revoked.

IV. At any time, the parties in a complaint, with the cooperation of the board, may refer a matter to conflict resolution or mediation services, provided that any proposed resolution of a complaint shall be subject to the approval of the board.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:15 Hearings. The board shall take no disciplinary action without a hearing. At least 14 days prior to hearing, both parties to a disciplinary proceeding shall be served, either personally or by registered mail, with a written copy of the complaint filed and notice of the time and place for hearing. All complaints shall be objectively received and fairly heard by the board, but no complaint shall be acted upon unless in writing or formally presented to the board. A hearing shall be held on all formal complaints received by the board within one year of the date notice of a complaint was received by the accused, unless otherwise agreed to by the parties. Official notice of all disciplinary decisions made by the board shall be given to both parties to the proceeding upon their issuance.

Source. 2001, 232:1. 2014, 34:12, eff. Jan. 1, 2015.

326–I:16 Display of License. Any person who has been issued a license under this chapter shall conspicuously display such license to a client or consumer upon request when acting as an interpreter for the deaf and hard of hearing.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:17 Record; Directory. The board shall maintain a record of its proceedings under this chapter and a directory of all persons licensed under this chapter. The directory shall list the name and last known business address for each licensee, and may include such other information as the board deems necessary.

Source. 2001, 232:1, eff. July 1, 2001.

326–I:18 Penalties.

I. Any person who shall practice or attempt to practice as an interpreter for the deaf and hard of hearing in this state without a license shall be guilty of a class A misdemeanor if a natural person or guilty of a felony if any other person.

II. Any person who violates any other provision of this chapter or any rule adopted by the board under this chapter, or who knowingly makes a false statement in an application for licensure or in response to any inquiry of the board shall be guilty of a violation. Upon conviction of a second or subsequent violation under this chapter, the person shall be guilty of a class A misdemeanor and may, in addition, be subject to a civil penalty of up to $2,000 per offense or, in the case of a continuing offense, $250 for each day the violation continues.

Source. 2001, 232:1. 2006, 76:11, eff. July 1, 2006.

CHAPTER 328–F

ALLIED HEALTH PROFESSIONALS

Disciplinary Action; Hearings

Disciplinary Action; Hearings

328–F:27 Unauthorized Practice.

I. Nothing in this chapter or the practice acts of the governing boards shall be construed to restrict persons licensed under any other laws of this state from engaging in the practice or profession for which they are licensed.

II. Practice of an allied health profession by any person who is not, and was never, licensed to practice such profession shall constitute unauthorized practice. A business which holds itself out, through advertising or in any other way, as providing an allied health service but does not have available to supervise its services an allied health professional licensed to provide the services which the business purports to offer, is engaged in unauthorized practice.

III. Unauthorized practice is punishable as a class A misdemeanor by an individual, and as a felony by an entity.

IV. Each governing board is authorized to issue a cease and desist order against any person or entity engaged in unauthorized practice. The cease and desist order shall be enforceable in superior court.

V. The attorney general, the governing board of the allied health practice affected or the prosecuting attorney of any county or municipality where the act of unauthorized practice takes place may maintain an action to enjoin any person or entity from continuing to do acts of unauthorized practice. The action to enjoin shall not replace any other civil, criminal or regulatory remedy. An injunction without bond is available to the governing board of the allied health practice affected.

Source. 1997, 287:1. 2003, 310:57. 2006, 76:16, eff. July 1, 2006.

TITLE XXXIV

PUBLIC UTILITIES

CHAPTER 376

MOTOR CARRIERS OF PASSENGERS

376:2 Definition of Terms. The following words and phrases as used in this chapter shall have the following meanings, unless the context clearly requires otherwise:

I. The term "department" means the department of safety.

II. The term "person" means any individual, firm, copartnership, corporation, company, association or joint-stock association, railroad corporation, including any trustee, administrator, executor, receiver, assignee or other personal representative thereof.

III. The term "motor carrier" includes both a common carrier and a contract carrier of passengers by motor vehicle.

IV. The term "common carrier of passengers" means a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

V. The term "regular route common carrier" means any common carrier of passengers by motor vehicle who operates over regular routes between points within this state.

VI. The term "irregular route common carrier" means any common carrier of passengers by motor vehicle who operates over irregular routes between points within this state.

VII. The term "contract carrier of passengers" means a person providing motor vehicle transportation for compensation under continuing agreements with one or more persons:

(a) By assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

(b) Designed to meet the distinct needs of each person.

VIII. The term "certificate" means a certificate of public convenience and necessity issued under the provisions of this chapter to a common carrier of passengers by motor vehicle.

IX. The term "permit" means a permit issued under the provisions of this chapter to a contract carrier of passengers by motor vehicle.

X. The term "highway" means the roads, highways, streets and ways laid out for and used generally by the public.

XI. The term "taxicab" means any rubber-tired motor vehicle having a manufacturer's rated seating capacity of not more than 7 persons used in the call and demand transportation of passengers for compensation to or from points chosen or designated by the passengers and not operated on a fixed schedule between fixed termini; or any such vehicle leased or rented, or held for leasing or renting, with or without drivers or operators.

XII. The term "vanpooling" means an arrangement for the transportation of persons to and from work on a nonprofit basis utilizing a motor vehicle manufactured primarily for use in transporting not less than 8 people and not more than 15 people, whose operator must be 18 years of age or older and must hold a vanpool operator's permit. The director of motor vehicles shall issue such permits at no charge, and shall require such examination as to the operator's qualifications as he may deem necessary.

Source. 1941, 224:2. RL 304:2. 1949, 166:1, 2. 1951, 203:1. RSA 376:2. 1977, 382:1. 1985, 402:6, I(e)(7). 1988, 288:24. 1989, 325:15, 16, eff. July 1, 1989.

376:3 Exemptions. There shall be exempt from the provisions of this chapter (1) motor vehicles while employed solely in transporting school children and teachers to or from the school for which such arrangements are within the supervision or control of the local or appropriate state school board authorities; or (2) taxicabs, and other motor vehicles having a manufacturer's rated seating capacity of not more than 7 persons, unless, after investigation, the department shall be of the opinion that the service provided is in competition with the schedules of a common carrier by highway or railroad; or (3) motor vehicles owned or operated by hotels which are used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles while engaged exclusively in work for any branch of the government of the United States or for any department of this state, or for any county, city, town or village; or (5) motor vehicles while engaged exclusively in the delivery of the United States mail; or (6) vans engaged in vanpooling not less than 8 people and not more than 15

people to and from work on a nonprofit basis and in which the operating costs and a reasonable vehicle depreciation cost for such vehicle are paid principally by those people utilizing such arrangement.

Source. 1941, 224:3. RL 304:3. 1949, 166:3. RSA 376:3. 1977, 382:2. 1985, 402:6, I(e)(7).

376:24 Vehicles to be Registered. Each motor carrier holding a certificate or a permit under the provisions of this chapter shall annually apply to the department of safety, division of motor vehicles, on blanks to be furnished by it, for the registration of each vehicle, operated under the provisions of such certificate or permit and pay to said department fees as provided for in RSA 376:25. Upon receipt of such application and fee, a distinguishing number plate or plates and registration certificate shall be furnished by the division for each vehicle applied for and said plates shall be prominently displayed on the vehicle in such manner as the director of the division shall prescribe. No such plates shall be transferred from one vehicle to another, except upon authority and with the consent of the department of safety, and the payment of the fees prescribed in RSA 376:25. Registration certificates and number plates issued under the provisions of this section shall be used coincidental with, and shall expire with, the corresponding registration certificate and number plates issued by the division of motor vehicles, department of safety, of this state under the provisions of RSA title XXI; provided, however, that if the vehicle so registered as a motor carrier is not registered with the division of motor vehicles, department of safety of this state under title XXI, said carrier registration certificate and number plates shall expire on March 31 next following the date of issue.

Source. 1941, 224:24. RL 304:24. RSA 376:24. 1961, 166:16. 1985, 402:6, I(e)(7). 1988, 288:25, eff. Jan. 1, 1989.

TITLE XXXVII

INSURANCE

CHAPTER 412

REGULATION OF FORMS AND RATES FOR PROPERTY AND CASUALTY INSURANCE

412:3 Definitions. In this chapter:

I. [Repealed.]

II. "Advisory organization" means any entity, including its affiliates or subsidiaries, which either has 2 or more member insurers or is controlled either directly or indirectly by 2 or more insurers, and which assists insurers in ratemaking-related activities such as those enumerated in RSA 412:4 and RSA 412:20. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.

III. "Classifications system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in costs may be recognized.

IV. "Commercial risk" means any kind of risk that is not a personal risk.

V. "Commissioner" means the insurance commissioner.

VI. "Competitive market" means a market that has not been found to be noncompetitive pursuant to RSA 412:13.

VII. "Developed losses" means losses, including loss adjustment expense, adjusted using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those which are anticipated to provide actual ultimate loss, including loss adjustment expense payments.

VIII. "Expenses" mean that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees.

IX. "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.

X. "Joint underwriting" means an arrangement established to provide insurance coverage for a risk pursuant to which 2 or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.

XI. "Large commercial policyholder" means an insurance contract holder that is a corporation, partnership, trust, sole proprietorship, or other business or public entity that uses an employed or retained risk manager to procure insurance and that has certified that it meets:

(a) At least one of the following 4 criteria:

(1) A net worth of $10,000,000 as certified by a certified public accountant or public accountant authorized to do business in this state.

(2) Net revenue or sales of $5,000,000 as certified by a certified public account or public accountant authorized to do business in this state.

(3) A total of more than 25 employees per individual company or more than 50 employees per holding company.

(4) Aggregate property and casualty insurance premiums, excluding workers' compensation, medical malpractice, life, health, and disability insurance premiums of $50,000 or more.

(b) "Large commercial policyholder" also includes a nonprofit or public entity with an annual budget or assets of $25,000,000 or more that employs or retains a risk manager to procure insurance and meets the premium criteria listed in subparagraph (a)(4), and a municipality with a population of 20,000 or more that meets the premium criteria listed in subparagraph (a)(4).

(c) In this section, "risk manager" means a chartered property and casualty underwriter, certified insurance counselor, an associate in risk management, certified risk manager or a licensed insurance consultant.

XII. "Loss adjustment expense" means the expenses incurred by the insurer in the course of settling claims.

XIII. "Market" means the interaction between buyers and sellers consisting of a product component and a geographic component. A product component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications and underwriting. A geographic component is a geographical area in which buyers seek access to the insurance product through

sales outlets and other distribution mechanisms. Determination of a geographic component shall consider existing distribution patterns.

XIV. "Noncompetitive market" means a market for which there is a ruling in effect pursuant to RSA 412:13 that a reasonable degree of competition does not exist.

XV. "Personal risk" means homeowners, including dwelling insurance for owner-occupied one to 4 family buildings, tenants, private passenger non-fleet automobiles on a personal automobile policy, mobile homes and other property and casualty insurance for personal, family or household needs. This includes any property and casualty insurance that is otherwise intended for non-commercial coverage.

XVI. "Pool" means a voluntary arrangement, established on an on-going basis, pursuant to which 2 or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.

XVII. "Prospective loss costs" means that portion of a rate that does not include provisions for expenses, other than loss adjustment expenses, or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

XVIII. "Rate" means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, special assessments, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.

XIX. "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

XX. "Special assessments" means guaranty fund assessments, assessments for residual market mechanisms, vocational rehabilitation fund assessments, and other similar assessments.

XXI. "Statistical agent" means an entity that has been licensed by the commissioner to collect statistics from insurers and provide reports developed from these statistics to the commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers under this chapter.

XXII. "Supplementary rating information" means any manual or plan of rates, or prospective loss costs, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule and any other similar information needed to determine the applicable rate in effect or to be in effect.

XXIII. "Supporting information" means:

(a) The experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer;

(b) The interpretation of any other data relied upon by the filer;

(c) Description of methods used in making the rates; and

(d) Any other information required by the commissioner to be filed.

XXIV. "Trending" means any procedure for projecting losses to the average date of loss, or premiums or exposures to the average date of writing, for the period during which the policies are to be effective.

Source. 2003, 150:1. 2004, 156:6, 8, I, eff. July 23, 2004. 2016, 115:1, eff. July 19, 2016.

CHAPTER 420–O

SELF-FUNDED STUDENT HEALTH BENEFIT PLANS

420–O:1 Purpose and Scope.

I. The purpose of this chapter is to set forth standards and procedures for not-for-profit private and public institutions of higher education which provide 4 year bachelor's degree programs and graduate or professional degree programs, and which have a history of providing for the health insurance needs of their students by implementing self-funded student health benefit plans, to obtain authorization to continue this practice.

II. This chapter shall apply only to self-funded student health benefit plans, not to fully-insured student major medical expense coverage, which is gov-

erned by RSA 415:19–a and other applicable provisions of Title XXXVII. Nothing in this chapter shall be construed to prohibit an educational institution from purchasing fully-insured student health coverage offered pursuant to RSA 415:19–a.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:2 Definitions. In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Plan document" means evidence of coverage furnished to a student that sets forth all benefits and terms and conditions, with regard to a student health plan.

III. "Qualified actuary" means an actuary who is a member in good standing of the American Academy of Actuaries or Society of Actuaries, with experience in establishing rates for self-insured trusts providing health benefits or other similar experience.

IV. "Institution of higher education" or "institution" means an educational institution in New Hampshire that:

(a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who have completed a secondary school education in a home school setting that is treated as a home school or private school under the laws of this state;

(b) Is legally authorized within New Hampshire to provide a program of education beyond secondary education;

(c) Provides an educational program for which the institution awards a bachelor's degree, graduate degree, or professional degree;

(d) Is a public or other nonprofit institution;

(e) Is accredited by a nationally recognized accrediting agency or association; and

(f) Has a history of providing for the health insurance needs of its students through a self-funded student health benefit plan.

V. "Student" means a person enrolled in a degree program in an institution of higher education and may include a postdoctoral fellow.

VI. "Student health plan" or "plan" means any self-funded plan established or maintained by an institution of higher education for the purpose of providing medical, surgical, or hospital services to a student, the student's spouse or domestic partner, the student's child or children, or other persons chiefly dependent upon the student for support and maintenance.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:3 Certificate of Authority.

I. An institution of higher education shall not establish, maintain, or otherwise participate in a student health plan in this state unless the institution obtains and maintains a certificate of authority from the commissioner pursuant to this chapter.

II. To obtain a certificate of authority, an institution shall file an application on such form as the commissioner may prescribe, and shall provide to the satisfaction of the commissioner the following:

(a) A copy of the student contract, including a table of the premium rates charged or proposed to be charged.

(b) A report indicating the benefit provisions, premium rates or premium equivalents, and incurred medical losses associated with the institution's students under the insurance policy or self-funded plan insuring the institution's students, for the 3 years prior to the date of the application.

(c) The most recent certified independently-audited financial statement for the institution.

(d) A report prepared by a qualified actuary that supports the proposed premiums for the plan.

(e) A copy of all agreements between the institution and any plan administrator, with regard to the student health plan.

(f) A balance sheet, including actuarially determined claims liabilities, and statement of revenue and expenses, including reasonably projected expenses, medical losses, and premiums to be charged to students for the plan during the first 3 years.

(g) A narrative description of the:

(1) Accounting methodology that the institution will utilize, including a description of the separate accounts for revenues and expenses, including medical and hospital expenses and administration expenses, reserves for claims and expenses thereon, including incurred-but-not-reported, unearned premium reserves, contingent reserves, and any asset accounts, including cash, premiums receivable, and investments, relevant to the plan. The accounts may be established within the institution's general accounting ledger system; provided the general ledger accounts are clearly identifiable as pertaining to the plan, including any such accounts allocated to the plan;

(2) Billing and claim payment procedures, including the names and contact information for those persons charged with handling accounting and claims issues; and

(3) Any compensation the institution will receive in connection with the plan.

(h) A copy of any stop-loss insurance policy issued or proposed to be issued by an insurer authorized to do the business of accident and health insurance in this state.

(i) Evidence of the student health plan's recognition as minimum essential coverage by the United States Department of Health and Human Services pursuant to 45 C.F.R. section 156.604.

(j) Such other information as the commissioner may require.

III. To maintain a certificate of authority, an institution shall:

(a) Have on a continuous basis within its own organization adequate resources and competent personnel to administer the student health plan or, in order to provide such administrative services, in whole or part, have contracted with a person or entity to serve as a plan administrator; provided that any such contracted plan administrator shall be in good standing under RSA 402–H or any other requirements of Title XXXVII applicable to administration of the plan.

(b) Establish and maintain premium equivalents sufficient to meet its contractual obligations and to satisfy the reserve requirements set forth in RSA 420–O:5.

(c) Comply with consumer protection requirements under Title XXXVII, including, but not limited to, RSA 420–J, and rules adopted thereunder, RSA 417, and the department's claims processing rules, including the requirements for claims review, network adequacy, dispute resolution, and appeal procedures.

(d) Provide covered students with a copy of the plan document annually.

(e) Maintain recognition of the student health plan as minimum essential coverage in accordance with 45 C.F.R. section 156.604.

(f) File all plan documents, including the plan document, premium equivalents, and any changes in contracts or stop-loss coverage with the commissioner annually at least 60 days prior to the start of the plan year, and receive the commissioner's approval in accordance with Title XXXVII prior to the coverage start date.

(g) File an annual report with the commissioner in accordance with RSA 420–O:6.

IV. Upon compliance by the institution with the requirements under paragraph II, and demonstration of capacity to comply with the requirements of paragraph III, the commissioner may issue a certificate of authority to an applicant. Every certificate of authority shall contain the name of the certified entity and its home office address. The commissioner shall refuse to grant a certificate of authority to an applicant that fails to meet the requirements of this section. The commissioner may refuse to issue any certificate of authority if, in the commissioner's judgment, the refusal will best promote the interests of the people of this state.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:4 Minimum Loss Ratio; Reporting.

I. A plan under this chapter shall have an expected loss ratio of not less than 85 percent. In reviewing a rate filing or application by a plan, the commissioner may modify the expected minimum loss ratio requirement if the commissioner determines the modification to be in the interests of the people of this state or if the commissioner determines that a modification is necessary to maintain plan solvency.

II. No later than 120 days after the close of a plan's fiscal year, a plan shall annually report the actual loss ratio for the previous plan fiscal year in a format acceptable to the commissioner. If the expected loss ratio is not met, the commissioner may direct the plan to take corrective action. Mandatory uniform student administrative health fees paid by the students irrespective of whether the student is a plan member to an institution shall not be deemed to be included in the premiums paid by students for health benefit coverage under a plan.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:5 Reserves.

I. An institution shall establish reserves with the amounts necessary to satisfy all contractual obligations and liabilities of the plan, including:

(a) Funds for the payment of claims and expenses thereon reported but not yet paid, and claims and expenses thereon incurred but not yet reported, which shall not be less than an amount equal to 25 percent of expected incurred claims and expenses thereon for the current plan year, unless a qualified actuary has demonstrated to the commissioner's satisfaction that a lesser amount shall be adequate.

(b) Funds for unearned premium equivalents, computed pro-rata on the basis of the unexpired portion of the policy period.

(c) Contingency funds, established and maintained for the sole purpose of satisfying unexpected obligations of the plan in the event of termination of the plan.

II. The reserve statement shall be prepared by a qualified actuary. If at any time the reserve funds required to be established pursuant to this section fall below the required minimum amounts, then the institution shall immediately notify the commissioner of such impairment. The institution shall cure the impairment within 5 business days.

III. The plan's assets, liabilities, income, and expenses shall be accounted for separate and apart from all other assets, liabilities, income, and expenses of the institution.

IV. The requirements for funding of the plan's reserves shall be calculated using generally accepted accounting principles. Only those expenses that relate to the plan shall be included in calculating the requirements for funding of the plan's reserve funds. Expenses allocated to the plan shall be allocated on an equitable basis in conformity with generally accepted accounting principles consistently applied. The books, accounts, and records of the plan shall be maintained to clearly and accurately disclose the nature and details of all expenses to support the reasonableness of such expenses.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:6 Annual Report.

I. Within 120 days of the close of its fiscal year, an institution of higher education operating under a certificate of authority issued under this chapter shall file with the commissioner a report that contains:

(a) An annual financial statement, verified by the oath of the chief financial officer and at least one of the institution's principal officers with direct knowledge of the operations of the student health plan, showing the financial condition of the plan during the most recent fiscal year, in accordance with law and generally accepted accounting principles, in a form prescribed by the commissioner.

(b) The identity of the qualified actuary utilized by the institution or plan and the amount paid to the qualified actuary by the institution or plan during its most recent fiscal year.

(c) The identities of all vendors involved in plan administration during its most recent fiscal year.

(d) The name and contact information of the person or entity appointed by the institution to administer the student health plan.

(e) A pro-forma statement of projected revenue and expenses for health benefits anticipated by the plan for the next 12-month period of the plan's operation, provided on a fiscal year basis.

(f) A detailed report of the operations and condition of the plan's reserve funds.

(g) Such other information as the commissioner may require.

II. The annual financial statement shall show the financial results of the student health plan operations and a description as to how the institution meets the reserve requirements in RSA 420–O:5, I, the method used to calculate the reserves, and the change in the reserves from the beginning of the plan's fiscal year to the end of the plan's fiscal year. In addition, the annual financial statement shall detail the assets comprising the reserve fund to demonstrate compliance with RSA 420–O:5, I.

III. An institution that fails to file any report or statement required by this chapter, or fails to reply within 30 days to a written inquiry by the commissioner in connection therewith shall, in addition to other penalties provided by this title, be subject, upon due notice and opportunity to be heard, to a penalty of up to $1,000 per day of delay, not to exceed $25,000 in the aggregate, for each such failure.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:7 Examination. The commissioner may, pursuant to RSA 400–A:37, make an examination into the affairs of any institution, with regard to a student health plan issued by the institution, as often as the commissioner deems it expedient for the protection of the interests of the people of New Hampshire. The expenses of every examination of the affairs of an institution, with regard to a student health plan established or maintained by the institution, shall be borne and paid by the institution so examined. The expenses of examination shall include reimbursement for the compensation paid for the services of persons employed by the commissioner or by the commissioner's authority to make such examination, and for the necessary traveling and living expenses of the person or persons making the examination.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:8 Investigations; Subpoenas. The commissioner may make such investigations as he or she deems necessary both within and outside the state in accordance with the provisions of RSA 400–A:16 and RSA 400–A:20–22.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:9 Suspension or Revocation of Certificate of Authority.

I. The commissioner may suspend or revoke a certificate of authority issued to an institution under this chapter upon a finding, after notice and hearing, that the institution has failed to comply with any requirement imposed on it under this chapter or necessary to maintain minimum essential coverage status and that in the commissioner's judgment such suspension or revocation is reasonably necessary to protect the interests of the people of this state, including:

(a) For any cause that would be a basis for denial of an initial application for such a certificate;

(b) Failure to maintain the reserves required by RSA 420–O:5; or

(c) The commissioner finds that the institution has refused to produce its accounts, records, and files for examination or has refused to cooperate or give information with respect to the affairs of the student health plan or to perform any other legal obligation relating to such an examination or investigation when required by the commissioner.

II. Any certificate of authority suspended or revoked under this section shall be surrendered to the commissioner, and the institution shall notify all participating students of that decision in such form and manner as the commissioner may prescribe, but not later than 10 days after receipt of notice of the commissioner's decision requiring suspension or revocation. In addition, the institution shall submit a plan for the commissioner's approval for winding up the plan's affairs in an orderly manner designed to result in timely payment of all benefits, in such form and manner as the commissioner may prescribe.

III. All final decisions to suspend or revoke the certificate of authority with regard to an institution shall be public.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:10 Termination of Plan.

I. In any case in which an institution determines that there is a reason to believe that the student health plan will terminate, the institution shall so inform the commissioner at least 60 days prior thereto, and shall file a sworn statement with the commissioner concerning all current and future liabilities under its discontinued plan. The institution also shall submit a plan for the superintendent's approval for winding up the plan's affairs in an orderly manner designed to result in timely payment of all benefits, in such form and manner as the commissioner may prescribe.

II. Any funds of the institution, as they pertain to the student health plan, shall be accounted for separate and apart from all other assets, liabilities, income, and expenses of the institution until all plan benefits and other plan obligations have been satisfied. Until such time, the institution shall continue to maintain and fund the reserve funds required to be established under RSA 420–O:5. If at any time the commissioner determines that additional funds shall be deposited in the reserve funds, then the institution shall make the deposit within 5 days of the commissioner's determination.

III. If, after 24 months, or such longer period as deemed necessary by the commissioner, all plan benefits and other plan obligations have been satisfied, the institution, upon approval by the commissioner, shall no longer be required to maintain assets within the plan's reserve funds.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:11 Administrative Rules. The commissioner may adopt rules under RSA 541–A necessary to implement the provisions of this chapter and to ensure that the plans established under this chapter are in the best interests of the students, students' spouses, students' children, and other persons chiefly dependent upon the students for support and maintenance.

Source. 2016, 257:1, eff. Jan. 1, 2017.

420–O:12 Penalties. Any institution of higher education that violates this chapter shall be subject to the penalties set forth in RSA 400–A:15 or such other section of the insurance code as may be applicable, including but not limited to RSA 420–J and RSA 417.

Source. 2016, 257:1, eff. Jan. 1, 2017.

TITLE LII

ACTIONS, PROCESS, AND SERVICE OF PROCESS

CHAPTER 507–B

BODILY INJURY ACTIONS AGAINST GOVERNMENTAL UNITS

507–B:2 Liability for Negligence. A governmental unit may be held liable for damages in an action to recover for bodily injury, personal injury or property damage caused by its fault or by fault attributable to it, arising out of ownership, occupation, maintenance or operation of all motor vehicles, and all premises; provided, however, that the liability of any governmental unit with respect to its sidewalks, streets, and highways shall be limited as provided in RSA 231 and the liability of any governmental unit with respect to publicly owned airport runways and taxiways shall be limited as set forth in RSA 422.

Source. 1975, 483:1. 1981, 376:2. 1991, 385:9, eff. Jan. 1, 1992.

CHAPTER 508

LIMITATION OF ACTIONS

508:17 Volunteers; Nonprofit Organizations; Liability Limited.

I. Any person who is a volunteer of a nonprofit organization or government entity shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury to any person if:

(a) The nonprofit organization or government entity has a record indicating that the person claiming to be a volunteer is a volunteer for such organization or entity; and

(b) The volunteer was acting in good faith and within the scope of his official functions and duties with the organization; and

(c) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the volunteer.

I–a. [Repealed.]

II. Liability of a nonprofit organization for damage or injury sustained by any one person in actions brought against the organization alleging negligence on the part of an organization volunteer is limited to $250,000. Such limit applies in the aggregate to any and all actions to recover for damage or injury sustained by one person in a single incident or occurrence. Liability of a nonprofit organization for damage or injury sustained by any number of persons in a single incident or occurrence involving negligence on the part of an organization volunteer is limited to $1,000,000.

III. Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization against any volunteer of such organization.

IV. Volunteer activity related to transportation or to care of the organization's premises shall be excepted from the provisions of paragraph I of this section.

V. In this section:

(a) "Damage or injury" includes physical, nonphysical, economic and noneconomic damage and property damage.

(b) "Nonprofit organization" shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation organized and operated exclusively for religious, cultural, charitable, scientific, recreational, literary, agricultural, or educational purposes, or to foster amateur competition in a sport formally recognized by the National Collegiate Athletic Association, and an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1986 organized or incorporated in this state or having a principal place of business in this state.

(c) "Volunteer" means an individual performing services for a nonprofit organization or government entity who does not receive compensation, other than reimbursement for expenses actually incurred for such services. In the case of volunteer athletic coaches or sports officials, such volunteers shall possess proper certification or validation of competence in the rules, procedures, practices, and programs of the athletic activity.

Source. 1988, 280:1. 1990, 116:1–3. 1998, 255:1, 2, eff. Jan. 1, 1999.

TITLE LIII

PROCEEDINGS IN COURT

CHAPTER 521–A

INTERPRETERS FOR THE DEAF

521–A:1 Definitions. As used in this chapter the following terms shall have the following meanings:

I. "Appointing authority" means the presiding justice of any court, the chairman of any board, commission or authority, and the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding wherein a qualified interpreter is required pursuant to this chapter.

II. "Deaf person" means any person whose hearing is so impaired as to seriously prohibit the person from processing linguistic information through hearing, with or without amplification, so as to require the use of an interpreter. This includes, but is not limited to, persons who are deaf, deaf and blind, or severely hard of hearing.

III. "Principal party in interest" means a person in any proceeding in which he is a named party or a person with respect to whom the decision or action which may be taken in any proceeding directly affects.

IV. "Qualified interpreter" means an interpreter licensed under RSA 326–I.

Source. 1977, 542:1. 1989, 51:2, 3. 2001, 232:4, eff. July 1, 2001.

521–A:2 Interpreter Required. At all stages of any proceeding before any court, department, board, commission, agency or licensing authority of the state; any political subdivision of the state; or any department, board, commission, agency or licensing authority of a political subdivision in which a deaf person is a principal party in interest the appointing authority shall appoint, upon request of the deaf principal, a qualified interpreter to interpret or to translate the proceedings to the deaf person and to interpret or translate his testimony.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:3 Interpreter Required in Criminal Matters. Whenever a deaf person is arrested for any alleged violation of criminal law where the penalty may include imprisonment or fine in excess of $100 or both, no attempt to interrogate or take a statement from such person shall be permitted until a qualified interpreter is appointed for said person and then only through the use of such interpreter.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:4 Preliminary Determination. No qualified interpreter shall be appointed in any case until the appointing authority makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person involved in the case.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:5 Interpreter to be Provided. Whenever any deaf person is a party to or receiving services from any health, welfare, or educational agency under the authority of the state or political subdivision of the state or municipality, the appointing authority shall appoint a qualified interpreter for the deaf to interpret or translate the actions of any personnel providing such service and to assist the deaf person in communicating with each person.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:6 Notice; Proof of Disability. Every deaf person whose appearance before a proceeding entitles him to an interpreter shall notify the appointing authority of his disability prior to any appearance and shall request at such time the services of an interpreter. An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of his disability when the appointing authority has reason to believe that the person is not so disabled.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:7 Coordination of Interpreter Requests.

[Repealed 2001, 232:5, I, eff. July 1, 2001.]

History

Former RSA 521–A:7, which was derived from 1977, 542:1 and 1994, 379:21, related to coordination of interpreter requests.

521–A:8 Compensation.

[Repealed 2001, 232:5, II, eff. July 1, 2001.]

521–A:8 Repealed

History

Former RSA 521–A:8, which was derived from 1977, 542:1 and 1994, 379:21, related to compensation for interpreters for the deaf.

521–A:9 Interpreter Permitted. Whenever a deaf person is interested in any administrative or judicial proceeding in which an interpreter would be required for a principal party in interest, he shall be entitled to utilize an interpreter to translate the proceeding for him and to assist him in presenting his testimony or comment.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:10 Oath of Interpreter. Every interpreter appointed pursuant to the provisions of this chapter, before entering upon his duties, shall take oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:11 Privileged Communications. Whenever a deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged and said person could not be compelled to testify as to the communications, said privilege shall apply to the interpreter as well.

Source. 1977, 542:1, eff. Sept. 13, 1977.

521–A:12 Compensation. A qualified interpreter appointed under this chapter shall be reimbursed by the appointing authority at a fixed rate reflecting the most recent fee schedule approved by the department of education, bureau of vocational rehabilitation. Nothing in this section shall be construed to prohibit any state department, board, commission, agency, or appointing authority, or any political subdivision of the state from employing a qualified interpreter on a full-time basis or under contract at a mutually agreed upon compensation rate.

Source. 2008, 6:1, eff. July 4, 2008.

TITLE LV

PROCEEDINGS IN SPECIAL CASES

CHAPTER 541

REHEARINGS AND APPEALS IN CERTAIN CASES

541:1 Definition. The word "commission" as here used means the public utilities commission, the milk sanitation board, or any state department or official concerning whose decision a rehearing or appeal is sought in accordance with the provisions of this chapter.

Source. RL 414:1. RSA 541:1. 1989, 138:8. 1996, 228:103, eff. July 1, 1996.

541:2 Uniform Procedure. When so authorized by law, any order or decision of the commission may be the subject of a motion for rehearing or of an appeal in the manner prescribed by the following sections.

Source. RL 414:2.

541:3 Motion for Rehearing. Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

Source. 1913, 145:18. PL 239:1. 1937, 107:14; 133:75. RL 414:3. RSA 541:3. 1994, 54:1, eff. Jan. 1, 1995.

541:4 Specifications. Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.

Source. 1913, 145:18. PL 239:2. 1937, 107:15; 133:76. RL 414:4.

541:5 Action on Motion. Upon the filing of such motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.

Source. 1913, 145:18. PL 239:3. 1937, 107:16; 133:77. RL 414:5.

541:6 Appeal. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

Source. 1913, 145:18. PL 239:4. 1937, 107:17; 133:78. RL 414:6.

541:7 Petition. Such petition shall state briefly the nature of the proceeding before the commission, and shall set forth the order or decision complained of, and the grounds upon which the same is claimed to be unlawful or unreasonable upon which the petitioner will rely in the supreme court.

Source. 1913, 145:18. PL 239:5. 1937, 107:18; 133:79. RL 414:7.

541:8 Parties. Any person or corporation whose rights may be directly affected by said appeal may appear and become a party, or the court may order such persons and corporations to be joined as parties as justice may require.

Source. 1913, 145:18. PL 239:6. 1937, 107:19; 133:80. RL 414:8.

541:9 Notice to Commission. Upon the filing of an appeal, the clerk of court shall issue an order of notice requiring the commission to file with the court a certified copy of the record in the proceeding, together with such of the evidence introduced before or considered by the commission as may be specified

by any party in interest, as well as such other evidence, so introduced and considered, as the commission may deem proper to certify, together with the originals or copies of all exhibits introduced in evidence before the commission.

Source. 1913, 145:18. PL 239:7. 1937, 107:20; 133:81. RL 414:9.

541:10 Other Notice. Such notice as the court may order shall also be given to persons and corporations who were parties to the proceeding before the commission, or who may be ordered joined by the court.

Source. 1913, 145:18. PL 239:8. 1937, 107:21; 133:82. RL 414:10.

541:11 Fees for Copies. The commission shall collect from the party making the appeal a fee of ten cents per folio of one hundred words for the copy of the record and such testimony and exhibits as shall be transferred, and five cents per folio for manifold copies, and shall not be required to certify the record upon any such appeal, nor shall said appeal be considered, until the fees for copies have been paid.

Source. 1915, 99:3. PL 239:9. 1937, 107:22; 133:83. RL 414:11.

541:12 Argument. Upon the filing of said copy of the record, evidence, and exhibits, the case shall be in order for argument at the next regular session of the court, unless the same be postponed for good cause shown.

Source. 1913, 145:18. PL 239:10. 1937, 107:23; 133:84. RL 414:12.

541:13 Burden of Proof. Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

Source. 1913, 145:18. PL 239:11. 1937, 107:24; 133:85. RL 414:13.

541:14 Additional Evidence. No new or additional evidence shall be introduced in the supreme court, but the case shall be determined upon the record and evidence transferred, except that in any case, if it shall be necessary in order that no party shall be deprived of any constitutional right, or if the court shall be of the opinion that justice requires the reception of evidence of facts which have occurred since the hearing, or which by reason of accident, mistake, or misfortune could not have been offered before the commission, it shall remand the case to the commission to receive and consider such additional evidence.

Source. 1913, 145:18. PL 239:12. 1937, 107:25; 133:86. RL 414:14. 1951, 203:13, eff. Sept. 1, 1951.

541:15 Action of Commission. Upon receipt of such evidence, the commission shall consider the same and may alter, modify, amend, or rescind the order or decision appealed from, and shall report its action thereon to the court within said twenty days.

Source. 1913, 145:18. PL 239:15. 1937, 107:28; 133:89. RL 414:17.

541:16 Subsequent Proceedings. If the commission shall rescind the order appealed from the appeal shall be dismissed; if it shall alter, modify, or amend the same such altered, modified, or amended order shall take the place of the original order complained of, and the court shall render judgment with reference thereto in said appeal as though said order had been made by the commission in the first instance, after allowing any amendments of the pleadings or other incidental proceedings desired by the parties which the changed situation may require.

Source. 1913, 145:18. PL 239:16. 1937, 107:29; 133:90. RL 414:18.

541:17 Evidence, How Considered. All evidence transferred by the commission shall be considered by the court regardless of any technical rule which might have rendered the same inadmissible if originally offered in the trial of an action at law.

Source. 1913, 145:18. PL 239:17. 1937, 107:30; 133:91. RL 414:19. 1951, 203:15, eff. Sept. 1, 1951.

541:18 Suspension of Order. No appeal or other proceedings taken from an order of the commission shall suspend the operation of such order; provided, that the supreme court may order a suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension; but no order of the public utilities commission providing for a reduction of rates, fares, or charges or denying a petition for an increase therein shall be suspended except upon conditions to be imposed by the court providing a means for securing the prompt repayment of all excess rates, fares, and charges over and above the rates, fares, and charges which shall be finally determined to be reasonable and just.

Source. 1913, 145:18. PL 239:18. 1937, 107:31; 133:92. RL 414:20. 1951, 203:16, eff. Sept. 1, 1951.

541:19 Conditions. Any order of the court suspending an order of the public utilities commission fixing rates, fares, charges, or prices shall, among other things, provide that the public utility affected

by the order suspended shall keep such accounts as shall suffice to show the amount being collected by such public utility, pending the appeal, in excess of the amounts which it would have collected if the order or decree of the commission had not been suspended, and shall provide such means as the court shall determine to secure the prompt repayment of all excess rates, fares and charges over and above the rates, fares and charges which shall finally be determined to be reasonable and just.

Source. 1913, 145:18. PL 239:19. 1937, 107:32; 133:93. RL 414:21. 1951, 203:17, eff. Sept. 1, 1951.

541:20 Contempt of Court. Whenever there is occasion after final decision for the distribution of said excess, any violation on the part of any public utility, or of the officers or members thereof, of the order of the court providing for the repayment of said excess may be punished as a contempt of court.

Source. 1951, 203:18. RL 414:21–a.

541:21 Exceptions. The provisions of this chapter shall not apply to appeals from the assessment of damages in eminent domain proceedings, but such appeals shall be taken and prosecuted as otherwise provided.

Source. 1951, 203:19. RL 414:21–b.

541:22 Remedy Exclusive. No proceeding other than the appeal herein provided for shall be maintained in any court of this state to set aside, enjoin the enforcement of, or otherwise review or impeach any order of the commission, except as otherwise specifically provided.

Source. 1913, 145:18. PL 239:22. 1937, 107:33; 133:94. RL 414:22.

CHAPTER 541–A

ADMINISTRATIVE PROCEDURE ACT

541–A:1 Definitions. In this chapter:

I. "Adjudicative proceeding" means the procedure to be followed in contested cases, as set forth in RSA 541–A:31 through RSA 541–A:36.

II. "Agency" means each state board, commission, department, institution, officer, or any other state official or group, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.

III. "Committee" means the joint legislative committee on administrative rules, unless the context clearly indicates otherwise.

IV. "Contested case" means a proceeding in which the legal rights, duties, or privileges of a party

are required by law to be determined by an agency after notice and an opportunity for hearing.

V. "Declaratory ruling" means an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency.

V–a. "Electronic document" means a document which complies with requirements established in the drafting and procedures manual under RSA 541–A:8. For electronic documents, a requirement during the rulemaking process for a signature accompanying the filing of an electronic document shall be met if such signature complies with the requirements of RSA 294–E.

VI. "File" means the actual receipt, by the director of legislative services, of a paper or electronic document required to be submitted during a rulemaking process established by this chapter. The term "file" shall also apply to any other response, submission, or written explanation required during a rulemaking process established by this chapter.

VI–a. "Final legislative action" means the defeat of a joint resolution sponsored by the legislative committee on administrative rules pursuant to RSA 541–A:13, VII(b) in either the house or the senate, or the failure of the general court to override the governor's veto of the joint resolution.

VII. "Fiscal impact statement" means a statement prepared by the legislative budget assistant, using data supplied by the rulemaking agency, and giving consideration to both short- and long-term fiscal consequences and includes the elements required by RSA 541–A:5, IV.

VII–a. "Form" means a document that establishes a requirement for persons outside the agency to provide information to an agency and the format in which such information must be submitted. The term does not include any document, regardless of what the document is called, that (a) is provided by an agency to facilitate the submission of information that is required to be submitted to the agency by federal or state statute, regulation, or rule and does not add to or modify such requirement or (b) that is used only by the agency to provide information to persons outside the agency.

VII–b. "Internet content" means material that exists only on a website on the Internet.

VIII. "License" means the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.

IX. "Licensing" means the agency process relative to the issuance, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license, or the imposition of terms for the exercise of a license.

X. "Nonadjudicative processes" means all agency procedures and actions other than an adjudicative proceeding.

XI. "Order" means the whole or part of an agency's final disposition of a matter, other than a rule, but does not include an agency's decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation.

XII. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.

XIII. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

XIV. "Presiding officer" means that individual to whom the agency has delegated the authority to preside over a proceeding, if any; otherwise it shall mean the head of the agency.

XV. "Rule" means each regulation, standard, form as defined in paragraph VII–a, or other statement of general applicability adopted by an agency to (a) implement, interpret, or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies. The term does not include (a) internal memoranda which set policy applicable only to its own employees and which do not affect private rights or change the substance of rules binding upon the public, (b) informational pamphlets, letters, or other explanatory material which refer to a statute or rule without affecting its substance or interpretation, (c) personnel records relating to the hiring, dismissal, promotion, or compensation of any public employee, or the disciplining of such employee, or the investigating of any charges against such employee, or (d) declaratory rulings. The term "rule" shall include rules adopted by the director of personnel, department of administrative services, relative to the state employee personnel system. Notwithstanding the requirements of RSA 21–I:14, the term "rule" shall not include the manual described in RSA 21–I:14, I or the standards for the format, content, and style of agency annual and biennial reports described in RSA 21–I:14, IX, which together

comprise the manual commonly known as the administrative services manual of procedures. The manual shall be subject to the approval of governor and council.

XVI. "Standing policy committee" means a committee listed in rules of the house of representatives or the senate to which legislation including rulemaking authority was originally referred for hearing and report.

Source. 1994, 412:1, eff. Aug. 9, 1994. 2000, 288:2. 2006, 145:2, eff. July 21, 2006. 2009, 232:1, 2, eff. Jan. 1, 2010. 2010, 123:1, eff. July 1, 2010 at 12:01 a.m.; 123:2, eff. June 9, 2010. 2012, 62:1, eff. July 13, 2012.

541–A:2 Joint Legislative Committee on Administrative Rules.

I. There is hereby created a joint legislative committee to be known as the joint legislative committee on administrative rules. The committee shall be composed of 10 members of the general court and 10 alternates to be appointed for 2-year terms ending on the first Wednesday in December of even-numbered years as follows: 5 members of the house of representatives, appointed by the speaker of the house in consultation with the minority leader, not more than 3 of whom shall be from the same party; 5 members of the senate, appointed by the senate president in consultation with the minority leader, not more than 3 of whom shall be from the same party; 5 alternate members of the house of representatives appointed by the speaker of the house in consultation with the minority leader, not more than 3 of whom shall be from the same party; and 5 alternate members of the senate, appointed by the senate president in consultation with the minority leader, not more than 3 of whom shall be from the same party. If a member of the committee is unable, for any reason, to attend a meeting or a portion of a meeting of the committee, the chair shall designate an alternate member to serve regardless of the number of other senators or representatives who attend the meeting. The committee shall elect a chair and a vice-chair from among its members, provided that the chair shall rotate biennially between the house and senate members.

II. The joint legislative committee on administrative rules shall meet at least once each month and more often as necessary for the prompt discharge of its duties. The director of legislative services shall provide services to the committee. The joint legislative committee on administrative rules shall adopt rules to govern its operation and organization. A quorum of the committee shall consist of 6 members. Members of the committee shall be entitled to legislative mileage as provided to members for attendance at sessions of the general court.

III. The committee may hold public hearings on a proposed or previously adopted rule on its own initiative. The committee shall give public notice of any hearing at least 7 days in advance in the rulemaking register. Any public hearing shall be scheduled at a time and place chosen to afford opportunity for affected persons to present their views. The committee may consult with the standing legislative committee having jurisdiction in the area of the rule under review.

IV. In addition to its ongoing review of proposed and adopted rules, the committee shall:

(a) Petition an agency under RSA 541–A:4 to adopt rules if the agency has clear rulemaking authority which it has not used.

(b) Review statutory passages granting rulemaking authority. On the basis of this review, the committee shall, before each regular legislative session, make written recommendations to the president of the senate and the speaker of the house as to how such passages should be amended to eliminate confusing, inefficient, or unnecessary statutory language.

(c) Make written recommendations, when appropriate, to the president of the senate and the speaker of the house as to how the legislative oversight of rulemaking might be improved. These recommendations may include proposed amendments to RSA 541–A.

(d) Have the authority to amend and provide the final approval of the drafting and procedure manual developed by the director of legislative services and the commissioner of administrative services under RSA 541–A:8.

(e) Notify the chairpersons of appropriate standing committees of the general court in writing when committee recommendations are made to agencies relative to legislation as a result of reviewing proposed and adopted rules.

(f) Make written recommendations, when appropriate, to the president of the senate, the speaker of the house of representatives, and the chairs of standing committees of the general court having jurisdiction over the subject matter of an agency concerning the amendment or repeal of the statutory authority of an agency that has enforced rules which are not effective or not otherwise valid, or that has not commenced rulemaking or adopted rules as required by statute.

(g) Establish, in consultation with the director of the office of legislative services, a pilot program authorizing procedures for electronic filing by agencies. Notwithstanding RSA 541–A:1, VI, the committee shall permit electronic filing or submissions by selected agencies pursuant to criteria established in the pilot program.

Source. 1994, 412:1. 2000, 288:3. 2002, 150:5; 217:7. 2003, 319:160, eff. July 1, 2003. 2009, 230:3, eff. Sept. 14, 2009. 2010, 123:3, eff. June 9, 2010.

541–A:3 Procedure for Adoption of Rules. Except for interim or emergency rules, an agency shall adopt a rule by:

I. Filing a notice of the proposed rule under RSA 541–A:6, including a fiscal impact statement and a statement that the proposed rule does not violate the New Hampshire constitution, part I, article 28–a;

II. Providing notice to occupational licensees or those who have made timely requests for notice as required by RSA 541–A:6, III;

III. Filing the text of a proposed rule under RSA 541–A:10;

IV. Holding a public hearing and receiving comments under RSA 541–A:11;

V. Filing a final proposal under RSA 541–A:12;

VI. Responding to the committee when required under RSA 541–A:13; and

VII. Adopting and filing a final rule under RSA 541–A:14.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:3–a Specificity of Rules; Identification of State or Federal Law.

I. If an agency proposes a rule pursuant to RSA 541–A:3 or 541–A:19, the agency shall identify the specific section or sections of state or federal statutes or regulations which the rule is intended to implement in the notice required pursuant to RSA 541–A:6 and 541–A:19, II, and either in the rule, or in a separate cross-reference table pursuant to paragraph II. The notice shall be in such form as the director of legislative services shall prescribe until otherwise provided by the drafting and procedure manual adopted pursuant to RSA 541–A:8. The identification in the rule shall be made in the manner specified in the drafting and procedure manual.

II. If the specific section or sections of state statute or federal statute or regulation required by paragraph I are not identified in the rule itself, the agency shall file the information in a separate cross-reference table with each filing of the proposed or adopted rule other than an emergency rule. The agency shall make the table available to the public with a proposed or adopted rule whenever the rule is made available to or requested by the public. Unless otherwise specified by the drafting and procedure manual, the table shall be filed as an appendix to the rule and, when the rule is published pursuant to RSA 541–A:15, shall be published as an appendix to the rule chapter containing the rule. The table shall not be required to be filed on a separate page.

III. General references to the name or title of a state or federal statute or regulation shall not suffice for the purposes of this section. To the extent that specific provisions of the proposed rule are designed to implement different sections or provisions of state or federal statutes or regulations, the agency shall reference the state or federal statute or regulation as provided in paragraph I, with the provision of the proposed rule that is intended to implement that statute or regulation.

Source. 1998, 347:1. 2006, 145:3, eff. July 21, 2006.

541–A:3–b Restriction on Rules Incorporating Documents by Reference. No agency may propose or adopt a rule under RSA 541–A:3 or RSA 541–A:19 that incorporates by reference any code, rule, or document from another state government without specific authority in the authorizing legislation or specific legislative approval for such a rule.

Source. 2003, 137:1, eff. Jan. 1, 2004.

541–A:4 Petition for Adoption of Rules.

I. Any interested person may petition an agency to adopt, amend, or repeal a rule. Within 30 days of receiving the petition, or 30 days after the next scheduled meeting of a board, commission, or group receiving the petition, the agency shall determine whether to grant or deny the petition and notify the petitioner. If the agency decides to deny the petition, the agency shall notify the petitioner of its decision in writing and shall state its reasons for denial. If the agency grants the petition, it shall notify the petitioner and commence the rulemaking proceeding by requesting a fiscal impact statement pursuant to RSA 541–A:5 within 120 days of receipt of the petition and continuing the proceeding as specified in RSA 541–A:3.

II. Notwithstanding paragraph I, if the committee petitions an agency to adopt, amend, or repeal a rule, and the agency does not notify the committee that rulemaking has commenced within one year of receiving the petition, or does not file a final proposal under RSA 541–A:12 within 2 years of receiving the

petition, the committee may file legislation to repeal the agency's rulemaking authority or otherwise amend the agency authority.

Source. 1994, 412:1. 2000, 288:4, eff. July 1, 2000. 2016, 63:1, eff. July 4, 2016.

541–A:5 Fiscal Impact Statements.

I. The agency shall provide the legislative budget assistant with adequate details of the intended action and supporting data to enable the legislative budget assistant to prepare a fiscal impact statement.

II. The legislative budget assistant shall develop a form which shall specify the details and supporting data necessary to assess the fiscal impact of the intended action. The fiscal impact of a proposed rule which was previously effective but has expired, or of a proposed rule which adopts a current agency policy, procedure, or practice as a rule for the first time, shall not be assessed as an existing rule but as a proposed rule which is not yet effective.

III. The legislative budget assistant shall establish a schedule of deadlines for submission of the fiscal impact form, and the agency shall file the completed form with the legislative budget assistant in accordance with such deadlines.

IV. The fiscal impact statement issued by the legislative budget assistant shall not be limited to dollar amounts, but shall include a discussion of the methodology used to reach any stated amounts. In addition, the fiscal impact statement shall consist of:

(a) A narrative stating the costs and benefits to the citizens of the state and to the political subdivisions of the intended action.

(b) A conclusion as to the cost or benefit to the state general fund or any state special fund of taking the intended action.

(c) An explanation of, and citation to, the federal mandate for the intended action, if there is such a mandate, and how that mandate affects state funds.

(d) A comparison of the cost of the intended action with the cost of the existing rule, if there is an existing rule, and, to the extent that the proposed rule had expired, indicating the cost of the expired rule and, if applicable, the difference in cost of any proposed change from the expired rule.

(e) An analysis of the general impact of the intended action upon any independently owned businesses, including a description of the specific reporting and recordkeeping requirements upon small businesses which employ fewer than 10 employees.

V. All agencies are directed to cooperate with the legislative budget assistant in the preparation of fiscal impact statements.

VI. Agencies shall also obtain an amended fiscal impact statement from the legislative budget assistant only if as a result of notice and hearing a change has been made which affects the original fiscal impact statement. Agencies shall file the amended fiscal impact statement as part of the final proposal pursuant to RSA 541–A:12, II.

VII. In this section, "intended action" means the proposed adoption, amendment, readoption, readoption with amendment, or repeal of a rule pursuant to RSA 541–A, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541–A:8.

Source. 1994, 412:1. 2000, 288:5, 6. 2001, 110:1, eff. Aug. 25, 2001. 2015, 234:1–3, eff. Sept. 11, 2015.

541–A:6 Notice of Rulemaking Proceedings.

I. The agency shall give at least 20 days' notice of its intent to hold a public hearing and shall also give notice of the cut-off date for the submission of written testimony pursuant to RSA 541–A:11, I, on any proposed adoption, amendment, readoption, readoption with amendment, or repeal of a rule. The notice periods shall begin on the day after the date of publication in the rulemaking register. The notice shall be in such form as the director of legislative services shall prescribe and shall include:

(a) The name and address of the agency.

(b) The statutory authority for the rule.

(c) Whether the intended action is an adoption, amendment, repeal, readoption, or readoption with amendment.

(d) The rule number and title.

(e) The date of the first agency public hearing and the cut-off date for the submission of written materials to the agency.

(f) If existing rules are being amended, readopted, or readopted with amendment, a concise summary of the existing rules and any proposed amendments, and if the proposed rules are being adopted, a concise summary of the proposed rules.

(g) A listing of people, enterprises, and government agencies affected by the rule.

(h) The name, address, and telephone number of an individual in the agency able to answer questions on the proposed rule.

(i) The fiscal impact statement completed by the legislative budget assistant.

(j) A statement, with adequate details and supporting data, that the proposed rule does not violate the New Hampshire constitution, part I, article 28–a.

II. The director of legislative services may refuse to publish a notice if the director determines that there is significant noncompliance with the requirements of paragraph I. In this paragraph, "significant noncompliance" means one or more errors of such magnitude that a reasonable person would not be able to discern what rules are the subject of the rulemaking proceeding and/or what the agency is proposing to do. The term includes the absence of elements required by paragraph I.

III. The agency shall send notice to the director of legislative services, to all persons regulated by the proposed rules who hold occupational licenses issued by the agency, and to all persons who have made timely request for advance notice of rulemaking proceedings. Upon request the agency shall send notice to the president of the senate, to the speaker of the house of representatives, and to the chairpersons of the legislative committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days before the first agency public hearing required by RSA 541–A:11, I. Notice to occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public notice advertisement in a publication of daily statewide circulation, or in such other manner that is reasonably calculated to inform such licensees of the proposed rulemaking. The committee may identify additional methods of notifying occupational licensees that are deemed sufficient.

Source. 1994, 412:1. 1998, 213:1. 2000, 288:7. 2006, 145:4, eff. July 21, 2006. 2011, 252:1, 2, eff. Sept. 11, 2011. 2012, 247:37, eff. Aug. 17, 2012.

541–A:7 Style of Rules. Rules shall be written in a clear and coherent manner using words with common and everyday meanings for those persons who engage in the activities that are regulated by the rules, which may include technical language as necessary.

Source. 1994, 412:1. 2006, 145:5, eff. July 21, 2006.

541–A:8 Drafting and Procedure Manual. Each agency shall conform to a drafting and procedure manual for rules, including agency forms, developed by the director of legislative services and the commissioner of administrative services, subject to amendment and final approval by the committee. The director may require any agency to rewrite any rule, including any agency form, submitted for filing to conform to this manual until that rule is adopted and filed under RSA 541–A:14 or RSA 541–A:19 or the form is adopted pursuant to RSA 541–A:19–b.

Source. 1994, 412:1. 2000, 288:8, eff. July 1, 2000. 2015, 234:4, eff. Sept. 11, 2015.

541–A:9 Rulemaking Register.

I. The director of legislative services shall publish weekly a rulemaking register which shall contain:

(a) Notice of intended rulemaking actions.

(b) Notice of rules adopted under RSA 541–A:14, RSA 541–A:18, and RSA 541–A:19.

(c) Executive orders and non-confidential opinions of the attorney general under RSA 541–A:28.

(d) Final objections under RSA 541–A:13, V.

(e) Notices of continued or postponed public comment hearings under RSA 541–A:11.

(f) Notices of declaratory rulings issued pursuant to rules adopted under RSA 541–A:16, I(d).

(g) Notice for the submission of comments on possible rulemaking under RSA 541–A:11, VIII.

(h) Publication of notice of the list of regulated toxic air pollutants and classifications by the department of environmental services under RSA 125–I:4.

(i) At the request of any agency, any other notices or documents related to rulemaking, at the discretion of the director.

(j) A list of proposals filed under RSA 541–A:12, I and proposed interim rules filed under RSA 541–A:19, II, and placed on the agenda for committee review at a regularly scheduled or special committee meeting.

I–a. Prior to publication and with prior notice to the agency, the director of legislative services may correct typographical, spelling, and punctuation errors, as well as unintentional errors in references and citations in a submission, provided the corrections do not affect the substance of the notice.

I–b. The date of publication of the rulemaking register shall be the date on which the register is available to the public on the general court information services web site.

II. The rulemaking register shall be made available upon request to agencies and officials of this state free of charge. The director of legislative services shall send a paper or electronic copy of the rulemaking register upon request to the clerk of each municipality in the state and upon request to any member of the general court free of charge. Municipalities and members of the general court shall be deemed to have requested an electronic copy unless a

paper copy is specifically requested. Paper copies of the register which are sent to municipalities and to members of the general court shall be sent by first-class mail.

III. Paper copies of the register shall also be made available upon request to other persons at prices fixed by the director of legislative services to cover mailing and publication costs.

Source. 1994, 412:1. 1996, 279:6. 2000, 288:9, eff. July 1, 2000. 2011, 252:3, 4, eff. Sept. 11, 2011.

541–A:10 Filing of Proposed Rule Text; Establishing and Revising Text.

I. At the same time the notice required by RSA 541–A:6, I is filed, the agency shall file the text of the proposed rule with the director of legislative services. The text of the proposed rules as filed by the agency pursuant to RSA 541–A:3, III shall not be changed prior to the hearing held pursuant to RSA 541–A:11, I(a).

II. The agency shall not establish the text of the final proposal until after the conclusion of the public comment period established pursuant to RSA 541–A:11, I(b). If the agency elects to solicit comment pursuant to RSA 541–A:11, I(c), the agency shall prepare a draft final proposal that is annotated to show how the rules as initially proposed are proposed to be changed. In response to comment received, the agency may revise the draft prior to filing the final proposal in accordance with RSA 541–A:12.

Source. 1994, 412:1, eff. Aug. 9, 1994. 2011, 107:1, eff. July 30, 2011; 252:5, eff. Sept. 11, 2011. 2015, 234:5, eff. Sept. 11, 2015. 2017, 156:207, eff. July 1, 2017.

541–A:11 Public Hearing and Comment.

I. (a) Each agency shall hold at least one public hearing on all proposed rules filed pursuant to RSA 541–A:3 and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or arguments in writing or, if practicable for the agency, in electronic format, in accordance with the terms of the notice filed pursuant to RSA 541–A:3, I and the provisions of this section. The office of legislative services shall provide oral or written comments on potential bases for committee objection under RSA 541–A:13, IV in a form and manner determined by the director of the office of legislative services. Each agency shall require all materials submitted in writing to be signed by the person who submits them, and the agency shall transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic mail, or other electronic format. Copies of the proposed rule shall be available to the public under RSA 91–A and at least 5 days prior to the date of the hearing.

(b) For rules proposed by a board or commission, a period of at least 5 business days after the hearing shall be provided for the submission of materials in writing or in electronic format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice, the deadline for the submission of such materials shall not be earlier than the scheduled conclusion of the public hearing. For rules proposed by an agency official, a period of at least 5 business days after the hearing shall be provided in all instances. If a hearing is continued or postponed as provided in paragraph III or IV of this section, the period for the submission of materials in writing or in electronic format shall be extended unless the previously-established deadline meets the applicable requirement specified above.

(c) An agency may hold a public hearing or otherwise solicit public comment on a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541–A:3, V. Notice of such hearing or comment period shall be provided by such means as are deemed appropriate to reach interested persons, which may include publishing a notice in the rulemaking register.

II. For rules proposed by a board or commission, each hearing shall be attended by a quorum of its members. For rules proposed by an agency official, each hearing shall be held by the official having the rulemaking authority, or designee, who shall be knowledgeable in the particular subject area of the proposed rules.

III. To provide reasonable opportunity for public comment, the agency may continue a public hearing past the scheduled time or to another date, or may extend the deadline for submission of written comment. If the agency continues the hearing or extends the deadline, it shall notify the public by any means it deems appropriate, including notice in the rulemaking register whenever practicable.

IV. A public comment hearing may be postponed in the event of any of the following:

(a) Inclement weather.

(b) Illness or unavoidable absence of the official with rulemaking authority.

(c) Lack of a quorum due to illness or unavoidable absence.

(d) Determination by the agency that postponement of the public comment hearing shall facilitate

greater participation by the public. If a public comment hearing is postponed, the agency shall provide notice in the rulemaking register at least 5 days before such postponed public comment hearing, and may also provide notice by any other means it deems appropriate.

V. A public comment hearing may be moved to another location if the agency determines for any reason that the original location is not able to accommodate the public. If changing the location does not also necessitate a change in the date of the public comment hearing, the agency shall post notice of the new location at the originally scheduled facility. If changing the location necessitates a change in the date of the public comment hearing, the agency shall provide notice as required by paragraph IV.

VI. On request, the agency shall promptly provide a copy of any rule as filed with the director at any stage in the rulemaking process. If the copy is mailed, it shall be sent not later than the end of the third working day after the request is received. The agency may, pursuant to RSA 91–A:4, IV, charge the actual cost of providing such copy.

VII. If requested by an interested person at any time before 30 days after final adoption of a rule, the adopting authority shall issue an explanation of the rule. The explanation shall include:

(a) A concise statement of the principal reasons for and against the adoption of the rule in its final form.

(b) An explanation of why the adopting authority overruled the arguments and considerations against the rule.

VIII. In addition to seeking information by other methods, an agency, before publication of a notice of proposed rulemaking under RSA 541–A:6, may solicit comments from the public on a subject matter of possible rulemaking under active consideration within the agency by causing notice to be published in the rulemaking register of the subject matter and indicating where, when, and how persons may provide comment on the rules under consideration.

Source. 1994, 412:1. 2000, 288:10, 11. 2003, 319:161, eff. July 1, 2003. 2011, 252:6, eff. Sept. 11, 2011.

541–A:12 Filing Final Proposal.

I. After fully considering public comment and any committee comments or comments by the office of the legislative services received pursuant to RSA 541–A:11, and any other relevant information, a quorum of the members of the agency or the agency official having rulemaking authority shall establish the text of the final proposed rule. After the text of the final proposed rule has been established, the agency shall file the final proposal no earlier than 21 days and no later than 150 days after the date of publication of the notice in the rulemaking register. If an agency is required to rewrite a rule in accordance with RSA 541–A:8, the agency shall have up to 180 days after the date of publication of the notice in the rulemaking register to file the final proposal. The agency shall file the final proposal with the director of legislative services. Final proposals filed no later than 14 days before a regularly scheduled committee meeting shall be placed on the agenda for that meeting. Final proposals filed fewer than 14 days before a regularly scheduled committee meeting shall be placed on the agenda of the following regularly scheduled committee meeting.

I–a. If an agency chooses to receive and respond to comments before the committee meeting as specified in RSA 541–A:13, II(a) and (b), the agency shall file the final proposal with a request that the final proposal be reviewed by the office of legislative services and placed on the agenda for the next regularly scheduled committee meeting or special meeting that is at least 28 days but no more than 60 days after the date that the final proposal is filed. The final proposal and request shall be filed at least 14 days prior to the first regularly scheduled committee meeting at which the request may be considered. The committee shall notify the agency in writing of its approval or denial of the request.

II. The final proposal shall include:

(a) A cover sheet listing:

(1) The number of the notice and the date the notice appeared in the rulemaking register;

(2) The name and address of the agency;

(3) The title and number of the rule; and

(4) A citation to the statutory authority for the rule.

(b) One copy of the established text of the final proposed rule.

(c) If required pursuant to RSA 541–A:5, VI, an amended fiscal impact statement from the legislative budget assistant stating that as a result of notice and hearing the rule did change and explaining how this change affects the original fiscal impact statement.

(d) A copy of the fixed text of the final proposed rule annotated clearly to show how the final proposed rule differs from the rule as initially proposed, if the text has changed.

III. An agency may establish requirements in its rules by citing to a document or to Internet content prepared by an unrelated third party. If state-enforceable requirements are so established, the agency shall file an incorporation by reference statement as specified in paragraph IV with the final proposal. No agency shall incorporate by reference any document or Internet content prepared by or on behalf of the agency, provided that documents prepared by a group or association of which the agency is a member may be incorporated by reference.

IV. Any incorporation by reference statement required by paragraph III shall include a statement signed by the adopting authority:

(a) Certifying that the text of the incorporated document or Internet content has been reviewed by the agency, with the name of the reviewing official;

(b) Explaining how the text of the incorporated document or Internet content can be obtained by the public, and at what cost;

(c) Explaining any modifications to the incorporated document or Internet content;

(d) Discussing the comparative desirability of reproducing the incorporated document or Internet content in full in the text of the rule; and

(e) Certifying that the agency has the capability and the intent to enforce the requirements being incorporated.

V. If an agency establishes requirements by incorporating undated Internet content by reference, the agency shall make a read-only copy of the incorporated Internet content no later than the date of filing the incorporation by reference statement, and make the dated copy available to the public.

VI. Each agency shall, upon request for a copy of any document or Internet content incorporated by reference in the agency's rules, make available for inspection any such document or downloaded Internet content.

VII. Each agency shall include the information required in subparagraph IV(b) as an appendix with each filing of the proposed or adopted rule. The agency shall make the information available to the public with a proposed or adopted rule whenever the rule is made available to or requested by the public. When the rule is published pursuant to RSA 541–A:15, the information shall be published as an appendix to the rule chapter containing the rule with a reference in the rule to the appendix. The information shall not be required to be filed on a separate page.

Source. 1994, 412:1. 2000, 288:12. 2001, 110:2. 2003, 319:162, eff. July 1, 2003. 2011, 252:7, eff. Sept. 11, 2011. 2012, 62:2, eff. July 13, 2012. 2016, 63:2, eff. July 4, 2016.

541–A:13 Review by the Joint Legislative Committee on Administrative Rules.

I. The committee shall either approve the rule or enter a conditional approval or objection under paragraph V within 45 days of the filing of a final proposal under RSA 541–A:12, I, unless the deadline is waived for good cause pursuant to RSA 541–A:40. The committee shall either approve the rule or enter a conditional approval or objection under paragraph V within 60 days of the filing of a final proposal under RSA 541–A:12, I–a, unless the deadline is waived for good cause pursuant to RSA 541–A:40. Objections to a rule may be made only once.

II. (a) If an agency has filed a final proposal and the committee has granted the agency's request, pursuant to RSA 541–A:12, I–a, the director of legislative services shall notify the agency of any potential bases for committee objection identified by the office of legislative services by forwarding a copy of the final proposal with the counsel's comments noted thereon at least 14 days prior to the committee meeting at which the proposal will be considered.

(b) In response to the comments, an agency may then file a proposed amended final proposal with the director for review by the committee and request that the committee approve the rule as amended. Both the request and the amendment shall be in writing and shall be filed at least 7 days prior to the regularly scheduled meeting or special meeting for which the final proposal has been placed on the agenda.

(c) The committee may:

(1) Approve the rule as originally filed;

(2) Approve the rule with amendment; or

(3) Act under paragraph V.

(d) If the committee approves the rule as filed pursuant to RSA 541–A:12, or with amendment, it shall notify the agency in writing of its approval.

(e) Failure to give notice of either approval, conditional approval, or objection at the end of the 45-day or 60-day period under paragraph I shall be deemed approval.

III. If the rule is approved under subparagraph II(c) or (e), the agency may adopt the rule.

IV. The committee may object to a proposed rule if the rule is:

(a) Beyond the authority of the agency;

(b) Contrary to the intent of the legislature;

(c) Determined not to be in the public interest; or

(d) Deemed by the committee to have a substantial economic impact not recognized in the fiscal impact statement.

V. The following procedures shall govern committee objections:

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

(b) If the committee objects to the final proposal as filed or as amended pursuant to paragraph II, the committee shall send the agency a preliminary written objection stating the basis for the objection. A preliminary objection or conditional approval shall require the assent of a majority of the votes cast, a quorum being present. If a preliminary objection is made, the committee may send a copy of the preliminary objection to the appropriate house and senate standing policy committees and, if so, shall give notice to the agency. Within 30 days of the date the preliminary objection was entered, the standing policy committees at properly convened executive sessions shall review the proposed rules and the preliminary objection and shall adopt recommendations or comments relative to the basis for the preliminary objection and shall communicate the same to the committee.

(c) The agency shall respond to the preliminary objection by withdrawing the rule, by amending the rule to remove the basis for objection, or by making no change. The agency shall respond to a committee objection only once, and shall report its response in writing to the committee within 45 days of the committee's vote to make a preliminary objection. Failure to respond to the committee in accordance with this subparagraph shall mean the rulemaking procedure for that proposed rule is invalid; however, the agency is not precluded from initiating the process over again for a similar rule. After receipt of the agency response, the committee may modify its objections made under paragraph IV or approve the rule.

(d) After submitting its preliminary objection response and prior to the final committee vote on the final proposal, and in all cases, prior to the adoption of the rule by the agency, the agency may request that the committee approve the rule with further amendment or issue a revised objection. The committee may approve the rule with further amendment only if the agency submits the request and proposed amendment, in writing to the committee at least 7 days prior to the committee meeting at which the agency presents the rule. Submission of such a request shall not preclude the agency from requesting a revised objection if the committee does not approve the rule as requested.

(e) A revised objection may be made only once by the committee and may be made only at the request of the agency. The agency shall respond and the committee may review the response in the same manner as a preliminary objection. No further amendment may be made by the agency after it responds to the committee except as provided in RSA 541–A:14, II.

(f) If the agency responds but the basis for the committee's preliminary or revised objection has not been removed or the response creates a new basis for objection, the committee may, by majority vote of the entire committee, file a final objection. The final objection shall be filed in certified form with the director of legislative services for publication in the next issue of the rulemaking register.

VI. After a final objection by the committee to a provision in the rule is filed with the director under subparagraph V(f), the burden of proof shall be on the agency in any action for judicial review or for enforcement of the provision to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is in the public interest, or does not have a substantial economic impact not recognized in the fiscal impact statement. If the agency fails to meet its burden of proof, the court shall declare the whole or a portion of the rule objected to invalid. The failure of the committee to object to a rule shall not be an implied legislative authorization of its substantive or procedural lawfulness.

VII. (a) The provisions of this paragraph may be used by the committee as an alternative to or in addition to the final objection procedure employed by the committee in paragraph V.

(b) If an agency responds to a preliminary or revised objection but the basis for objection has not been removed or the response creates a new basis for objection, the committee may, within 50 days from the date on which the objection response was due and by majority vote of the entire committee, recommend legislative action through sponsorship of a joint resolution to implement its recommendation. Such vote shall prevent the rule from being adopted and filed by the agency for the period of time specified in subparagraph VII(c).

(c) If the committee votes to sponsor a joint resolution pursuant to subparagraph VII(b), the joint resolution shall be introduced in the house of representatives or senate within 20 business days of such vote when the general court is in session and 20 business days of the start of the following legislative session if such vote occurs when the general court is not in session. If a joint resolution is not introduced within this time frame, the agency may adopt the rule. If a joint resolution is introduced within this time frame, the agency shall be prevented from adopting and filing such rule until final legislative action is taken on the resolution or the passage of 90 consecutive calendar days during which the general court shall have been in session, whichever occurs first. The 90 calendar day period shall commence on the date such joint resolution has been introduced. If the session of the general court adjourns prior to the sixtieth calendar day after such joint resolution has been introduced, then the agency shall be prevented from adopting and filing such rule until 90 calendar days, beginning with the next session of the general court, have passed.

(d) The provisions of this paragraph shall apply to only the specific portion of the agency's rule identified in the joint resolution. The provisions of this paragraph shall not prevent an agency from adopting and filing the remainder of the rules in the final proposal under RSA 541–A while the committee pursues legislative action under this paragraph, nor shall it prevent the committee from also voting to enter a final objection pursuant to paragraph V.

(e) Nothing in this section shall prevent the general court from introducing legislation which addresses any matter included in a joint resolution introduced under the provisions of this section.

(f) Notwithstanding any house or senate rules to the contrary, a joint resolution which the committee votes to sponsor under subparagraph VII(b) may be introduced at any time during the legislative session. It shall be subject to the same rules as any other bill introduced at the beginning of the legislative session.

Source. 1994, 412:1. 2000, 288:13. 2001, 110:3. 2003, 319:163, 164. 2004, 180:7. 2006, 145:6, 7, eff. July 21, 2006. 2007, 80:1, eff. June 11, 2007. 2011, 107:2, eff. July 30, 2011; 252:16, eff. Sept. 11, 2011.

541–A:14 Final Adoption.

I. An agency may adopt a properly filed final proposed rule after:

(a) The passage of 45 days from filing of a final proposal under RSA 541–A:12, I, or 60 days from filing under RSA 541–A:12, I–a, without receiving notice of objection from the committee;

(b) Receiving approval from the committee;

(c) Written confirmation is sent to the agency by committee legal counsel relative to agency compliance with the committee's conditional approval pursuant to RSA 541–A:13, V(a);

(d) Passage of the 50-day period for committee review of the preliminary objection response, or revised objection response, if applicable, provided that the committee has not voted to sponsor a joint resolution pursuant to RSA 541–A:13, VII; or

(e) Final legislative action, as defined in RSA 541–A:1, VI-a, is taken on the joint resolution sponsored pursuant to RSA 541–A:13, VII(b) or the passage of the 90 consecutive calendar days specified by RSA 541–A:13, VII(c), whichever occurs first.

II. The text of the adopted rule shall be the same as the text of the final proposed rule submitted under

RSA 541–A:12, unless revised by the agency in direct response to the committee's written objection or as otherwise provided in RSA 541–A:13. The director of legislative services may refuse to accept for filing any final rule which contains changes, other than minor editorial changes, that are not specifically made in accordance with the procedures provided in RSA 541–A:13, II(b) or RSA 541–A:13, V. The agency shall identify each minor editorial change in writing to the director of legislative services.

III. The agency shall file all adopted rules with the director of legislative services.

IV. Adopted rules shall become effective under RSA 541–A:16, III on the day after filing by the agency, or at a later date, provided that the agency so specifies in a letter to the director of legislative services, and further provided that the agency does not establish different effective dates for different provisions within the same rule. If the agency has specified a later effective date, the agency may modify the date by providing a statement to the director of legislative services which shall indicate the new effective date and all reasons for modifying the date. The statement shall be published by the director of legislative services in the rulemaking register. No modified effective date shall occur earlier than the date of publication in the rulemaking register. The director shall maintain a file of all currently effective rules, and each agency shall maintain a file of its own currently effective rules, both of which shall be open to the public.

Source. 1994, 412:1. 2000, 288:14. 2001, 110:4, eff. Aug. 25, 2001.

541–A:14–a Extension of Currently Effective Rules Pending Readoption.

I. If an agency files a notice pursuant to RSA 541–A:6 to readopt existing rules, with or without amendments, the currently effective rules in the filing which would otherwise expire prior to the completion of the readoption of the rules by the agency shall continue in effect until the proposed rules are adopted and effective.

II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by the deadline specified in RSA 541–A:12, fails to file a response to objection as specified in RSA 541–A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules which would otherwise expire prior to the completion of the readoption of the rules by the agency shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline pursuant to RSA 541–A:40, IV(a). If the agency has obtained a waiver to a deadline, such existing rules shall expire 30 days after the deadline established pursuant to RSA 541–A:40, IV(b) if the required action is not taken.

III. If rules are extended pursuant to this section, the agency shall:

(a) Adopt and file the proposed rules as required by RSA 541–A:14, III no later than 30 days after the date on which the agency is allowed to adopt the rules under RSA 541–A:14, I; and

(b) File the rules as required by RSA 541–A:14, III with an effective date that is not more than 60 days from the date of filing, except that an agency may specify an effective date that is more than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541–A:40.

Source. 2011, 252:8, eff. Sept. 11, 2011. 2015, 234:6, eff. Sept. 11, 2015.

541–A:15 Publication of Rules.

I. The director of legislative services shall compile, index, and publish, or require agencies to publish, all effective rules adopted by each agency. The text of an adopted rule as filed with the director and which is effective shall be the official version of the rule, unless or until a version prepared for publication, which may have editorial changes not affecting the substance of the rule, is certified by the agency as the same in substance as originally filed. The certified version shall be the official version. The official version of the rule shall be available to the public by the agency and the director pursuant to RSA 541–A:14, IV.

I–a. The director shall send the text of a rule to be certified to the agency adopting the rule. The agency shall certify the rule under paragraph I within 120 days of receiving the first edited text. The 120-day deadline shall not apply to interim rules or emergency rules. A copy of each rule as filed and each as certified shall be sent by the director to the state library and the New Hampshire law library at the supreme court.

I–b. Compilations shall be supplemented, revised, or published as often as necessary. The compilation, indexing, or publishing of fiscal impact statements shall not be required. The director of legislative services, in consultation with state agencies, may enter into a contract for the preparation and publishing of the compilation of agency rules or any portion of it, or may certify a commercially prepared version of the compilation. Any version or portion of the code published under this section shall conform to all requirements of this chapter.

II. The director of legislative services shall assist the agencies in developing a publicly accessible electronic rules database.

III. The director of legislative services may omit from the compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

Source. 1994, 412:1. 1998, 346:1, eff. Aug. 25, 1998.

541–A:16 Rules; Filing Required.

I. In addition to other rulemaking requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods by which the public may obtain information or make submissions or requests.

(b) Adopt rules of practice setting forth the nature and requirement of all formal and informal procedures available, including:

(1) [Repealed.]

(2) Rules governing adjudicative proceedings pursuant to RSA 541–A:30–a; and

(3) Rules governing public comment hearings for rulemaking.

(c) Adopt rules setting the format and procedures for submitting, considering, and disposing of rulemaking petitions under RSA 541–A:4.

(d) Adopt rules relating to filing petitions for declaratory rulings and their prompt disposition.

II. Each agency shall also:

(a) Make available to the public all written statements of policy or interpretations, other than rules, formulated or used by the agency in the discharge of its functions.

(b) File with the director of legislative services all declaratory rulings issued.

III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541–A:14, IV, RSA 541–A:14–a, III, or RSA 541–A:19, X, or such other date and time as specified, provided that filing occurs before such effective date and time. Except as provided in RSA 541–A:14–a, a rule adopted under RSA 541–A:14, IV shall expire after the last day of the tenth year following its becoming effective, unless sooner amended, readopted, or repealed.

IV. If any deadline for action by an agency, the public, or the committee imposed by this chapter falls on a Saturday, Sunday, or state legal holiday, the deadline for such action shall be extended to the next day that is not a Saturday, Sunday, or state legal holiday.

Source. 1994, 412:1. 1998, 298:1. 2006, 145:11, eff. July 21, 2006. 2011, 252:9, eff. Sept. 11, 2011.

541–A:17 Time Limit.

I. No rule shall be effective for a period of longer than 10 years except as extended pursuant to RSA 541–A:14–a, but the agency may adopt an identical rule under RSA 541–A:5 through RSA 541–A:14–a, in conformance with the drafting and procedure manual adopted under RSA 541–A:8.

II. Notwithstanding the provisions of paragraph I, any organizational and procedural rules proposed and adopted pursuant to RSA 541–A:16, I and as identified in the drafting and procedure manual shall not expire, provided that they have been approved by the committee. No changes to such organizational and procedural rules may be made by the agency, other than editorial changes not affecting the substance of the procedural rules, without following the rulemaking procedures in this chapter. However, if the adoption or amendment of a statute governing the agency renders the agency's organizational and procedural rules no longer accurate, such rules shall expire one year after the effective date of the statute that makes such change, unless such organizational and procedural rules are amended, superseded, or repealed before such expiration. The agency shall commence rulemaking to amend its rules no later than 90 days after the effective date of such statute. If the agency reorganizes its organization and responsibilities in such a way that the agency's rules under RSA 541–A:16, I(a) describing its organization are no longer accurate, the agency shall amend its rules as soon as is practicable, but shall commence rulemaking not later than 90 days after such changes occur.

Source. 1994, 412:1. 2000, 288:15, eff. July 1, 2000. 2009, 232:5, eff. Jan. 1, 2010. 2011, 89:1, eff. July 26, 2011; 252:10, eff. Sept. 11, 2011.

541–A:18 Emergency Rules.

I. An agency may proceed to adopt an emergency rule if it finds either that an imminent peril to the public health or safety requires adoption of a rule with less notice than is required under RSA 541–A:6 or that substantial fiscal harm to the state or its

citizens could occur if rules are not adopted with less notice than is required under RSA 541–A:6. The rule may be adopted without having been filed in proposed or final proposed form and may be adopted after whatever notice and hearing the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are made known to persons who may be affected by them.

II. Notwithstanding RSA 541–A:16, III, emergency rules adopted under this section shall not remain in effect for more than 180 days from the date and time of filing with the director of legislative services. An agency may propose a permanent rule on the same subject at the same time that it adopts an emergency rule, but it shall not adopt the same emergency rule when the emergency rule expires.

III. Emergency rules adopted under this section shall include:

(a) The name and address of the agency.

(b) The statutory authority for the rule.

(c) Whether the intended action is an adoption, amendment, or repeal.

(d) The rule number and title.

(e) A signed and dated statement by the adopting authority explaining the nature of the basis for the emergency rule, including an explanation of the effect upon the state if the emergency rule were not adopted.

(f) A listing of people, enterprises, and government agencies affected by the rule.

(g) The name, address, and telephone number of an individual in the agency able to answer questions on the emergency rule.

IV. Emergency rules adopted under this section shall not be adopted solely to avoid the time requirements of this chapter. The committee may petition the adopting agency to repeal the rule if it determines that the statement of emergency required by RSA 541–A:18, III(e) is inadequate and does not demonstrate that the rule is necessary to prevent an imminent peril to the public health or safety.

V. Effective rules which are amended or repealed by adoption of an emergency rule shall again be effective in their original form upon expiration of the emergency rule.

VI. An agency may repeal an emergency rule by filing a statement with the director of legislative services which includes:

(a) The name and address of the agency.

(b) The rule number and title.

(c) The effective date of the repeal.

(d) The name, address, and telephone number of an individual within the agency able to answer questions about the repeal.

(e) An explanation of why the rule is being repealed.

Source. 1994, 412:1. 2000, 288:16, eff. July 1, 2000. 2011, 252:11, 12, eff. Sept. 11, 2011.

541–A:19 Interim Rules.

I. An agency may adopt as an interim rule any rule which amends an existing rule, repeals an existing rule, or creates a new rule, and which is designed solely to allow the agency to:

(a) Conform with a new or amended codified state statute or chaptered session law, provided, however, that an agency shall not publish notice of a proposed interim rule more than 120 days after the effective date of the new or amended codified state statute or chaptered session law;

(b) Conform with a controlling judicial decision;

(c) Conform with a federal requirement which must be met sooner than the time periods allowed under RSA 541–A for a rule adopted under the procedures listed in RSA 541–A:3;

(d) Continue its rules which would otherwise expire prior to the completion of the readoption of the rules by the agency; or

(e) Minimize the time between the expiration of rules and their subsequent readoption by the agency.

II. An agency may adopt an interim rule under subparagraphs I(a), (b), or (c) without meeting the requirements of RSA 541–A:6 and RSA 541–A:9 through RSA 541–A:14 and an agency may adopt an interim rule under subparagraph I(d) or (e) without meeting the requirements of RSA 541–A:5 through RSA 541–A:14 provided the agency:

(a) Publishes notice of a proposed interim rule in a newspaper of daily statewide circulation and files the proposed interim rule, with the cover sheet as provided in paragraph IV, with the director of legislative services no later than the date of publication of the notice; or

(b) Files the proposed interim rule with the cover sheet as provided in paragraph IV, and the notice of the proposed interim rule with the director of legislative services, and has published notice in the rulemaking register.

III. Notice of an agency's intent to propose an interim rule shall include:

(a) The name and address of the agency.

(b) Citation to the statutory or other rulemaking authority for the proposed interim rule.

(c) Whether the proposed interim rule is an adoption, readoption, amendment, readoption with amendment, or repeal.

(d) The rule number and title.

(e) A concise summary explaining the effect of the proposed interim rule.

(f) A listing of people, enterprises, and government agencies affected by the proposed interim rule.

(g) A summary of the effect upon the state if the proposed interim rule were not adopted.

(h) The name, address, and telephone number of an individual in the agency able to answer questions on the proposed interim rule.

(i) The date the proposed interim rule will be filed with the director of legislative services.

(j) The expected date of review by the committee.

IV. Proposed interim rules filed under paragraph II shall include a cover sheet stating:

(a) The name and address of the agency.

(b) Citation to the statutory rulemaking authority for the proposed interim rule.

(c) Whether the intended action is an adoption, readoption, amendment, readoption with amendment, or repeal.

(d) The rule number and title.

(e) A signed and dated statement by the adopting authority explaining why an interim rule is necessary, including documentary evidence to prove the agency is acting in accordance with the terms of this section and is not adopting an interim rule solely to avoid the time periods imposed by RSA 541–A, except as provided in paragraph I of this section.

(f) A listing of people, enterprises, and government agencies affected by the proposed interim rule.

(g) The name, address, and telephone number of an individual in the agency able to answer questions on the proposed interim rule.

V. A proposed interim rule filed under paragraph II no less than 14 days before a regularly scheduled committee meeting shall be placed on the committee's agenda for review for that meeting. Publication of notice shall occur no less than 7 days before a regularly scheduled meeting. If the agency has published notice in a newspaper, pursuant to subparagraph II(a), the agency shall file a copy of the notice as it was published no later than 3 days after the date of publication. Proposed interim rules filed less than 14 days before a regularly scheduled committee meeting shall be placed on the agenda for review at the following regularly scheduled committee meeting or at a special meeting, as determined by the committee.

VI. The committee shall vote to approve the rule or object under paragraph VII. Objections to a proposed interim rule may be made only once.

VII. The committee may object to a proposed interim rule if the rule is:

(a) Beyond the authority of the agency;

(b) Contrary to the intent of the legislature;

(c) Determined not to be in the public interest; or

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

VIII. The following procedures shall govern committee review of interim rules:

(a) The director of legislative services shall notify the agency of any potential bases for committee objection by forwarding a copy of the proposed interim rule with comments noted thereon to the agency at least 7 days prior to the committee meeting at which the rule will be considered. Following receipt of the comments an agency may amend its interim rule to address the noted potential bases for objection. The agency may present the amended proposal to the committee for approval at the committee meeting. The committee may approve the rule as originally proposed or as amended.

(b) If the committee objects to the proposed interim rule as filed or as amended, it shall so inform the agency. In lieu of an objection, the committee may vote to conditionally approve the rule with an amendment, provided that the committee specified in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its conditional approval. Within 14 days of the meeting, the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by

the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary objection on the date of the conditional approval. If the committee legal counsel determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the committee legal counsel shall promptly send written confirmation of compliance to the agency. The agency may then adopt the rule as amended.

(c) If the committee objects to the proposed interim rule as filed or as amended pursuant to subparagraph VIII(a), the committee shall send the agency a written objection stating the basis for the objection. An objection or a conditional approval shall require the assent of a majority of the votes cast, a quorum being present.

(d) If the committee makes an objection to the proposed interim rule pursuant to subparagraph VIII(c), the agency may cure the defect or withdraw the interim rule. The agency shall respond to a committee objection only once, and shall report its response in writing to the committee prior to its next regularly scheduled meeting. Failure to respond to the committee in accordance with this subparagraph shall mean the rulemaking procedure for that proposed interim rule is invalid; however, the agency is not precluded from initiating the process over again for a similar rule, provided the conditions in paragraph I are met.

(e) The committee shall review the response and vote to approve the response or continue the objection.

(f) The committee's objection shall not preclude the agency from adopting the substance of an interim rule by meeting the requirements of RSA 541–A:3.

IX. No proposed interim rule shall be adopted unless within 90 days of publication of the notice the committee votes to approve or conditionally approve the proposed interim rule.

X. No proposed interim rule shall be adopted unless the committee has voted to approve the proposed interim rule or conditionally approve the proposed interim rule, provided that the committee legal counsel has sent written confirmation to the agency pursuant to RSA 541–A:19, VIII(b). An adopted interim rule shall be filed with the director of legislative services no later than 30 days following committee approval or conditional approval. An interim rule shall be effective under RSA 541–A:16, III on the day after filing with the director of legislative services, or at a later date, provided the agency so specifies in a letter to the director of legislative services and the effective date is within 30 days following committee approval or conditional approval. Interim rules shall be effective for a period not to exceed 180 days. During the time an interim rule shall be in effect, the agency may propose a permanent rule to replace the interim rule once it expires, but it shall not adopt another interim rule to replace the expiring interim rule.

Source. 1994, 412:1. 2000, 288:17, 18. 2003, 309:1; 319:165. 2006, 145:8, 9, eff. July 21, 2006. 2011, 252:13, eff. Sept. 11, 2011.

541–A:19–a Expedited Repeal of Rules.

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

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

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

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

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

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

(a) The name and address of the agency.

(b) The statutory rulemaking authority for the rule.

(c) The rule number and title.

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

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

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

III. The notice required by paragraph II shall be filed with the director of legislative services for publication in the rulemaking register.

IV. The agency shall file the text of the rule to be repealed with the notice filed pursuant to paragraph III.

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

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

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

(a) Beyond the authority of the agency;

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

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

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

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

Source. 2004, 180:8, eff. June 1, 2004. 2009, 232:3, eff. Jan. 1, 2010.

541–A:19–b Adoption of Forms. An agency may adopt a form as defined in RSA 541–A:1, VII–a by incorporating the actual form by reference or by setting forth the requirements of the form in rules adopted according to the procedures in this chapter.

Source. 2009, 232:4, eff. Jan. 1, 2010. 2011, 89:2, eff. July 26, 2011.

541–A:19–c Revisions to Forms; Expedited Procedure.

I. An agency may make editorial changes to a previously adopted form without following the procedures required in RSA 541–A:19–b, in this section, or in RSA 541–A:3.

II. An agency may revise a form as defined in RSA 541–A:1, VII–a without meeting the requirements of RSA 541–A:5–7 and RSA 541–A:9–14 either in accordance with RSA 541–A:19–b or by providing notice and adopting the form in accordance with paragraphs III through VII.

III. Notice of an agency's intent to adopt a form or amendment to a form shall include:

(a) The name and address of the agency.

(b) The statutory authority for the form.

(c) An explanation of the reason for the proposed adoption or amendment of a form.

(d) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed form.

(e) The deadline for receipt by the agency of written or electronic public comment, which shall be no sooner than the 7th calendar day after the date of publication of the notice in the rulemaking register.

IV. The notice required by paragraph III shall be filed with the director of legislative services for publication in the rulemaking register. A copy of the form to be adopted shall be filed with the notice.

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

VI. The proposed form shall be placed on the agenda of the committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the close of the period for written or electronic comment described in subparagraph III(e). The committee may approve or object to the form. The committee may object to the adoption of the form if the form is:

(a) Beyond the authority of the agency;

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

(c) Deemed by the committee not to meet the requirements of this section.

VII. Subsequent review and adoption of the form shall be as provided in RSA 541–A:13 for final proposed rules.

Source. 2009, 232:4, eff. Jan. 1, 2010.

541–A:19–d Expedited Amendment to Incorporation by Reference.

I. An agency may amend any existing rules which incorporate by reference documents or Internet content pursuant to RSA 541–A:12, III–VII by using the expedited procedures of this section, and without meeting the requirements of RSA 541–A:5 and RSA 541–A:6 and RSA 541–A:9 through RSA 541–A:14 except as provided below, if:

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

(b) The proposed amendment only updates or changes the document or Internet content incorporated by reference, or amends related text, in the existing rule.

(c) The amended rule does not encompass more than a full rules section, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541–A:8.

(d) The proposed amendment has no fiscal impact which would otherwise require a fiscal impact statement pursuant to RSA 541–A:5.

(e) The requirements of RSA 541–A:12, III–VII are met as they would be for final proposals as described in paragraph IV.

II. Notice of an agency's intent to amend a rule which incorporates by reference documents or Internet content shall include:

(a) The name and address of the agency.

(b) The statutory rulemaking authority for the rule.

(c) Whether the action is an amendment or readoption with amendment as described in the drafting and procedure manual for administrative rules pursuant to RSA 541–A:8.

(d) The rule number and title.

(e) A concise summary of the existing rule and the proposed amendment, and an explanation of the differences between the existing document or Internet content incorporated by reference and the document or Internet content in the amended rule.

(f) Identification of the state or federal statute or regulations which the rule is intended to implement pursuant to RSA 541–A:3–a.

(g) The deadline for receipt by the agency of written or electronic public comment, which shall be no sooner than the fourteenth calendar day after the date of publication of the notice in the rulemaking register.

(h) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the amended rule.

III. The notice required by paragraph II shall be filed with the director of legislative services for publication in the rulemaking register.

IV. The agency shall file the amended rule with the notice filed pursuant to paragraph III, including an appendix pursuant to RSA 541–A:3–a, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541–A:8. The agency shall also comply with RSA 541–A:12, III–VII as for filing final proposals, including filing of an incorporation by reference statement for each document or Internet content incorporated by reference.

V. Copies of the text of the amended rule shall be available to the public at the time the notice is filed, and a copy of the document or Internet content incorporated by reference shall also be available for inspection pursuant to RSA 541–A:12, VI.

VI. If on the basis of public comment the official or the group of individuals with rulemaking authority determines that the rule should not be amended by the expedited procedure, the agency shall so notify the director of legislative services and the rule shall not be amended under this section.

VII. The amended rule shall be placed on the agenda of the committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the close of the period for written or electronic comment described in subparagraph II(g). The committee may approve, conditionally approve, or object to the amended rule pursuant to RSA 541–A:13, V–VII. The committee may object to the amended rule if the rule is:

(a) Beyond the authority of the agency;

(b) Contrary to the intent of the legislature;

(c) Deemed not to be in the public interest; or

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

VIII. Subsequent review and adoption of the amended rule shall be as provided in RSA 541–A:13, V–VII and RSA 541–A:14 as for final proposed rules.

Source. 2015, 234:7, eff. Sept. 11, 2015.

541–A:20 Initiating Rulemaking Prior to Effective Date of Statutory Authority. After the enactment and before the effective date of any statute granting rulemaking authority, the agency to whom such authority is granted may initiate procedures to adopt such rules; provided that the effective date of the rule, under RSA 541–A:14, IV or RSA 541–A:19, X shall not occur before the effective date of the act granting statutory authority for that rule.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:20–a Initiating Rulemaking Prior to Expiration Date of Existing Rule; Expired Rule.

I. Provided that the relevant statute granting rulemaking authority for an existing rule is valid and in effect and requires the agency to adopt the rule, the agency to which such authority is granted shall act expeditiously to commence rulemaking pursuant to RSA 541–A to prevent expiration of such rules and to allow adequate time for the committee to consider the rules.

II. If an agency consistently fails to readopt its rules prior to their expiration as provided in paragraph I, the committee may direct the agency to contact the director to develop a timetable of readoption or readoption with amendments.

III. An agency shall not be precluded from adopting an interim rule pursuant to RSA 541–A:19, I(d) to keep rules from expiring or RSA 541–A:19, I(e) to put expired rules back into effect.

Source. 2009, 230:1, eff. Sept. 14, 2009.

541–A:21 Exceptions.

I. Authority granted under the provisions of the following statutes shall be exempt from RSA 541–A:

(a) RSA 230:53, relative to the use of limited access highway facilities.

(b) RSA 236:1, II, relative to regulating, permanently or seasonally, the use of certain class I, II and III highways by the posting of traffic control stop signs, devices, and signals thereon.

(c) RSA 265:22, relative to painted marking of highways.

(d) RSA 265:62, relative to the establishment of state speed zones.

(e) RSA 265:71, relative to stopping, standing, or parking and the placing of signs relative thereto on certain highways.

(f) RSA 236:9, relative to excavation permits.

(g) RSA 236:13, relative to driveway permits.

(h) RSA 231:161, relative to licensing utility poles and appurtenances within public highways.

(i) RSA 266:18–c, V, relative to bridge weight limits.

(j) RSA 651–A:22, II, relative to credit for good conduct of prisoners.

(k) RSA 111, relative to the state guard.

(*l*) RSA 284:12, IV, relative to the sale of parimutuel pools as authorized under RSA 284:22 and RSA 284:22–a.

(m) RSA 237:5, II; 237:9; 237:17; 237:24, I; 237:34; and 237:40, relative to the establishment of toll rates for turnpikes.

(n) Except for rules adopted by the authority acting through the division of ports and harbors under RSA 12–G:42, X, which shall be subject to the provisions of RSA 541–A:3 through RSA 541–A:15, RSA 12–G, relative to the Pease development authority.

(*o*) [Repealed.]

(p) [Repealed.]

(q) RSA 374:8, relative to a uniform system of accounts for regulated utilities.

(r) RSA 21–P:27, II(a) and (b), relative to educational, training and evidentiary standards for fire service personnel and curriculum requirements for schools training fire service personnel.

(s) RSA 106–L:5, VI, relative to educational, training, and evidentiary standards and curriculum requirements for police and corrections personnel and courses and tuition students at such courses.

(t) RSA 260:65–b, relative to the multi-jurisdictional fuel tax agreement.

(u) RSA 162–A, relative to the business finance authority.

(v) Rules adopted under RSA 195–D, relative to the New Hampshire health and education facilities authority.

(w) RSA 485:16–b, II relative to limits on the concentration of methyl tertiary butyl ether in gasoline.

(x) RSA 204–C:53, relative to the housing finance authority.

(y) RSA 237:16–d, relative to the E–Z Pass Interagency Agreement for Operations.

(z) RSA 21–L:12–b, relative to bridge and highway construction requirements in AASHTO design standards and manuals.

(aa) RSA 21–H:8, III, relative to internal practices and procedures in the department of corrections.

(bb) RSA 170–B:18, VII, relative to background checks conducted as part of an adoption assessment, and RSA 170–E:29, II–a relative to background checks of prospective foster parents.

(cc) RSA 106–B:14, I–a, relative to the fee for criminal record checks of department of health and human services employees, service providers, and licensed and license-exempt child day care providers.

(dd) RSA 270:12, relative to boat operating restrictions.

(ee) RSA 155–A:10, V, relative to the amendments to the state building code and state fire code for the codes described in RSA 155–A:1, IV and IV–a.

(ff) RSA 153:5, I, relative to the adoption of the state fire code.

(gg) RSA 21–R:4, XX, relative to the telephony services manual developed by the department of information technology.

[Paragraph I(hh) effective as provided in 2014, 290:4.]

(hh) Rules relative to the state infrastructure bank established in RSA 21–L:19 through RSA 21–L:23 for transportation purposes.

(ii) [Repealed.]

II. Rules adopted under RSA 394–A:7 prior to the effective date of the repeal of that chapter shall be exempt from committee review under RSA 541–A:13.

III. Rules adopted under RSA 161:4, VI, relative to rates of reimbursement to providers of medical services under the medical assistance program, shall be exempt from the requirements of RSA 541–A:5 through RSA 541–A:14.

IV. Rules adopted under RSA 125–F:5, IV and V, RSA 125–F:7, RSA 125–F:8, RSA 125–F:8–a, III, and RSA 125–F:22, III, to conform to 10 CFR and 21 CFR shall be exempt from the uniform system of numbering and drafting rules required by 1994, 412:52 and the drafting and numbering requirements of RSA 541–A:8. These rules shall be in compliance with RSA 541–A:7 if the wording is consistent with the language of the corresponding federal regulations.

V. Requirements on forms as specified in RSA 21–J:13–a shall be exempt from RSA 541–A.

VI. (a) Rules adopted under title XXXVII, relative to insurance regulation, shall be exempt from RSA 541–A:7 and RSA 541–A:8 and shall permit the use of terminology allowing for discretionary authority by the commissioner when:

(1) The wording is consistent with the language of corresponding National Association of Insurance Commissioners guidelines or models.

(2) The rule relates to technical instructions concerning the implementation of electronic or computerized programs or systems.

(3) The rule implements a federal benefit or program that requires the adoption of uniform language.

(b) As specified in RSA 400–A:15–d, forms adopted by the commissioner shall be exempt from RSA 541–A:7 and RSA 541–A:8.

VII. RSA 170–G:4, XVII, relative to the publication of rates for services, placements, and programs which are paid for by the department of health and human services pursuant to RSA 169–B:40, RSA 169–C:27, and RSA 169–D:29 shall be exempt from RSA 541–A.

VIII. Rules relative to the department of health and human services medical assistance program coverage criteria for medical services and items, adopted under either RSA 161:4–a, IX or other rulemaking authority of the commissioner of the department relative to the medical assistance program, shall be exempt from RSA 541–A:12, V and may incorporate by reference these criteria as Internet content without specifying a date or edition for the content incorporated. Amendments to these criteria shall be exempt from the requirements of RSA 541–A:5 through RSA 541–A:14.

IX. Rules of the department of transportation relating to the state bridge aid program or the state highway aid program, adopted under rulemaking authority of the commissioner of the department, shall be exempt from RSA 541–A:12, III and may incorporate by reference the department of transportation's Standard Specifications for Road and Bridge Construction, Highway Design Manual, and Bridge Design Manual without specifying a date or edition for the content incorporated, as provided in RSA 234:5, II and RSA 235:14, II.

Source. 1994, 412:1. 1995, 155:16; 179:2. 1996, 164:5; 292:39. 1997, 329:16. 1998, 207:9, IV. 1999, 253:17; 313:3. 2000, 166:5; 251:3. 2001, 247:4; 290:16. 2003, 242:19. 2005, 248:15, eff. Sept. 12, 2005. 2007, 60:2, eff. July 31, 2007; 240:1, eff. June 25, 2007; 263:175, II, eff. July 1, 2007; 325:6, eff. July 1, 2007. 2009, 144:130, eff. July 1, 2009. 2010, 93:1, eff. July 24, 2010; Sp. Sess., 1:73, 81, eff. June 10, 2010. 2011, 8:2, eff. June 24, 2011. 2012, 62:3, eff. July 13, 2012; 93:2, eff. July 28, 2012; 242:20, eff. June 18, 2012. 2013,

30:2, eff. May 16, 2013. 2014, 290:2, eff. as provided in 2014, 290:4. 2015, 176:2, eff. June 26, 2015; 272:51, eff. Oct. 1, 2015. 2016, 63:3, eff. July 4, 2016; 147:11, eff. July 1, 2016; 277:4, eff. June 17, 2016; 277:5, eff. July 1, 2017. 2017, 206:21, eff. Sept. 8, 2017.

541–A:22 Validity of Rules.

I. No agency rule is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required in this chapter and has not expired.

II. Rules shall be valid and binding on persons they affect, and shall have the force of law unless they have expired or have been amended or revised or unless a court of competent jurisdiction determines otherwise. Except as provided by RSA 541–A:13, VI, rules shall be prima facie evidence of the proper interpretation of the matter that they refer to.

III. An agency shall not by rule:

(a) Provide for penalties or fines unless specifically authorized by statute.

(b) Require licensing, as defined in RSA 541–A:1, IX, unless authorized by a law which uses one of the specific terms listed in RSA 541–A:1, VIII.

(c) Require fees unless specifically authorized by a statute enforced or administered by an agency. Specific authorization shall not include the designation of agency fee income in the operating budget when no other statutory authorization exists.

(d) Provide for non-consensual inspections of private property, unless the statute enforced or administered by the agency specifically grants inspection authority.

(e) Delegate its rulemaking authority to anyone other than the agency named in the statute delegating authority.

(f) Adopt rules under another agency's authority.

(g) Expand or limit a statutory definition affecting the scope of who may practice a profession.

(h) Require a submission of a social security number unless mandated by state or federal law.

IV. No agency shall grant waivers of, or variances from, any provisions of its rules without either amending the rules, or providing by rule for a waiver or variance procedure. The duration of the waiver or variance may be temporary if the rule so provides.

Source. 1994, 412:1. 2003, 309:2, eff. July 1, 2004. 2015, 234:8, eff. Sept. 11, 2015.

541–A:23 Remedies for Procedural Failures.

I. The following shall prevent a rule from taking effect:

(a) Failure to file with the director of legislative services;

(b) Failure to file with the committee;

(c) Failure to respond to an objection of the committee as required by RSA 541–A:13, V; or

(d) Failure to receive approval of the committee for a proposed interim rule, as required by RSA 541–A:19, X.

II. The following shall not affect the validity of a rule:

(a) Inadvertent failure to make required assurances relating to an incorporation by reference;

(b) Failure to certify that all procedures required by this chapter have been satisfied;

(c) Failure to meet the style requirements of RSA 541–A:7; or

(d) Inadvertent failure to mail notice or copies of any rule.

III. For other violations of this chapter, the court may fashion appropriate relief.

IV. An action to contest the validity of a rule for noncompliance with any of the provisions of this chapter other than those listed in paragraph I shall be commenced within one year after the effective date of the rule. Such actions shall be brought in the Merrimack county superior court. The plaintiff shall give notice of the action to the office of legislative services, division of administrative rules, at the time of filing. Upon receiving a judgment on the merits, the respondent agency or department shall also file a copy of that judgment with the office of legislative services, division of administrative rules.

Source. 1994, 412:1, eff. Aug. 9, 1994. 2017, 101:2, eff. Aug. 7, 2017.

541–A:24 Declaratory Judgment on Validity or Applicability of Rules. The validity or applicability of a rule may be determined in an action for declaratory judgment in the Merrimack county superior court if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. The plaintiff shall give notice of the action to the office of legislative services, division of administrative rules, at the time of filing. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question. Upon

receiving a declaratory judgment, the respondent agency or department shall also file a copy of that judgment with the office of legislative services, division of administrative rules.

Source. 1994, 412:1, eff. Aug. 9, 1994. 2017, 101:3, eff. Aug. 7, 2017.

541–A:25 Unfunded State Mandates.

I. A state agency to which rulemaking authority has been granted, including those agencies, the rulemaking authority of which was granted prior to May 6, 1992, shall not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate further expenditures by the political subdivision unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision. Such programs include those functions of a nature customarily undertaken by municipalities whether or not performance of such functions is required by statute.

II. Such programs also include, but are not limited to, functions such as police, fire and rescue, roads and bridges, solid waste, sewer and water, and construction and maintenance of buildings and other municipal facilities or other facilities or functions undertaken by a political subdivision.

III. Included in the scope and nature of such programs are those municipal functions which might be undertaken by a municipality or by a private entity and those functions which a municipality may legally choose not to undertake.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:26 Administration of Federal Mandates. Any state agency, when administering federal mandates, shall not mandate or assign to any political subdivision any new, expanded or modified programs or responsibilities additional to the federal mandate in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:27 Notification of Federal Statute and Regulation. Any new, expanded, or modified programs or responsibilities based upon a federal mandate and lawfully mandated or assigned to any political subdivision shall specifically state the federal statute and regulation requiring such new, expanded, or modified programs or responsibilities.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:28 Executive Orders and Opinions of the Attorney General. The secretary of state shall transmit each executive order received from the governor to the director of legislative services, who shall publish the text of the executive order in the rulemaking register. The attorney general shall transmit a copy of every non-confidential opinion relative to rulemaking or rulemaking authority issued by the attorney general or in the attorney general's name to the director of legislative services. The director shall publish such opinions in the rulemaking register.

Source. 1994, 412:1. 2000, 288:19, eff. July 1, 2000.

541–A:29 Agency Action on Applications, Petitions and Requests. In processing an application, petition or request, in any matter other than rulemaking or a declaratory ruling, in which a response is specifically addressed to the applicant, petitioner or requester, the agency shall:

I. Within 60 days of receipt, examine the application, petition or request, notify the applicant of any apparent errors or omissions, request any additional information that the agency is permitted by law to require, and notify the applicant of the name, official title, address, and telephone number of an agency official or employee who may be contacted regarding the application.

II. Within a reasonable time, not to exceed 120 days, after receipt of the application, petition or request, or of the response to a timely request made by the agency pursuant to paragraph I, the agency shall:

(a) Approve or deny the application, in whole or in part, on the basis of nonadjudicative processes, if disposition of the application by the use of these processes is not precluded by any provision of law; or

(b) Commence an adjudicative proceeding in accordance with this chapter.

III. If the time limits prescribed by this section conflict with specific time limits provided for by other provisions of law, the specific time limits provided for by such other provisions shall control.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:30 Agency Action Against Licensees.

I. If a timely and sufficient application has been made in accordance with agency rules for renewal of a license for any activity of a continuing nature that does not automatically expire by law, the existing license shall not expire until the agency has taken final action upon the application for renewal. If the

agency's final action is unfavorable, the license shall not expire until the last day for seeking judicial review of the agency's action, or a later date fixed by the reviewing court.

II. An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license unless the agency first gives notice to the licensee of the facts or conduct upon which the agency intends to base its action, and gives the licensee an opportunity, through an adjudicative proceeding, to show compliance with all lawful requirements for the retention of the license.

III. If the agency finds that public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered pending an adjudicative proceeding. The agency shall commence this adjudicative proceeding not later than 10 working days after the date of the agency order suspending the license. A record of the proceeding shall be made by a certified shorthand court reporter provided by the agency. Unless expressly waived by the licensee, agency failure to commence an adjudicative proceeding within 10 working days shall mean that the suspension order is automatically vacated. The agency shall not again suspend the license for the same conduct which formed the basis of the vacated suspension without granting the licensee prior notice and an opportunity for an adjudicative proceeding.

Source. 1994, 412:1. 1999, 331:1, eff. Sept. 14, 1999.

541–A:30–a Rules for Adjudicative Proceedings.

I. Subject to paragraph V, each agency shall adopt rules pursuant to RSA 541–A governing the nature and requirement of all formal and informal procedures available in an adjudicative proceeding.

II. The attorney general, in consultation with agencies that conduct adjudicative proceedings, and with the approval of the director of the office of legislative services, shall draft proposed rules on model procedures relative to adjudicative proceedings and request a fiscal impact statement pursuant to RSA 541–A:5 within 90 days of the effective date of this section. The attorney general shall adopt the model rules pursuant to RSA 541–A on behalf of agencies, for purposes described in paragraph V, that do not have adopted effective rules on adjudicative proceedings. The attorney general shall amend the model rules pursuant to RSA 541–A as necessary after consultation and approval as required for the original proposed model rules. Neither the original proposed model rules nor any amendments shall be adopted by the attorney general unless the committee has voted to approve them. Notwithstanding RSA 541–A:17, I, the original model rules and any amendments shall not expire.

III. The model rules adopted pursuant to paragraph II, and all rules on adjudicative proceedings, unless authorized otherwise by statutes governing an agency, shall address at least the following areas:

(a) Filing and service of documents;

(b) Appearances before agencies;

(c) Procedures for pre-hearing exchange of information;

(d) Burden of proof;

(e) Standard of proof;

(f) Computation of time periods;

(g) Roles of complainants, intervenors, and agency staff in disciplinary and enforcement proceedings;

(h) Continuances;

(i) Reopening of the record;

(j) Waiver of rules governing adjudicative proceedings;

(k) Procedure and criteria for the withdrawal of a presiding officer; and

(*l*) Retention schedule for written decisions or orders pursuant to RSA 541–A:35, subject to any longer periods for retention set by the director of the division of archives and records management of the department of state pursuant to rules adopted under RSA 5:40.

IV. Each agency may adopt, pursuant to RSA 541–A, the text of the model rules. In order to adopt any supplements or modifications to the model rules, each agency shall adopt, pursuant to RSA 541–A, the text of the model rules as amended by the supplements or modifications.

V. Notwithstanding the provisions of RSA 541–A:22, I, an agency shall apply the model rules as necessary in a particular adjudicative proceeding to the extent that the agency's rules or governing statutes do not address the procedures in the model rules, and provided that:

(a) Such use shall not conflict with a statute, judicial decision, or other rules of the agency;

(b) Notice shall be given to all parties with the notice pursuant to RSA 541–A:31, III of the extent to which the model rules will apply to the proceeding; and

(c) The agency shall provide copies of the notice to the attorney general, the director of the office of

legislative services, and the joint legislative committee on administrative rules.

VI. A copy of the written decision or order pursuant to RSA 541–A:35 shall be readily available to the public pursuant to the provisions of RSA 91–A unless:

(a) Otherwise provided by statute; or

(b) The written decision or order has been disposed after a retention period adopted pursuant to paragraph III.

VII. Each agency shall retain a copy of the verbatim recording of all oral proceedings pursuant to RSA 541–A:31, VII at least 30 days after the opportunity for all administrative and judicial appeals has been exhausted.

VIII. The attorney general shall prepare and distribute to all agencies authorized to conduct contested cases copies of the model rules and any amendments thereto, along with recommended guidelines for presiding officers in an adjudicative proceeding. These guidelines shall be available to the public pursuant to RSA 91–A. The guidelines shall be updated annually to address relevant changes in statutes, rules, or judicial decisions. Each agency that receives the guidelines shall provide a copy to all presiding officers in a contested case and to all members of the agency who may render the final decision in a contested case.

Source. 1998, 298:2, eff. July 1, 1998. 2003, 97:4, eff. Aug. 5, 2003.

541–A:31 Availability of Adjudicative Proceeding; Contested Cases; Notice, Hearing and Record.

I. An agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case or, if the matter is one for which a provision of law requires a hearing only upon the request of a party, upon the request of a party.

II. (a) An agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction, except that no disciplinary proceeding against an occupational licensee shall be initiated unless such action is commenced within 5 years of the date upon which the alleged violation of an applicable rule or statute occurred, or within 5 years of the date upon which the violation could reasonably have been discovered.

(b) The time limitation provided in subparagraph (a) shall be tolled (1) during the period of time during which a criminal action on the matter is pending in a trial court of this state, or of another state, or of the United States, (2) during the time in which a complainant is a minor or incapacitated, and (3) during any time which the accused prevents discovery of the subject matter of the alleged violation.

(c) The time limitations established in this paragraph shall not apply to the commencement of actions initiated by the real estate appraiser board under RSA 310–B.

III. In a contested case, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include:

(a) A statement of the time, place, and nature of the hearing.

(b) A statement of the legal authority under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the issues involved. Upon request an agency shall, when possible, furnish a more detailed statement of the issues within a reasonable time.

(e) A statement that each party has the right to have an attorney present to represent the party at the party's expense.

(f) For proceedings before an agency responsible for occupational licensing as provided in paragraph VII–a, a statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceeding.

IV. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

V. (a) Unless precluded by law, informal disposition may be made of any contested case, at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default.

(b) In order to facilitate proceedings and encourage informal disposition, the presiding officer may, upon motion of any party, or upon the presiding officer's own motion, schedule one or more informal prehearing conferences prior to beginning formal proceedings. The presiding officer shall provide notice to all parties prior to holding any prehearing conference.

(c) Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:

(1) Offers of settlement.

(2) Simplification of the issues.

(3) Stipulations or admissions as to issues of fact or proof, by consent of the parties.

(4) Limitations on the number of witnesses.

(5) Changes to standard procedures desired during the hearing, by consent of the parties.

(6) Consolidation of examination of witnesses by the parties.

(7) Any other matters which aid in the disposition of the proceeding.

(d) The presiding officer shall issue and serve upon all parties a prehearing order incorporating the matters determined at the prehearing conference.

VI. The record in a contested case shall include all of the following that are applicable in that case:

(a) Any prehearing order.

(b) All pleadings, motions, objections, and rulings.

(c) Evidence received or considered.

(d) A statement of matters officially noticed.

(e) Proposed findings and exceptions.

(f) Any decision, opinion, or report by the officer presiding at the hearing.

(g) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding.

(h) Staff memoranda or data submitted to the presiding officer, except memoranda or data prepared and submitted by agency legal counsel or personal assistants and not inconsistent with RSA 541–A:36.

(i) Matters placed on the record after an ex parte communication.

VII. The entirety of all oral proceedings shall be recorded verbatim by the agency. Upon the request of any party or upon the agency's own initiative, such record shall be transcribed by the agency if the requesting party or agency shall pay all reasonable costs for such transcription. If a transcript is not provided within 60 days of a request by a person who is a respondent party in a disciplinary hearing before an agency responsible for occupational licensing, the proceeding shall be dismissed with prejudice. Any party may record an oral proceeding, have a transcription made at the party's expense, or both, but only the transcription made by the agency from its verbatim record shall be the official transcript of the proceeding.

VII–a. At the request of a party in any oral proceeding involving disciplinary action before an agency responsible for occupational licensing except for an emergency action under RSA 541–A:30, III, the record of the proceeding shall be made by a certified shorthand court reporter provided by the agency at the requesting party's expense. A request shall be submitted to the agency in writing at least 10 days prior to the day of the proceeding.

VIII. Findings of fact shall be based exclusively on the evidence and on matters officially noticed in accordance with RSA 541–A:33, V.

Source. 1994, 412:1. 1999, 331:2–4. 2000, 288:20, eff. July 1, 2000. 2014, 34:2, eff. Jan. 1, 2015.

541–A:32 Intervention.

I. The presiding officer shall grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

(a) Limitation of the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.

(b) Limitation of the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.

(c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

IV. Limitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:33 Evidence; Official Notice in Contested Cases.

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:

(a) Any fact which could be judicially noticed in the courts of this state.

(b) The record of other proceedings before the agency.

(c) Generally recognized technical or scientific facts within the agency's specialized knowledge.

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:34 Examination of Evidence by Agency. If a majority of the officials of the agency who are to render the final decision in a contested case have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the final decision. The proposal for decision shall contain a statement of the reasons for the decision and shall set forth each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:35 Decisions and Orders. A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed promptly to each party and to a party's recognized representative.

Source. 1994, 412:1. 2000, 288:21, eff. July 1, 2000.

541–A:36 Ex Parte Communications. Unless required for the disposition of ex parte matters authorized by law, officials or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue before the agency, with any person or party, except upon notice and opportunity for all parties to participate. This notice requirement shall not apply to:

I. Communications between or among agency personnel, or between the agency and legal counsel.

II. Communications between or among the presiding officer and one or more personal assistants.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:37 Waiver. Except to the extent precluded by law, a person may waive any right conferred upon that person by this chapter.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:38 Informal Settlements. Except to the extent precluded by law, informal settlement of matters by nonadjudicative processes is encouraged. This section does not require any party or other person to utilize informal procedures or to settle a matter pursuant to informal procedures.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:39 Notice to Municipalities.

I. In addition to any other requirements imposed by this chapter, each agency shall give notice to and afford all affected municipalities reasonable opportunity to submit data, views, or comments with respect to the issuance of a permit, license, or any action within its boundaries that directly affects the municipality. Such actions shall include those which may have an effect on land use, land development, or transportation; those which would result in the operation of a business; or those which would have an immediate fiscal impact on the municipality or require the provision of additional municipal services.

II. Each agency shall give notice by first class mail to the town or city clerk.

III. In the event of emergency circumstances which require prompt attention, prior notice or opportunity to comment shall not be required. However, notice contemporaneous with the action shall be required.

IV. This section shall not apply to the issuance of professional or occupational licenses unless such issuance also results in actions meeting the criteria set forth in paragraph I. This section shall not apply to reissuance or renewal of licenses or permits issued prior to August 23, 1985.

Source. 1994, 412:1, eff. Aug. 9, 1994.

541–A:40 Suspension of Provisions.

I. To the extent necessary to avoid a denial of funds or services from the United States which would otherwise be available to the state, the governor may suspend, in whole or in part, one or more provisions of this chapter. When the governor determines that a suspension is no longer necessary to prevent the loss of funds or services from the United States, the governor shall issue an order specifying the dates of termination of a suspension.

II. The original copy of any suspension order or order recognizing the termination of a suspension issued by the governor shall be dated, certified and filed in the office of legislative services.

III. If any provision of this chapter is suspended pursuant to this section, the governor shall promptly report the suspension to the general court. The report shall include recommendations with respect to any desirable legislation that may be necessary to conform this chapter with federal law.

IV. (a) Notwithstanding any other provision of this chapter, the director of legislative services may, after consultation with the chair and vice-chair of the joint legislative committee on administrative rules, and for good cause shown, waive any deadline or otherwise extend any time period contained in any provision of this chapter which relates to the rulemaking process.

(b) If a deadline is waived or a time period is extended, the director shall, after consultation with the chair and the vice-chair of the committee and the agency whose rules are affected, establish a new deadline by which the required action shall be taken.

Source. 1994, 412:1. 2000, 288:22. 2004, 180:9, eff. June 1, 2004. 2011, 252:15, eff. Sept. 11, 2011.

541–A:41 Effect of Prior Law. This chapter shall govern all agency rulemaking procedures, hearings, and appeals, except as specifically exempted by this chapter. Conflicts between this chapter and prior or existing statutes shall be resolved by following the stricter requirements.

Source. 1994, 412:1, eff. Aug. 9, 1994.

TITLE LVI

PROBATE COURTS AND DECEDENTS' ESTATES

CHAPTER 547–B

PUBLIC GUARDIANSHIP AND PROTECTION PROGRAM

547–B:1 Purpose. The purpose of this chapter is to provide guardianship and protection services where such services are required by law and are otherwise unavailable.

Source. 1983, 409:1, eff. Sept. 1, 1983.

547–B:2 Program Established. There is hereby established a public guardianship and protection program which shall operate in accordance with the provisions of this chapter.

Source. 1983, 409:1, eff. Sept. 1, 1983.

547–B:3 Appointment of Guardian.

I. Notwithstanding any other provision of law to the contrary, when nomination of a guardian is required under RSA 135–C:60 or RSA 171–A:10, and there is no relative, friend, or other interested person available, willing, and able to serve in such a capacity, the probate court may appoint the public guardianship and protection program as guardian of the person, estate, or both person and estate, as may be deemed appropriate.

II. In other instances when guardianship services are required and there is no relative, friend, or other interested person available, willing, and able to serve in such a capacity, the probate court may appoint the public guardianship and protection program as guardian of the person, estate, or both person and estate, as may be deemed appropriate, provided that there are funds available to pay for such services.

Source. 1983, 409:1. 1994, 248:6, eff. June 2, 1994.

547–B:4 Powers and Duties. Except as limited by law or court order, the public guardianship and protection program shall have the same powers and duties as those granted to private guardians or conservators, pursuant to RSA 464–A. The public guardianship and protection program shall file annual reports with the probate court for each person for whom it is appointed guardian or co-guardian as provided in RSA 547–B:5. The reports shall be reviewed by the court to insure that the public guardianship and protection program is complying with all requirements of state and federal law, that the ward is receiving appropriate care and services, and that the highest ethical standards are being maintained.

Source. 1983, 409:1, eff. Sept. 1, 1983.

547–B:5 Appointment of Co-Guardian. At the request of a relative, friend, or other interested party, the public guardianship and protection program may, in the discretion of the probate court, be appointed co-guardian. Both co-guardians shall make themselves readily available to each other to consult with each other, to gather and share all relevant information, and to plan and decide procedures which execute the powers and duties assigned by the appointing court. Disagreements shall be resolved upon petition by decision of the court, prior to which emergency decisions by the public guardianship and protection program shall prevail. Absence or unavailability of either co-guardian empowers the other to act in the capacity of guardian.

Source. 1983, 409:1, eff. Sept. 1, 1983.

547–B:6 Contract for Program Services.

I. The department of health and human services, with the approval of the governor and council, shall contract with one or more organizations approved by the New Hampshire supreme court which shall be designated the public guardianship and protection program and which shall provide guardianship services pursuant to RSA 464–A, as required by RSA 135–C:60 and RSA 171–A:10. The contract shall fix the cost per guardianship and shall permit the contracting organization to subcontract for such consulting services as may be necessary to carry out the program's guardianship responsibilities. The compensation for operation of the public guardianship and protection program shall be such sums as may be fixed by the contract, subject to the appropriations made therefor.

II. The contract may provide for protection services other than guardianship services when such services are consistent with the intent of RSA 464–A. The contract shall set forth an appropriate rate for such services, if provided. Such protective services may include, but not be limited to, power of attorney,

client representation, or service as a conservator, representative or protective payee, but shall not include direct service delivery.

Source. 1983, 291:1, I; 409:1. 1994, 248:7. 1995, 310:181, eff. Nov. 1, 1995.

547–B:7 Services to Other Clients. Nothing in this chapter shall prevent an organization designated as a public guardianship and protection program from providing guardianship or other services to any individual when such services are not mandated by RSA 135–C:60 or RSA 171–A:10, except that no funds furnished under a contract entered into pursuant to RSA 547–B:6 shall be expended for services provided to such other individuals.

Source. 1983, 409:1. 1994, 248:8, eff. June 2, 1994.

547–B:8 Costs of Services. Except in cases of indigency as determined by the probate court, the cost of services rendered under this chapter shall be borne solely by the person or the estate of such person receiving such services. The office of reimbursements established by RSA 126–A:33 is hereby authorized to seek reimbursement from such person or the estate of such person for the actual cost to the state of services rendered.

Source. 1983, 409:1. 1995, 310:14, eff. Nov. 1, 1995.

TITLE LVIII

PUBLIC JUSTICE

CHAPTER 570–A

WIRETAPPING AND EAVESDROPPING

570–A:2 Interception and Disclosure of Telecommunication or Oral Communications Prohibited.

I. A person is guilty of a class B felony if, except as otherwise specifically provided in this chapter or without the consent of all parties to the communication, the person:

(a) Wilfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any telecommunication or oral communication;

(b) Wilfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

(1) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in telecommunication, or

(2) Such device transmits communications by radio, or interferes with the transmission of such communication, or

(3) Such use or endeavor to use (A) takes place on premises of any business or other commercial establishment, or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment; or

(c) Wilfully discloses, or endeavors to disclose, to any other person the contents of any telecommunication or oral communication, knowing or having reason to know that the information was obtained through the interception of a telecommunication or oral communication in violation of this paragraph; or

(d) Willfully uses, or endeavors to use, the contents of any telecommunication or oral communication, knowing or having reason to know that the information was obtained through the interception of a telecommunication or oral communication in violation of this paragraph.

I–a. A person is guilty of a misdemeanor if, except as otherwise specifically provided in this chapter or without consent of all parties to the communication, the person knowingly intercepts a telecommunication or oral communication when the person is a party to the communication or with the prior consent of one of the parties to the communication, but without the approval required by RSA 570–A:2, II(d).

II. It shall not be unlawful under this chapter for:

(a) Any operator of a switchboard, or an officer, employee, or agent of any communication common carrier whose facilities are used in the transmission of a telecommunication, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of such communication; provided, however, that said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) An officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a telecommunication or oral communication.

(c) Any law enforcement officer, when conducting investigations of or making arrests for offenses enumerated in this chapter, to carry on the person an electronic, mechanical or other device which intercepts oral communications and transmits such communications by radio.

(d) An investigative or law enforcement officer in the ordinary course of the officer's duties pertaining to the conducting of investigations of organized crime, offenses enumerated in this chapter, solid waste violations under RSA 149–M:9, I and II, or harassing or obscene telephone calls to intercept a telecommunication or oral communication, when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; provided, however, that no such interception shall be made unless the attorney general, the deputy attorney general, or an assistant attorney general designated by the attorney general determines that there exists a reasonable suspicion that evidence of criminal conduct will be derived from such interception. Oral authorization for the interception may be given and a written memorandum of said determina-

tion and its basis shall be made within 72 hours thereafter. The memorandum shall be kept on file in the office of the attorney general.

(e) Where the offense under investigation is defined in RSA 318–B, the attorney general to delegate authority under RSA 570–A:2, II(d) to a county attorney. The county attorney may exercise this authority only in the county where the county attorney serves. The attorney general shall, prior to the effective date of this subparagraph, adopt specific guidelines under which the county attorney may give authorization for such interceptions. Any county attorney may further delegate authority under this section to any assistant county attorney in the county attorney's office.

(f) An officer, employee, or agent of the Federal Communications Commission, in the normal course of employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a telecommunication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(g) Any law enforcement officer, when conducting investigations of or making arrests for offenses enumerated in this chapter, to carry on the person an electronic, mechanical or other device which intercepts oral communications and transmits such communications by radio.

(h) Any municipal, county, or state fire or police department, the division of emergency services and communications as created by RSA 21–P:48–a, including the bureau of emergency communications as defined by RSA 106–H, or any independently owned emergency service, and their employees in the course of their employment, when receiving or responding to emergency calls, to intercept, record, disclose or use a telecommunication, while engaged in any activity which is a necessary incident to the rendition of service or the protection of life or property.

(i) Any public utility regulated by the public utilities commission, and its employees in the course of employment, when receiving central dispatch calls or calls for emergency service, or when responding to central dispatch calls or calls for emergency service, to intercept, record, disclose or use a telecommunication, while engaged in any activity which is a necessary incident to the rendition of service, or the protection of life and property. Any public utility recording calls pursuant to this subparagraph shall provide an automatic tone warning device which automatically produces a distinct signal that is repeated at regular intervals during the conversation. The public utilities commission may adopt rules relative to the recording of emergency calls under RSA 541–A.

(j) A uniformed law enforcement officer to make an audio recording in conjunction with a video recording of a routine stop performed in the ordinary course of patrol duties on any way as defined by RSA 259:125, provided that the officer shall first give notification of such recording to the party to the communication unless it is not reasonable or practicable under the circumstances.

(k)(1) The owner or operator of a school bus, as defined in RSA 259:96, to make an audio recording in conjunction with a video recording of the interior of the school bus while students are being transported to and from school or school activities, provided that the school board authorizes audio recording, the school district provides notification of such recording to the parents and students as part of the district's pupil safety and violence prevention policy required under RSA 193–F, and there is a sign informing the occupants of such recording prominently displayed on the school bus.

(2) Prior to any audio recording, the school board shall hold a public hearing to determine whether audio recording should be authorized in school buses, and if authorized, the school board shall establish an administrative procedure to address the length of time which the recording is retained, ownership of the recording, limitations on who may listen to the recording, and provisions for erasing or destroying the recording. Such administrative procedure shall permit the parents or legal guardian of any student against whom a recording is being used as part of a disciplinary proceeding to listen to the recording. In no event, however, shall the recording be retained for longer than 10 school days unless the school district determines that the recording is relevant to a disciplinary proceeding, or a court orders that it be retained for a longer period of time. An audio recording shall only be reviewed if there has been a report of an incident or a complaint relative to conduct on the school bus, and only that portion of the audio recording which is relevant to the incident or complaint shall be reviewed.

(*l*) A law enforcement officer in the ordinary course of the officer's duties using any device capable of making an audio or video recording, or both, and which is attached to and used in conjunction with a TASER or other similar electroshock device.

Any person who is the subject of such recording shall be informed of the existence of the audio or video recording, or both, and shall be provided with a copy of such recording at his or her request.

(m) A law enforcement officer to make a body-worn recording pursuant to RSA 105–D.

Source. 1969, 403:1. 1975, 385:2. 1977, 588:16. 1979, 282:1. 1985, 263:2. 1988, 25:3. 1990, 96:1; 191:2. 1992, 174:2. 1995, 195:1; 280:10, I, II, III. 1996, 251:24, eff. Aug. 9, 1996; 274:1–5, eff. Jan. 1, 1997. 2002, 257:11, eff. July 1, 2002. 2003, 319:129, eff. Sept. 4, 2003. 2004, 171:21, eff. July 24, 2004. 2006, 69:1, eff. June 24, 2006. 2008, 139:1, eff. Aug. 5, 2008; 361:11, eff. July 11, 2008. 2010, 155:4, eff. July 1, 2010. 2016, 169:1, eff. June 3, 2016; 322:2, eff. Jan. 1, 2017.

CHAPTER 571–B

EXPOSING MINORS TO HARMFUL MATERIALS

General Provisions

Preliminary Hearing

General Provisions

571–B:1 Definitions. As used in this chapter:

I. "Harmful to minors" means that quality of any description or representation, in whatever form of sexual conduct, when it:

(a) Predominantly appeals to the prurient interest of minors in sex, that is, an interest in lewdness or lascivious thoughts;

(b) Depicts or describes sexual conduct in a manner so explicit as to be patently offensive to contemporary adult standards, in the county within which any offense set forth in this chapter was committed, with respect to what is suitable material for minors; and

(c) Lacks serious literary, artistic, political or scientific value.

II. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry, or both, as to:

(a) The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

(b) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonably bona fide attempt to ascertain the true age of such minor.

III. "Minor" means any person under the age of 18 years.

IV. "Sexual conduct" means human masturbation, sexual intercourse, actual or simulated, normal or perverted, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of same or opposite sex or between humans and animals, any depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts sexual intercourse which give the appearance of the consummation of sexual intercourse, normal or perverted.

Source. 1969, 252:1. 1976, 46:1. 1977, 123:1, eff. Aug. 1, 1977.

571–B:2 Offenses.

I. It shall be unlawful for any person knowingly to give, sell, loan or otherwise provide, with or without monetary consideration, to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts sexual conduct and which is harmful to minors, or

(b) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in RSA 571–B:2, I(a), or explicit and detailed verbal descriptions or narrative accounts of sexual conduct and which, taken as a whole, is harmful to minors.

II. It shall be unlawful for any person knowingly to exhibit, for or without monetary consideration, to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor, for or without monetary consideration, to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts or describes sexual conduct and which is harmful to minors.

Source. 199, 252:1. 1976, 46:2, eff. June 1, 1976.

571–B:3 Penalty. A person convicted of any violation of this chapter shall be guilty of a misdemeanor.

Source. 1969, 252:1. 1977, 588:9, eff. Sept. 16, 1977.

Preliminary Hearing

571–B:4 Preliminary Hearing.

I. No recognized or established school, museum, public library or governmental agency, nor any person acting as an employee or agent of such institu-

tion, shall be arrested, charged or indicted for any violation of a provision of this chapter until such time as the material involved has first been the subject of an adversary hearing wherein such institution or person is made a defendant, and, after such material is declared by the court to be harmful to minors, such institution or person continues to engage in the conduct prohibited by this chapter. The sole issue at the hearing shall be whether the material is harmful to minors.

II. The adversary hearing prescribed in paragraph I of this section may be initiated only by complaint of the county attorney or the attorney general. Hearing on the complaint shall be held in the superior court of the county in which the alleged violation occurs. Notice of the complaint and of the hearing shall be given by registered mail or personal service. The notice shall state the nature of the violation, the date, place and time of the hearing, and the right to present and cross examine witnesses. In addition to the defendant, any other interested party may appear at the hearing in opposition to the complaint and may present and cross examine witnesses. For the purposes of this paragraph, the term "interested party" includes but is not limited to the manufacturer of the material alleged to be harmful to minors.

III. The state or any defendant may appeal from a judgment. Such appeal shall not stay the judgment. Any defendant engaging in conduct prohibited by this chapter subsequent to notice of the judgment finding the material to be harmful to minors shall be subject to criminal prosecution notwithstanding the appeal from the judgment.

Source. 1979, 397:1, eff. Aug. 22, 1979.

CHAPTER 571–C

RESPONSIBILITY TO MINORS

571–C:2 Intoxicating Beverages at Interscholastic Athletic Contests. No person shall drink or have in his possession any intoxicating beverage while in attendance, as a spectator or otherwise, at any place where a school interscholastic athletic contest is being conducted. Whoever violates the provisions of this section shall be guilty of a misdemeanor.

Source. 1971, 141:1. RSA 570:24–a. 1973, 532:25, eff. Nov. 1, 1973.

TITLE LXII

CRIMINAL CODE

CHAPTER 627

JUSTIFICATION

627:1–a Civil Immunity. A person who uses force in self-protection or in the protection of other persons pursuant to RSA 627:4, in the protection of premises and property pursuant to RSA 627:7 and 627:8, in law enforcement pursuant to RSA 627:5, or in the care or welfare of a minor pursuant to RSA 627:6, is justified in using such force and shall be immune from civil liability for personal injuries sustained by a perpetrator which were caused by the acts or omissions of the person as a result of the use of force. In a civil action initiated by or on behalf of a perpetrator against the person, the court shall award the person reasonable attorney's fees, and costs, including but not limited to, expert witness fees, court costs, and compensation for loss of income.

Source. 2011, 268:3, eff. Nov. 13, 2011.

627:6 Physical Force by Persons With Special Responsibilities.

I. A parent, guardian or other person responsible for the general care and welfare of a minor is justified in using force against such minor when and to the extent that he reasonably believes it necessary to prevent or punish such minor's misconduct.

II. (a) A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes is justified on the premises in using necessary force against any such minor, when the minor creates a disturbance, or refuses to leave the premises or when it is necessary for the maintenance of discipline.

(b) In a child care program licensed or exempt from licensure under RSA 170–E, necessary force shall be limited to the minimum physical contact necessary to protect the child, other children present, the staff, or the general public from harm.

III. A person responsible for the general care and supervision of an incompetent person is justified in using force for the purpose of safeguarding his welfare, or, when such incompetent person is in an institution for his care and custody, for the maintenance of reasonable discipline in such institution.

IV. The justification extended in paragraphs I, II, and III does not apply to the malicious or reckless use of force that creates a risk of death, serious bodily injury, or substantial pain.

V. A person authorized by law to maintain decorum or safety in a vessel, aircraft, vehicle, train or other carrier, in a hospital or other health care facility, or in a place where others are assembled may use non-deadly force when and to the extent that he or she reasonably believes it necessary for such purposes, but the person may use deadly force only when he or she reasonably believes it necessary to prevent death or serious bodily injury.

VI. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use a degree of force on such person as he reasonably believes to be necessary to thwart such a result.

VII. A licensed physician, or a person acting under his or her direction, or an advanced practice registered nurse (APRN) working for the department of corrections may use force for the purpose of administering a recognized form of treatment which he or she reasonably believes will tend to promote the physical or mental health of the patient, provided such treatment is administered:

(a) With consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with his care and supervision; or

(b) In an emergency when the physician or the advanced practice registered nurse (APRN) reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

VIII. An employee authorized by a hospital or other health care facility may use non-deadly force when and to the extent that he or she reasonably believes it necessary to maintain decorum or safety and may use deadly force only when he or she reasonably believes it necessary to prevent death or serious bodily injury.

Source. 1971, 518:1. 2000, 225:1. 2002, 112:1. 2009, 54:4, 5, eff. July 21, 2009. 2016, 118:1, 2, eff. July 19, 2016.

CHAPTER 630

HOMICIDE

630:1 Capital Murder.

I. A person is guilty of capital murder if he knowingly causes the death of:

(a) A law enforcement officer or a judicial officer acting in the line of duty or when the death is caused as a consequence of or in retaliation for such person's actions in the line of duty;

(b) Another before, after, while engaged in the commission of, or while attempting to commit kidnapping as that offense is defined in RSA 633:1;

(c) Another by criminally soliciting a person to cause said death or after having been criminally solicited by another for his personal pecuniary gain;

(d) Another after being sentenced to life imprisonment without parole pursuant to RSA 630:1–a, III;

(e) Another before, after, while engaged in the commission of, or while attempting to commit aggravated felonious sexual assault as defined in RSA 632–A:2;

(f) Another before, after, while engaged in the commission of, or while attempting to commit an offense punishable under RSA 318–B:26, I(a) or (b); or

(g) Another, who is licensed or privileged to be within an occupied structure, or separately secured or occupied section thereof, before, after, or while in the commission of, or while attempting to commit, burglary as defined in RSA 635:1.

II. As used in this section, a "law enforcement officer" is a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail or corrections institution, a probation-parole officer, or a conservation officer.

II–a. As used in this section, a "judicial officer" is a judge of a district, probate, superior or supreme court; an attorney employed by the department of justice or a municipal prosecutor's office; or a county attorney; or attorney employed by the county attorney.

III. A person convicted of a capital murder may be punished by death.

IV. As used in this section, the meaning of "another" shall not include a fetus.

V. In no event shall any person under the age of 18 years at the time the offense was committed be culpable of a capital murder.

Source. 1971, 518:1. 1974, 34:1. 1977, 440:1; 588:41. 1988, 69:1, 2. 1990, 199:1. 1994, 128:1, 2. 2005, 35:1. 2011, 222:2, eff. July 1, 2011. 2017, 188:1, eff. Jan. 1, 2018.

630:1–a First Degree Murder.

I. A person is guilty of murder in the first degree if he:

(a) Purposely causes the death of another; or

(b) Knowingly causes the death of:

(1) Another before, after, while engaged in the commission of, or while attempting to commit felonious sexual assault as defined in RSA 632–A:3;

(2) Another before, after, while engaged in the commission of, or while attempting to commit robbery or burglary while armed with a deadly weapon, the death being caused by the use of such weapon;

(3) Another in perpetrating or attempting to perpetrate arson as defined in RSA 634:1, I, II, or III;

(4) The president or president-elect or vice-president or vice-president-elect of the United States, the governor or governor-elect of New Hampshire or any state or any member or member-elect of the congress of the United States, or any candidate for such office after such candidate has been nominated at his party's primary, when such killing is motivated by knowledge of the foregoing capacity of the victim.

II. For the purpose of RSA 630:1–a, I(a), "purposely" shall mean that the actor's conscious object is the death of another, and that his act or acts in furtherance of that object were deliberate and premeditated.

III. A person convicted of a murder in the first degree shall be sentenced to life imprisonment and shall not be eligible for parole at any time.

IV. For the purposes of this section and RSA 630:1–b, RSA 630:2, RSA 630:3, and RSA 630:4, the meaning of "another" shall include a fetus as defined in paragraph V.

V. (a) Nothing in paragraph IV shall apply to:

(1) Any act committed by the pregnant woman;

(2) Any act committed at the request or direction of the pregnant woman or for the benefit of the pregnant woman;

(3) Any act performed by a physician or other medical professional in the course of such physician's or medical professional's professional duties, including but not limited to, an act that results in the termination of a pregnancy; or

(4) Any act taken in furtherance of the lawful dispensation or administration of prescription or nonprescription medication.

(b) In this section:

(1) "Fetus" means an unborn offspring, from the embryo stage which is the end of the twentieth week after conception or, in the case of in vitro fertilization, the end of the twentieth week after implantation, until birth.

(2) "Pregnant" means the female reproductive condition of having one or more developing embryos or fetuses implanted in the uterus or elsewhere in the female body.

(3) "Pregnancy" means one or more developing embryos or fetuses implanted in the uterus or elsewhere in the female body.

Source. 1974, 34:2. 1986, 132:3. 1990, 199:2, eff. Jan. 1, 1991. 2017, 188:2, eff. Jan. 1, 2018.

630:1–b Second Degree Murder.

I. A person is guilty of murder in the second degree if:

(a) He knowingly causes the death of another; or

(b) He causes such death recklessly under circumstances manifesting an extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor causes the death by the use of a deadly weapon in the commission of, or in an attempt to commit, or in immediate flight after committing or attempting to commit any class A felony.

II. Murder in the second degree shall be punishable by imprisonment for life or for such term as the court may order.

Source. 1974, 34:2, eff. April 15, 1974.

630:2 Manslaughter.

I. A person is guilty of manslaughter when he causes the death of another:

(a) Under the influence of extreme mental or emotional disturbance caused by extreme provocation but which would otherwise constitute murder; or

(b) Recklessly.

II. Manslaughter shall be punishable by imprisonment for a term of not more than 30 years.

III. In addition to any other penalty imposed, if the death of another person resulted from the driving of a motor vehicle, the court may revoke the license or driving privilege of the convicted person indefinitely. In a case in which alcohol was involved, the court may also require that the convicted person shall not have a license to drive reinstated until after the division of motor vehicles receives certification of installation of an ignition interlock device as described in RSA 265–A:36, which shall remain in place for a period not to exceed 5 years.

Source. 1971, 518:1. 1974, 34:3. 1979, 126:4. 2000, 318:1, eff. June 21, 2000. 2017, 243:3, eff. July 18, 2017.

630:3 Negligent Homicide.

I. A person is guilty of a class B felony when he causes the death of another negligently.

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

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

Source. 1971, 518:1. 1977, 588:40. 1985, 290:2. 1989, 415:2. 1992, 257:10. 1993, 272:2. 2000, 287:4; 318:2. 2006, 260:32, eff. Jan. 1, 2007.

630:4 Causing or Aiding Suicide.

I. A person is guilty of causing or aiding suicide if he purposely aids or solicits another to commit suicide.

II. Causing or aiding suicide is a class B felony if the actor's conduct causes such suicide or an attempted suicide. Otherwise it is a misdemeanor.

Source. 1971, 518:1, eff. Nov. 1, 1973.

630:5 Procedure in Capital Murder.

I. Whenever the state intends to seek the sentence of death for the offense of capital murder, the attorney for the state, before trial or acceptance by the court of a plea of guilty, shall file with the court and serve upon the defendant, a notice:

(a) That the state in the event of conviction will seek the sentence of death; and

(b) Setting forth the aggravating factors enumerated in paragraph VII of this section and any other aggravating factors which the state will seek to prove as the basis for the death penalty.

The court may permit the attorney for the state to amend this notice for good cause shown. Any such amended notice shall be served upon the defendant as provided in this section.

II. When the attorney for the state has filed a notice as required under paragraph I and the defendant is found guilty of or pleads guilty to the offense of capital murder, the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted:

(a) Before the jury which determined the defendant's guilt;

(b) Before a jury impaneled for the purpose of the hearing if:

(1) the defendant was convicted upon a plea of guilty; or

(2) the jury which determined the defendant's guilt has been discharged for good cause; or

(3) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary.

A jury impaneled under subparagraph (b) shall consist of 12 members, unless at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

III. When a defendant is found guilty of or pleads guilty to the offense of capital murder, no presentence report shall be prepared. In the sentencing hearing, information may be presented as to matters relating to any of the aggravating or mitigating factors set forth in paragraphs VI and VII, or any other mitigating factor or any other aggravating factor for which notice has been provided under subparagraph I(b). Where information is presented relating to any of the aggravating factors set forth in paragraph VII, information may be presented relating to any other aggravating factor for which notice has been provided under subparagraph I(b). Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial, or at the trial judge's discretion. Any other information relevant to such mitigating or aggravating factors may be presented by either the state or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The state and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The state shall open and the defendant shall conclude the argument to the jury. The burden of establishing the existence of any aggravating factor is on the state, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

IV. The jury shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factors set forth in paragraph VII, which are found to exist. If one of the aggravating factors set forth in subparagraph VII(a) and another of the aggravating factors set forth in subparagraphs VII(b)–(j) is found to exist, a special finding identifying any other aggravating factor for which notice has been provided under subparagraph I(b) may be returned. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this section, regardless of the number of jurors who con-

cur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If an aggravating factor set forth in subparagraph VII(a) is not found to exist or an aggravating factor set forth in subparagraph VII(a) is found to exist but no other aggravating factor set forth in paragraph VII is found to exist, the court shall impose a sentence of life imprisonment without possibility of parole. If an aggravating factor set forth in subparagraph VII(a) and one or more of the aggravating factors set forth in subparagraph VII (b)–(j) are found to exist, the jury shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, if the jury concludes that the aggravating factors outweigh the mitigating factors or that the aggravating factors, in the absence of any mitigating factors, are themselves sufficient to justify a death sentence, the jury, by unanimous vote only, may recommend that a sentence of death be imposed rather than a sentence of life imprisonment without possibility of parole. The jury, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence and the jury shall be so instructed.

V. Upon the recommendation that the sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence of life imprisonment without possibility of parole.

VI. In determining whether a sentence of death is to be imposed upon a defendant, the jury shall consider mitigating factors, including the following:

(a) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

(b) The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

(c) The defendant is punishable as an accomplice (as defined in RSA 626:8) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

(d) The defendant was youthful, although not under the age of 18.

(e) The defendant did not have a significant prior criminal record.

(f) The defendant committed the offense under severe mental or emotional disturbance.

(g) Another defendant or defendants, equally culpable in the crime, will not be punished by death.

(h) The victim consented to the criminal conduct that resulted in the victim's death.

(i) Other factors in the defendant's background or character mitigate against imposition of the death sentence.

VII. If the defendant is found guilty of or pleads guilty to the offense of capital murder, the following aggravating factors are the only aggravating factors that shall be considered, unless notice of additional aggravating factors is provided under subparagraph I(b):

(a) The defendant:

(1) purposely killed the victim;

(2) purposely inflicted serious bodily injury which resulted in the death of the victim;

(3) purposely engaged in conduct which:

(A) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and

(B) resulted in the death of the victim.

(b) The defendant has been convicted of another state or federal offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by law.

(c) The defendant has previously been convicted of 2 or more state or federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

(d) The defendant has previously been convicted of 2 or more state or federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

(e) In the commission of the offense of capital murder, the defendant knowingly created a grave risk of death to one or more persons in addition to the victims of the offense.

(f) The defendant committed the offense after substantial planning and premeditation.

(g) The victim was particularly vulnerable due to old age, youth, or infirmity.

(h) The defendant committed the offense in an especially heinous, cruel or depraved manner in that it involved torture or serious physical abuse to the victim.

(i) The murder was committed for pecuniary gain.

(j) The murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from lawful custody.

VIII. If a person is convicted of the offense of capital murder and the court does not impose the penalty of death, the court shall impose a sentence of life imprisonment without possibility of parole.

IX. If the jury cannot agree on the punishment within a reasonable time, the judge shall impose the sentence of life imprisonment without possibility of parole. If the case is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment.

X. In all cases of capital murder where the death penalty is imposed, the judgment of conviction and the sentence of death shall be subject to automatic review by the supreme court within 60 days after certification by the sentencing court of the entire record unless time is extended for an additional period not to exceed 30 days by the supreme court for good cause shown. Such review by the supreme court shall have priority over all other cases and shall be heard in accordance with rules adopted by said court.

XI. With regard to the sentence the supreme court shall determine:

(a) Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and

(b) Whether the evidence supports the jury's finding of an aggravating circumstance, as authorized by law; and

(c) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

XII. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(a) Affirm the sentence of death; or

(b) Set the sentence aside and remand the case for resentencing.

XIII. When the penalty of death is imposed, the sentence shall be that the defendant be imprisoned in the state prison at Concord until the day appointed for his execution, which shall not be within one year from the day sentence is passed. The punishment of death shall be inflicted by continuous, intravenous administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent until death is pronounced by a licensed physician according to accepted standards of medical practice.

XIV. The commissioner of corrections or his designee shall determine the substance or substances to be used and the procedures to be used in any execution, provided, however, that if for any reason the commissioner finds it to be impractical to carry out the punishment of death by administration of the required lethal substance or substances, the sentence of death may be carried out by hanging under the provisions of law for the death penalty by hanging in effect on December 31, 1986.

XV. An execution carried out by lethal injection shall be performed by a person selected by the commissioner of the department of corrections and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse, licensed or registered under the laws of this or any other state.

XVI. The infliction of the punishment of death by administration of the required lethal substance or substances in the manner required by this section shall not be construed to be the practice of medicine, and any pharmacist or pharmaceutical supplier is authorized to dispense drugs to the commissioner of corrections or his designee, without prescription, for carrying out the provisions of this section, notwithstanding any other provision of law.

XVII. The governor and council or their designee shall determine the time of performing such execution and shall be responsible for providing facilities for the implementation thereof. In no event shall a sentence of death be carried out upon a pregnant woman or a person for an offense committed while a minor.

Source. 1974, 34:10. 1977, 440:2. 1986, 82:1. 1990, 199:3, eff. Jan. 1, 1991.

630:6 Place; Witnesses. The punishment of death shall be inflicted within the walls or yard of the state prison. The sheriff of the county in which the person was convicted, and 2 of his deputies, shall be present, unless prevented by unavoidable casualty.

He shall request the presence of the attorney general or county attorney, clerk of the court and a surgeon, and may admit other reputable citizens not exceeding 12, the relations of the convict, his counsel and such priest or clergyman as he may desire, and no others.

Source. 1974, 34:10, eff. April 15, 1974.

CHAPTER 631

ASSAULT AND RELATED OFFENSES

631:1 First Degree Assault.

I. A person is guilty of a class A felony if he:

(a) Purposely causes serious bodily injury to another; or

(b) Purposely or knowingly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II–g; or

(c) Purposely or knowingly causes injury to another resulting in miscarriage or stillbirth; or

(d) Knowingly or recklessly causes serious bodily injury to a person under 13 years of age.

II. In this section:

(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus; and

(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

III. (a) Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2–b, III, a conviction under this section shall be recorded as "first degree assault-domestic violence."

(b) In addition to any other penalty authorized by law, the court shall levy a fine of $50 for each conviction recorded as "first degree assault-domestic violence" under this paragraph. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this paragraph and no fine imposed under this paragraph shall be subject to an additional penalty assessment. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. The clerk shall forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173–B:15. The provisions of RSA 618:8 and RSA 618:9 shall not apply to a fine imposed under this paragraph.

Source. 1971, 518:1. 1979, 126:1. 1990, 95:2. 1991, 75:1. 1992, 71:1. 2014, 152:3, eff. Jan. 1, 2015. 2017, 90:4, eff. Jan. 1, 2018.

631:2 Second Degree Assault.

I. A person is guilty of a class B felony if he or she:

(a) Knowingly or recklessly causes serious bodily injury to another; or

(b) Recklessly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he or she shall be sentenced in accordance with RSA 651:2, II–g; or

(c) Recklessly causes bodily injury to another under circumstances manifesting extreme indifference to the value of human life; or

(d) Purposely or knowingly causes bodily injury to a child under 13 years of age; or

(e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth; or

(f) Purposely or knowingly engages in the strangulation of another.

II. In this section:

(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus.

(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

(c) "Strangulation" means the application of pressure to another person's throat or neck, or the blocking of the person's nose or mouth, that causes the person to experience impeded breathing or blood circulation or a change in voice.

III. (a) Upon proof that the victim and defendant were intimate partners or family or household mem-

bers, as those terms are defined in RSA 631:2–b, III, a conviction under this section shall be recorded as "second degree assault-domestic violence."

(b) In addition to any other penalty authorized by law, the court shall levy a fine of $50 for each conviction recorded as "second degree assault-domestic violence" under this paragraph. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this paragraph and no fine imposed under this paragraph shall be subject to an additional penalty assessment. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. The clerk shall forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173–B:15. The provisions of RSA 618:8 and RSA 618:9 shall not apply to a fine imposed under this paragraph.

Source. 1971, 518:1. 1979, 126:2. 1985, 181:1. 1990, 95:3. 1991, 75:2. 2010, 8:1. 2014, 152:4, eff. Jan. 1, 2015. 2017, 90:5, eff. Jan. 1, 2018.

631:2–a Simple Assault.

I. A person is guilty of simple assault if he:

(a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or

(b) Recklessly causes bodily injury to another; or

(c) Negligently causes bodily injury to another by means of a deadly weapon.

II. Simple assault is a misdemeanor unless committed in a fight entered into by mutual consent, in which case it is a violation.

Source. 1979, 126:3, eff. Aug. 4, 1979.

631:2–b Domestic Violence.

I. A person is guilty of domestic violence if the person commits any of the following against a family or household member or intimate partner:

(a) Purposely or knowingly causes bodily injury or unprivileged physical contact against another by use of physical force;

(b) Recklessly causes bodily injury to another by use of physical force;

(c) Negligently causes bodily injury to another by means of a deadly weapon;

(d) Uses or attempts to use physical force, or by physical conduct threatens to use a deadly weapon for the purpose of placing another in fear of imminent bodily injury;

(e) Threatens to use a deadly weapon against another person for the purpose to terrorize that person;

(f) Coerces or forces another to submit to sexual contact by using physical force or physical violence;

(g) Threatens to use physical force or physical violence to cause another to submit to sexual contact and the victim believes the actor has the present ability to execute the threat;

(h) Threatens to use a deadly weapon to cause another to submit to sexual contact and the victim believes the actor has the present ability to carry out the threat;

(i) Confines another unlawfully, as defined in RSA 633:2, by means of physical force or the threatened use of a deadly weapon, so as to interfere substantially with his or her physical movement;

(j) Knowingly violates a term of a protective order issued pursuant to RSA 173–B:4, I by means of the use or attempted use of physical force or the threatened use of a deadly weapon;

(k) Uses physical force or the threatened use of a deadly weapon against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

(1) The report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

(2) A request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

II. Domestic violence is a class A misdemeanor unless the person uses or threatens to use a deadly weapon as defined in RSA 625:11, V, in the commission of an offense, in which case it is a class B felony.

III. For purposes of this section:

(a) "Family or household member" means:

(1) The actor's spouse or former spouse;

(2) A person with whom the actor is cohabiting as a spouse, parent, or guardian;

(3) A person with whom the actor cohabited as a spouse, parent, or guardian but no longer shares the same residence;

(4) An adult with whom the actor is related by blood or marriage; or

(5) A person with whom the actor shares a child in common.

(b) "Intimate partner" means a person with whom the actor is currently or was formerly in-

volved in a romantic relationship, regardless of whether or not the relationship was sexually consummated.

IV. Upon conviction and sentencing, the court shall document on the sentencing form the specific nature of the relationship between the defendant and the victim, by reference to subparagraphs III(a)(1)–(5) and III(b).

V. In addition to any other penalty authorized by law, the court shall levy a fine of $50 for each conviction under this section. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this section. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. Fines imposed under this section shall not be subject to an additional penalty assessment and shall not be subject to the provisions of RSA 618:8 or 618:9. The clerk shall forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173–B:15.

Source. 2014, 152:2. 2015, 244:1, eff. July 1, 2015. 2017, 90:6, eff. Jan. 1, 2018.

631:3 Reckless Conduct.

I. A person is guilty of reckless conduct if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.

II. Reckless conduct is a class B felony if the person uses a deadly weapon as defined in RSA 625:11, V. All other reckless conduct is a misdemeanor.

III. A person convicted of a class B felony offense under this section shall not be subject to the provisions of RSA 651:2, II–g.

IV. (a) Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2–b, III, a conviction under this section shall be recorded as "reckless conduct-domestic violence."

(b) In addition to any other penalty authorized by law, the court shall levy a fine of $50 for each conviction recorded as "reckless conduct-domestic violence" under this paragraph. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this paragraph and no fine imposed under this paragraph shall be subject to an additional penalty assessment. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. The clerk shall forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173–B:15. The provisions of RSA 618:8 and RSA 618:9 shall not apply to a fine imposed under this paragraph.

Source. 1971, 518:1. 1994, 187:1. 2006, 163:2. 2014, 152:5, eff. Jan. 1, 2015. 2017, 90:7, eff. Jan. 1, 2018.

631:3–a Conduct Involving Laser Pointing Devices.

I. (a) Any person who knowingly shines the beam of a laser pointing device at an occupied motor vehicle, vessel, or window, or at a person shall be guilty of a violation and the laser pointing device shall be seized and forfeited upon conviction.

(b) Any person who knowingly shines the beam of a laser pointing device at an occupied aircraft shall be guilty of a misdemeanor and the laser pointing device shall be seized and forfeited upon conviction.

II. Any person who knowingly shines the beam of a laser pointing device at a law enforcement officer or law enforcement vehicle shall be guilty of a class A misdemeanor and the laser pointing device shall be seized and forfeited upon conviction.

III. It shall be an affirmative defense under this section if the laser pointing device was used in an organized meeting or training class by the instructor or speaker. Nothing in this section shall be construed so as to limit the use of medical lasers by qualified medical personnel, or construction lasers used by construction personnel in the course of their work, or laser devices utilized by law enforcement personnel in the performance of their official duties.

Source. 1999, 230:1, eff. Jan. 1, 2000. 2016, 92:1, eff. Jan. 1, 2017.

631:4 Criminal Threatening.

I. A person is guilty of criminal threatening when:

(a) By physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or

(b) The person places any object or graffiti on the property of another with a purpose to coerce or terrorize any person; or

(c) The person threatens to commit any crime against the property of another with a purpose to coerce or terrorize any person; or

(d) The person threatens to commit any crime against the person of another with a purpose to terrorize any person; or

(e) The person threatens to commit any crime of violence, or threatens the delivery or use of a biological or chemical substance, with a purpose to cause evacuation of a building, place of assembly, facility of public transportation or otherwise to cause serious public inconvenience, or in reckless disregard of causing such fear, terror or inconvenience; or

(f) The person delivers, threatens to deliver, or causes the delivery of any substance the actor knows could be perceived as a biological or chemical substance, to another person with the purpose of causing fear or terror, or in reckless disregard of causing such fear or terror.

II. (a) Criminal threatening is a class B felony if the person:

(1) Violates the provisions of subparagraph I(e); or

(2) Uses a deadly weapon as defined in RSA 625:11, V in the violation of the provisions of subparagraph I(a), I(b), I(c), or I(d).

(b) All other criminal threatening is a misdemeanor.

III. (a) As used in this section, "property" has the same meaning as in RSA 637:2, I; "property of another" has the same meaning as in RSA 637:2, IV.

(b) As used in this section, "terrorize" means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation.

IV. A person who responds to a threat which would be considered by a reasonable person as likely to cause serious bodily injury or death to the person or to another by displaying a firearm or other means of self-defense with the intent to warn away the person making the threat shall not have committed a criminal act under this section.

Source. 1971, 518:1. 1983, 338:1. 1994, 187:2. 1996, 92:1. 2002, 222:7. 2003, 69:1. 2010, 361:2, eff. Jan. 1, 2011.

631:4–a Harm or Threats to Certain Government Officials.

I. A person is guilty of a class A felony if he or she causes bodily injury to, or commits any other crime against, a sitting member of the general court, an executive councilor, a past or present governor, member of the judiciary, marital master, or member of their immediate family, for the purpose of influencing such official's action or in retaliation for action taken as a part of an official's government duties.

II. A person is guilty of a class B felony if he or she threatens bodily injury or threatens to commit any other crime against a sitting member of the general court, an executive councilor, a past or present governor, member of the judiciary, marital master, or member of their immediate family, for the purpose of influencing such official's action or in retaliation for action taken as a part of an official's government duties.

III. Violations of this statute shall be prosecuted by the office of the attorney general.

Source. 2006, 47:1, eff. Jan. 1, 2007.

631:5 Operating Boats Under Influence of Liquor or Drugs.

[Repealed 1992, 257:22, II, eff. Jan. 1, 1993.]

History

Former RSA 631:5, which was derived from 1971, 518:1; 1985, 28:2; and 1989, 353:28, related to penalties for operating boats under the influence of liquor or drugs. See now RSA 265–A:19.

631:6 Failure to Report Injuries.

I. Except as provided in paragraph II, a person is guilty of a misdemeanor if, having knowingly treated or assisted another for a gunshot wound or for any other injury he believes to have been caused by a criminal act, he fails immediately to notify a law enforcement official of all the information he possesses concerning the injury.

II. A person who has rendered treatment or assistance is excepted from the reporting provisions of paragraph I if the person seeking or receiving treatment or other assistance: (a) is 18 years of age or older, (b) has been a victim of a sexual assault offense or abuse as defined in RSA 173–B:1, and (c) objects to the release of any information to law enforcement officials. This exception shall not apply if the sexual assault or abuse victim is also being treated for a gunshot wound or other serious bodily injury.

III. [Repealed.]

Source. 1971, 518:1. 1991, 59:1. 1993, 95:1, 3, eff. Jan. 1, 1994.

631:7 Student Hazing.

I. For the purposes of this section:

(a) "Educational institution" means any public or private high school, college, university, or other secondary or postsecondary educational establishment.

(b) "Organization" means a fraternity, sorority, association, corporation, order, society, corps, athletic group, cooperative, club, or service, social or similar group, whose members are or include students, operating at or in conjunction with an educational institution.

(c) "Student" means any person regularly enrolled on a full-time or part-time basis as a student in an educational institution.

(d) "Student hazing" means any act directed toward a student, or any coercion or intimidation of a student to act or to participate in or submit to any act, when:

(1) Such act is likely or would be perceived by a reasonable person as likely to cause physical or psychological injury to any person; and

(2) Such act is a condition of initiation into, admission into, continued membership in or association with any organization.

II. (a) A natural person is guilty of a class B misdemeanor if such person:

(1) Knowingly participates as actor in any student hazing; or

(2) Being a student, knowingly submits to hazing and fails to report such hazing to law enforcement or educational institution authorities; or

(3) Is present at or otherwise has direct knowledge of any student hazing and fails to report such hazing to law enforcement or educational institution authorities.

(b) An educational institution or an organization operating at or in conjunction with an educational institution is guilty of a misdemeanor if it:

(1) Knowingly permits or condones student hazing; or

(2) Knowingly or negligently fails to take reasonable measures within the scope of its authority to prevent student hazing; or

(3) Fails to report to law enforcement authorities any hazing reported to it by others or of which it otherwise has knowledge.

III. The implied or express consent of any person toward whom an act of hazing is directed shall not be a defense in any action brought under this section.

Source. 1993, 155:1, eff. July 1, 1993.

631:8 Criminal Neglect of Elderly, Disabled, or Impaired Adults.

I. In this section:

(a) "Adult" means any person who is 18 years of age or older.

(b) "Caregiver" means any person who has been entrusted with, or has assumed the responsibility voluntarily, by contract, or by order of the court, for frequent and regular care of or services to an elderly, disabled, or impaired adult, including subsistence, medical, custodial, personal or other care, on a temporary or permanent basis. A caregiver shall not include an uncompensated volunteer, unless such person has agreed to provide care and is aware that the person receiving the care is dependent upon the care provided.

(c) "Disabled adult" means an adult who has a diagnosed physical or mental impairment.

(d) "Elderly adult" means an individual who is 60 years of age or older.

(e) "Impaired adult" means any adult who suffers from an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, memory loss, or other cause, that causes an adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the adult's person or property or exhibits the functional limitations as defined in RSA 464–A:2, VII. Impaired adult includes a person determined to be vulnerable under RSA 161–F or incapacitated under RSA 464–A.

(f) "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. "Neglect" may be repeated conduct or a single incident.

(g) "Person" means any natural person, corporation, trust, partnership, unincorporated association, or any other legal entity.

(h) "Serious bodily injury" means serious bodily injury as defined in RSA 625:11, VI.

(i) "Undue influence" means the intentional use, by a person in a position of trust and confidence with an elderly, disabled, or impaired adult, of that position to obtain an unfair advantage over the elderly, disabled, or impaired adult, through actions or tactics, including, but not limited to, emotional, psychological, and legal manipulation.

II. Any caregiver who purposely causes serious bodily injury to an elderly, disabled, or impaired adult by neglect shall be guilty of a class A felony.

III. Any caregiver who knowingly or recklessly causes serious bodily injury to an elderly, disabled, or

impaired adult by neglect shall be guilty of a class B felony.

IV. Nothing in this section shall be construed to alter or impair a person's right to self-determination or right to refuse medical treatment as described in RSA 151:21 and RSA 151:21–b.

V. Nothing in this section shall be construed to mean a person is abused, neglected, exploited, or in need of protective services for the sole reason that such person relies on or is being furnished treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a church or religious denomination of which such person is a member or an adherent.

VI. Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to provide for the care of an elderly, disabled, or impaired adult, but through no fault of his or her own, has been unable to provide such care, or on a person who is carrying out the lawful request of an elderly or disabled adult who is competent to make his or her own decisions.

Source. 2002, 226:1. 2014, 151:2, 3, eff. Jan. 1, 2015. 2016, 59:8, eff. July 4, 2016.

631:9 Financial Exploitation of an Elderly, Disabled, or Impaired Adult.

I. Whoever commits any of the following acts against an elderly, disabled, or impaired adult, as defined in RSA 631:8, shall be guilty of financial exploitation and penalized pursuant to RSA 631:10 if:

(a) In breach of a fiduciary obligation recognized in law, including pertinent regulations, contractual obligations, documented consent by a competent person, including, but not limited to, an agent under a durable power of attorney, guardian, conservator, or trustee, a person, knowingly or recklessly, for his or her own profit or advantage:

(1) Fails to use the real or personal property or other financial resources of the elderly, disabled, or impaired adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the elderly, disabled, or impaired adult when under a duty to do so; or

(2) Unless authorized by the instrument establishing fiduciary obligation, deprives, uses, manages, or takes either temporarily or permanently the real or personal property or other financial resources of the elderly, disabled, or impaired adult for the benefit of someone other than the elderly, disabled, or impaired adult; or

(b) In the absence of legal authority a person knowingly or recklessly through the use of undue influence, harassment, duress, force, compulsion, or coercion:

(1) Acquires possession or control of an interest in real or personal property or other financial resources of an elderly, disabled, or impaired adult;

(2) Induces an elderly, disabled, or impaired adult against the elderly, disabled, or impaired adult's will to perform services for the profit or advantage of another; or

(3) Establishes a relationship with a fiduciary obligation to an elderly, disabled, or impaired adult that gives the person control of an interest in real or personal property or other financial resources of an elderly, disabled, or impaired adult.

II. State and local law enforcement agencies shall have concurrent jurisdiction to investigate reports of abuse, neglect, or exploitation of vulnerable adults as defined in RSA 161–F or incapacitated adults under RSA 464–A and all other crimes against elderly, disabled, or impaired adult victims including, but not limited to, the crimes set forth in RSA 631:8 and this section. Nothing in this paragraph shall be construed to alter the duties and responsibilities of the commissioner of the department of health and human services, or his or her designees, relative to investigating reports of abuse, neglect, self-neglect, or exploitation of vulnerable adults pursuant to RSA 161–F.

III. Nothing in this section requires a health or residential care facility, licensed under RSA 151, or any person to provide financial management or supervise financial management for an elderly, disabled, or impaired adult except as otherwise required by law.

IV. If the person knew or had reason to know that the elderly, disabled, or impaired adult lacked capacity to consent, consent is not a defense to a violation of this section.

V. Nothing in this section shall be construed to impose criminal liability on a person who makes a good faith effort to assist an elderly, disabled, or impaired adult in the management of funds, assets, or property which effort fails through no fault of the person.

Source. 2014, 151:4, eff. Jan. 1, 2015. 2016, 59:9, eff. July 4, 2016.

631:10 Penalties.

I. Any person who violates RSA 631:9 and who knows or reasonably should know that the victim is an elderly, disabled, or impaired adult shall be guilty of:

(a) A class A felony if the funds, assets, or property involved in the exploitation of the elderly, disabled, or impaired adult is valued at $1,500 or more; or

(b) A class B felony if the funds, assets, or property involved in the exploitation of the elderly, disabled, or impaired adult is valued at $1,000 or more, but less than $1,500; or

(c) A misdemeanor if the funds, assets, or property involved in the exploitation of the elderly, disabled, or impaired adult is valued at less than $1,000.

II. A person convicted of financial exploitation shall be sentenced to make restitution of the full value of the fund, assets, or property involved in the exploitation to the elderly, disabled, or impaired adult or the adult's estate in accordance with RSA 651:63.

Source. 2014, 151:4, eff. Jan. 1, 2015.

CHAPTER 632–A

SEXUAL ASSAULT AND RELATED OFFENSES

632–A:1 Definitions. In this chapter:

I. "Actor" means a person accused of a crime of sexual assault.

I–a. "Affinity" means a relation which one spouse because of marriage has to blood relatives of the other spouse.

I–b. "Genital openings" means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum.

I–c. "Pattern of sexual assault" means committing more than one act under RSA 632–A:2 or RSA 632–A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years.

II. "Retaliate" means to undertake action against the interests of the victim, including, but not limited to:

(a) Physical or mental torment or abuse.

(b) Kidnapping, false imprisonment or extortion.

(c) Public humiliation or disgrace.

III. "Serious personal injury" means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ.

IV. "Sexual contact" means the intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts, including emissions, tongue, anus, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

V. (a) "Sexual penetration" means:

(1) Sexual intercourse; or

(2) Cunnilingus; or

(3) Fellatio; or

(4) Anal intercourse; or

(5) Any intrusion, however slight, of any part of the actor's body, including emissions, or any object manipulated by the actor into genital or anal openings of the victim's body; or

(6) Any intrusion, however slight, of any part of the victim's body, including emissions, or any object manipulated by the victim into the oral, genital, or anal openings of the actor's body; or

(7) Any act which forces, coerces, or intimidates the victim to perform any sexual penetration as defined in subparagraphs (1)–(6) on the actor, on another person, or on himself.

(b) Emissions include semen, urine, and feces. Emission is not required as an element of any form of sexual penetration.

(c) "Objects" include animals as defined in RSA 644:8, II.

VI. "Therapy" means the treatment of bodily, mental, or behavioral disorders by remedial agents or methods.

Source. 1975, 302:1. 1979, 127:1. 1981, 553:10. 1986, 132:2. 1992, 254:3–5. 1994, 185:1. 1998, 240:1. 1999, 177:1. 2008, 334:8, eff. Jan. 1, 2009.

632–A:2 Aggravated Felonious Sexual Assault.

I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in

sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.

(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.

(g) When the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship:

(1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; or

(2) Uses this position as such provider to coerce the victim to submit.

(h) When, except as between legally married spouses, the victim has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability.

(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.

(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:

(1) the actor is a member of the same household as the victim; or

(2) the actor is related by blood or affinity to the victim.

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

(*l*) When the victim is less than 13 years of age.

(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632–A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to legiti-

macy, stepchildren, and relationships of parent and child by adoption.

V. (a) Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2–b, III, a conviction under this section shall be recorded as "aggravated felonious sexual assault-domestic violence."

(b) In addition to any other penalty authorized by law, the court shall levy a fine of $50 for each conviction recorded as "aggravated felonious sexual assault-domestic violence" under this paragraph. The court shall not reduce or suspend any sentence or the payment of any fine imposed under this paragraph and no fine imposed under this paragraph shall be subject to an additional penalty assessment. If the court determines that the defendant is unable to pay the fine on the date imposed, the court may defer payment or order periodic payments thereof. The clerk shall forward all fines collected under this paragraph to the department of health and human services for the purposes of RSA 173–B:15. The provisions of RSA 618:8 and RSA 618:9 shall not apply to a fine imposed under this paragraph.

Source. 1975, 302:1. 1981, 415:2, 3. 1986, 132:1. 1992, 254:6. 1994, 185:2. 1995, 66:1. 1997, 220:2. 1998, 240:2. 1999, 177:2. 2003, 226:1, 2. 2008, 334:13. 2012, 105:1. 2014, 152:6, eff. Jan. 1, 2015. 2017, 90:8, eff. Jan. 1, 2018.

632–A:10 Prohibition From Child Care Service of Persons Convicted of Certain Offenses.

I. A person is guilty of a class A felony if, having been convicted in this or any other jurisdiction of any felonious offense involving child sexual abuse images, or of a felonious physical assault on a minor, or of any sexual assault, he or she knowingly undertakes employment or volunteer service involving the care, instruction or guidance of minor children, including, but not limited to, service as a teacher, a coach, or worker of any type in child athletics, a day care worker, a boy or girl scout master or leader or worker, a summer camp counselor or worker of any type, a guidance counselor, or a school administrator of any type.

II. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he knowingly fails to provide information of such conviction when applying or volunteering for service or employment of any type involving the care, instruction, or guidance of minor children, including, but not limited to, the types of services set forth in paragraph I.

III. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he knowingly fails to provide information of such conviction when making application for initial teacher certification in this state.

Source. 1988, 257:2, eff. Jan. 1, 1989. 2017, 91:7, eff. Aug. 6, 2017.

632–A:10–a Penalties. Notwithstanding RSA 651:2, and except where an extended term is sought as provided in RSA 651:6:

I. A person convicted of aggravated felonious sexual assault under:

(a) RSA 632–A:2, I(*l*) shall be sentenced in accordance with subparagraph (b) and paragraphs II–V and may be sentenced to lifetime supervision under paragraph V.

(b) Any provision of RSA 632–A:2 shall be sentenced to a maximum sentence which is not to exceed 20 years and a minimum which is not to exceed ½ of the maximum.

II. If a court finds that a defendant has been previously convicted under RSA 632–A:2 or any other statute prohibiting the same conduct in another state, territory or possession of the United States, the defendant shall be sentenced to a maximum sentence which is not to exceed 40 years and a minimum which is not to exceed ½ of the maximum.

III. If the court finds that a defendant has been previously convicted of 2 or more offenses under RSA 632–A:2 or any other statute prohibiting the same conduct in another state, territory or possession of the United States, the defendant shall be sentenced to life imprisonment and shall not be eligible for parole at any time.

IV. In this section, the phrase "previously convicted" shall mean any conviction obtained by trial on the merits, or negotiated plea with the assistance of counsel and evidencing a knowing, intelligent and voluntary waiver of the defendant's rights, provided, however, that previous imprisonment is not required.

V. (a) When a defendant pleads or is found guilty of aggravated felonious sexual assault under RSA 632–A:2, I(*l*), the judge may include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision by the department of corrections. The defendant shall comply with the conditions of lifetime supervision which are imposed by the court or the department of correc-

tions. Violation of any terms of lifetime supervisions shall be deemed contempt of court. The special sentence of lifetime supervision shall begin upon the release of the offender from incarceration, parole or probation.

(b) A person sentenced to lifetime supervision under subparagraph (a) may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(1) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(2) The person is not likely to pose a threat to the safety of others if released from supervision.

(c) Prior to granting any petition pursuant to subparagraph V(b), the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family and permit those parties to be heard on the petition. If the court denies the offender's petition, the offender may not file another application pursuant to this paragraph for 5 years from the date of the denial and shall include a risk assessment prepared at the offender's expense.

Source. 1992, 254:8. 1998, 7:1, 2; 240:5. 2006, 327:15, 16, eff. Jan. 1, 2007.

632–A:10–b HIV Testing.

I. The state shall administer to any person convicted of any offense under this chapter, except violations of RSA 632–A:10 or RSA 632–A:19, a test to detect in such person the presence of the etiologic agent for acquired immune deficiency syndrome.

I–a. The results of such test shall be disclosed to the person convicted and to the office of victim/witness assistance. The office of victim/witness assistance is authorized to disclose the test results to the county attorney victim/witness advocates and to the victim. The victim may be notified whether or not the victim has requested notification.

II. Notwithstanding RSA 141–F:7 and RSA 141–F:8, the state shall disclose results of a test administered pursuant to paragraph I and RSA 141–F:5, IV, to any person convicted, to the office of victim/witness assistance and may disclose the results to the victim.

III. The state shall provide counseling to the victim and the person convicted for such an offense regarding HIV disease, HIV testing for the victim in accordance with applicable law and referral for appropriate health care and support services.

IV. For purposes of this section:

(a) "HIV" means "human immune deficiency virus" as defined in RSA 141–F:2, V.

(b) "Person convicted" includes persons adjudicated under juvenile proceedings.

(c) "Victim" means "victim" as defined in RSA 21–M:8–b, I(a).

Source. 1993, 138:1. 1994, 18:1, eff. June 21, 1994.

632–A:10–c Limitations on Civil Actions.

I. In this section "victim" means a person alleging to have been subjected to aggravated felonious sexual assault as defined in RSA 632–A:2, felonious sexual assault, as defined in RSA 632–A:3 or sexual assault as defined in RSA 632–A:4. The term "victim" shall include the parent, guardian, or custodian of such person if the person is less than 18 years of age or if the person is mentally incapable of meaningfully understanding or participating in the legal process.

II. Neither the defendant in an aggravated felonious sexual assault, felonious sexual assault or a sexual assault case nor the parent or legal guardian of such defendant shall commence or maintain a civil action against a victim of the crime for which the defendant is charged if both of the following circumstances exist:

(a) The criminal action is pending in a trial court of this state, of another state, or of the United States.

(b) The civil action is based upon statements or reports made by the victim that pertain to an incident from which the criminal action is derived.

III. The court shall dismiss without prejudice a civil action commenced or maintained in violation of paragraph II.

IV. The period of limitations for the bringing of a civil action described in paragraph II is tolled for the period of time during which the criminal action is pending in a trial court of this state, or another state, or of the United States.

V. This section shall not apply:

(a) If the victim files a civil action based upon an incident from which the criminal action is derived against the defendant in the criminal action; or

(b) The court determines that there are reasonable grounds to believe that the delay would be prejudicial to the interest of justice.

Source. 1993, 356:1, eff. Aug. 5, 1993.

CHAPTER 634

DESTRUCTION OF PROPERTY

634:1 Arson.

I. A person is guilty of arson if he knowingly starts a fire or causes an explosion which unlawfully damages the property of another.

II. Arson is a class A felony if the property damaged is:

(a) An occupied structure and the actor knew it was an occupied structure; or

(b) An historic structure.

III. Arson is a class B felony if:

(a) The property is either that of another or the actor's property, and the fire was started or the explosion caused for the purpose of collecting insurance on such property; or

(b) The actor purposely starts a fire or causes an explosion on anyone's property and thereby recklessly places another in danger of death or serious bodily injury, or places an occupied structure of another in danger of damage; or

(c) The property damaged is real estate; or

(d) The pecuniary loss caused is in excess of $1,000.

IV. All other arson is a misdemeanor.

V. As used in this section:

(a) "Occupied structure" has the same meaning as in RSA 635:1, III, and includes structures appurtenant to occupied structures and seasonal dwellings whether vacant or occupied;

(b) "Property" has the same meaning as in RSA 637:2, I;

(c) "Property of another" has the same meaning as in RSA 637:2, IV.

(d) "Historic structure" means any structure listed, or determined by the department of natural and cultural resources to be eligible for listing, in the National Register of Historic Places, or designated as historic under state or local law.

Source. 1971, 518:1. 1975, 284:1, 2. 1994, 346:1, 2. 1998, 363:3, eff. Aug. 25, 1998. 2017, 156:38, eff. July 1, 2017.

634:2 Criminal Mischief.

I. A person is guilty of criminal mischief who, having no right to do so nor any reasonable basis for belief of having such a right, purposely or recklessly damages property of another.

II. Criminal mischief is a class B felony if the actor purposely causes or attempts to cause:

(a) Pecuniary loss in excess of $1,500; or

(b) A substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service; or

(c) Discharge of a firearm at an occupied structure, as defined in RSA 635:1, III; or

(d) Damage to private or public property, real or personal, when the actor knows that the property has historical, cultural, or sentimental value that cannot be restored by repair or replacement.

II–a. Criminal mischief is a class A misdemeanor if the actor purposely causes or attempts to cause pecuniary loss in excess of $100 and not more than $1,500.

III. All other criminal mischief is a misdemeanor.

IV. As used in this section, "property" has the same meaning as in RSA 637:2, I; "property of another" has the same meaning as in RSA 637:2, IV.

V. For purposes of determining pecuniary loss under subparagraph II(a), amounts involved in acts committed pursuant to one scheme or course of conduct participated in by the actor may be aggregated in determining the grade of the offense.

VI. Any person who is found guilty of criminal mischief under paragraph III of this section because he or she has vandalized, defaced, or destroyed any part of state or municipal property, or any natural geological formation, site, or rock surface located on public property that has been designated by the state or any of its political subdivisions or the federal government as a natural area or landmark shall be guilty of a class A misdemeanor and shall also make restitution for any damage he or she has caused.

VII. If the court determines that a motor vehicle was used to abet the commission of the act constituting criminal mischief, the court may suspend, for a period not to exceed 90 days, the driver's license of a person who is convicted of criminal mischief, or the driver's licenses of persons who are convicted of criminal mischief.

VIII. Any person who is found guilty of criminal mischief under this section because the person has purposely or recklessly damaged an emergency vehicle, emergency apparatus, or private vehicle containing emergency equipment, shall be liable for full restitution to the injured party.

IX. Any person who is found guilty of criminal mischief under this section because such person is a

tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor.

Source. 1971, 518:1. 1985, 201:1. 1986, 98:1. 1987, 182:1. 1991, 35:1. 1992, 269:12. 1996, 225:27. 1997, 327:2. 2001, 283:1. 2003, 290:1. 2009, 193:1. 2010, 239:1. 2012, 133:1, eff. Jan. 1, 2013.

CHAPTER 635

UNAUTHORIZED ENTRIES

635:1 Burglary.

I. A person is guilty of burglary if he or she enters or remains unlawfully in a building or occupied structure, or separately secured or occupied section thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

II. Burglary is a class B felony unless it is perpetrated in the dwelling of another at night, or if, in the commission of the offense, attempt at commission or in flight immediately after attempt or commission, the actor is armed with a deadly weapon or explosives or he purposely, knowingly or recklessly inflicts bodily injury on anyone; in which case it is a class A felony; except that if the person is armed with a deadly weapon and the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II–g.

III. "Occupied structure" shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. "Night" shall mean the period between 30 minutes past sunset and 30 minutes before sunrise.

IV. A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a class A felony.

V. A person is guilty of a misdemeanor if he makes or mends, or begins to make or mend, or knowingly has in his possession, an engine, machine, tool, or implement adapted and designed for cutting through, forcing or breaking open a building, room, vault, safe, or other depository, in order to steal therefrom money or other property, or to commit any other crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose.

Source. 1971, 518:1. 1990, 95:4. 2014, 161:9, eff. July 10, 2014.

635:2 Criminal Trespass.

I. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place.

II. Criminal trespass is a misdemeanor for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of $1,500 to the value of the property of another.

III. Criminal trespass is a misdemeanor if:

(a) The trespass takes place in an occupied structure as defined in RSA 635:1, III; or

(b) The person knowingly enters or remains:

(1) In any secured premises;

(2) In any place in defiance of an order to leave or not to enter which was personally communicated to him by the owner or other authorized person; or

(3) In any place in defiance of any court order restraining him from entering such place so long as he has been properly notified of such order.

IV. All other criminal trespass is a violation.

V. In this section, "secured premises" means any place which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

VI. In this section, "property," "property of another," and "value" shall be as defined in RSA 637:2, I, IV, and V, respectively.

Source. 1971, 518:1. 1979, 377:7. 2005, 125:1. 2010, 239:2, eff. July 1, 2010.

635:3 Trespassing Stock. If any person having the charge or custody of any sheep, goats, cattle, horses, or swine shall knowingly, recklessly, or negligently suffer or permit the same to enter upon, pass over, or remain upon any improved or enclosed land of another without written permission of the owner,

occupant, or his agent, and thereby injures his crops, or property, he shall be guilty of a violation.

Source. 1971, 518:1, eff. Nov. 1, 1973.

635:4 Prescribed Manner of Posting. A person may post his land to prohibit criminal trespass and physical activities by posting signs of durable material with any words describing the physical activity prohibited, such as "No Hunting or Trespassing", printed with block letters no less than 2 inches in height, and with the name and address of the owner or lessee of such land. Such signs shall be posted not more than 100 yards apart on all sides and shall also be posted at gates, bars and commonly used entrances. This section shall not prevent any owner from adding to the language required by this section.

Source. 1977, 284:1, eff. Aug. 21, 1977.

635:5 Penalty. Any person who is found removing, defacing or destroying any sign, poster or property of another shall be guilty of a class B misdemeanor.

Source. 1977, 284:1. 1992, 269:13, eff. July 1, 1992.

Cemeteries, Burial Grounds, Gravestones

635:6 Interference With Cemetery or Burial Ground.

I. No person, without the written authorization of the owner of a burial plot, or the lineal descendant or ascendant of the deceased, if such owner or lineal descendant or ascendant is known, or the written authorization of the governing board of the municipality in which the burial plot lies, if the owner or lineal descendant or ascendant is unknown, shall:

(a) Purposely or knowingly destroy, mutilate, injure or remove any tomb, monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, curb, or plot delineator or other enclosure for the burial of the dead.

(b) Purposely or knowingly disturb the contents of any tomb or grave in any cemetery or burial ground.

II. The governing board of the municipality in which the burial plot lies shall not grant approval for the removal or disturbance of a tomb, monument, gravestone, marker, or plot delineator without first giving 30 days' notice, along with a report of the full circumstances, to the division of historical resources, that such approval has been requested. The governing board of the municipality shall maintain a record of the date, circumstances, and disposition of the request for removal or disturbance.

Source. 1987, 107:1. 2015, 95:1, eff. Aug. 4, 2015.

635:7 Unlawful Possession or Sale of Gravestones and Gravesite Items. No person shall possess or sell, offer for sale or attempt to sell, or transfer or dispose of any monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, plot delineator, or curb, knowing or having reasonable cause to know that it has been unlawfully removed from a cemetery or burial ground.

Source. 1987, 107:1, eff. May 6, 1987.

635:8 Penalties. Any person who is convicted of an offense under RSA 635:6 or 635:7 shall be guilty of a class B felony, and shall be ordered by the court to make restitution for damages resulting from the offense and for replacement of removed items.

Source. 1987, 107:1, eff. May 6, 1987.

CHAPTER 636

ROBBERY

636:1 Robbery.

I. A person commits the offense of robbery if, in the course of committing a theft, he:

(a) Uses physical force on the person of another and such person is aware of such force; or

(b) Threatens another with or purposely puts him in fear of immediate use of physical force.

II. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, in an effort to retain the stolen property immediately after its taking, or in immediate flight after the attempt or commission.

III. Robbery is a class B felony, except that if the defendant:

(a) Was actually armed with a deadly weapon; or

(b) Reasonably appeared to the victim to be armed with a deadly weapon; or

(c) Inflicted or attempted to inflict death or serious injury on the person of another,

the offense is a class A felony, except that if the defendant was actually armed with a deadly weapon, and the deadly weapon was a firearm, he shall be sentenced in accordance with RSA 651:2, II–g.

Source. 1971, 518:1. 1990, 95:5, eff. June 12, 1990.

CHAPTER 637

THEFT

637:1 Consolidation. Conduct denominated theft in this chapter constitutes a single offense embracing the separate offenses such as those heretofore known as larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail, receiving stolen property. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or information.

Source. 1971, 518:1, eff. Nov. 1, 1973.

637:2 Definitions. The following definitions are applicable to this chapter:

I. "Property" means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services, or otherwise containing any thing of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.

II. "Obtain" means, in relation to property, to bring about a transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade secret, to make any facsimile, replica, photograph or other reproduction.

III. "Purpose to deprive" means to have the conscious object:

(a) To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or of the use and benefit thereof, would be lost; or

(b) To restore the property only upon payment of a reward or other compensation; or

(c) To dispose of the property under circumstances that make it unlikely that the owner will recover it; or

(d) To appropriate the goods or merchandise of a merchant without paying the merchant's stated or advertised price.

IV. "Property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

V. "Value" means the highest amount determined by any reasonable standard of property or services.

(a) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

(b) The value of property or services obtained by the actor shall determine the grade of the offense, and such value shall not be offset against or reduced by the value of any property or services given by the actor in exchange.

(c) Each personal check or credit card shall have a value of $250.

VI. "Merchant" means the owner or operator of any place of business where merchandise is displayed, held, or stored, for sale to the public, or any agent or employee of such owner or operator.

Source. 1971, 518:1. 1986, 222:1. 2005, 36:1. 2009, 209:2, 3, eff. Jan. 1, 2010.

637:3 Theft by Unauthorized Taking or Transfer.

I. A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

II. As used in this section and RSA 637:4 and 5, "obtain or exercise unauthorized control" includes but is not necessarily limited to conduct heretofore defined or known as common law larceny by trespassory taking, larceny by conversion, larceny by bailee, and embezzlement.

Source. 1971, 518:1, eff. Nov. 1, 1973.

637:3–a Willful Concealment.

I. A person is guilty of willful concealment if, without authority, he or she willfully conceals the goods or merchandise of any store while still upon the premises of such store. Goods or merchandise found concealed upon the person shall be prima facie evidence of willful concealment. Notwithstanding RSA 637:11, willful concealment shall be a misdemeanor.

II. A person commits theft if, with the purpose to deprive a merchant of goods or merchandise, he or she knowingly:

(a) Removes goods or merchandise from the premises of a merchant; or

(b) Alters, transfers, or removes any price marking affixed to goods or merchandise; or

(c) Causes the cash register or other sales recording device to reflect less than the merchant's stated or advertised price for the goods or merchandise; or

(d) Transfers goods or merchandise from the container in which such goods or merchandise were intended to be sold to another container.

Source. 2009, 209:1, eff. Jan. 1, 2010.

637:4 Theft by Deception.

I. A person commits theft if he obtains or exercises control over property of another by deception and with a purpose to deprive him thereof.

II. For the purposes of this section, deception occurs when a person purposely:

(a) Creates or reinforces an impression which is false and which that person does not believe to be true, including false impressions as to law, value, knowledge, opinion, intention or other state of mind. Provided, however, that an intention not to perform a promise, or knowledge that it will not be performed, shall not be inferred from the fact alone that the promise was not performed; or

(b) Fails to correct a false impression which he previously had created or reinforced and which he did not believe to be true, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(c) Prevents another from acquiring information which is pertinent to the disposition of the property involved; or

(d) Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Misrepresents to or misleads any person, in any manner, so as to make that person believe that the person on whose behalf a solicitation or sales promotion is being conducted is a charitable trust or that the proceeds of such solicitation or sales promotion shall be used for charitable purposes, if such is not the fact.

III. Theft by deception does not occur, however, when there is only falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

IV. A person commits theft under this section notwithstanding that the victim has suffered no actual or net pecuniary loss.

Source. 1971, 518:1. 1986, 222:2. 1992, 239:4, eff. July 1, 1992.

637:5 Theft by Extortion.

I. A person is guilty of theft as he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

II. As used in this section, extortion occurs when a person threatens to:

(a) Cause physical harm in the future to the person threatened or to any other person or to property at any time; or

(b) Subject the person threatened or any other person to physical confinement or restraint; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse any person of a crime or expose him to hatred, contempt or ridicule; or

(e) Reveal any information sought to be concealed by the person threatened; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(h) Bring about or continue a strike, boycott or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(i) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

Source. 1971, 518:1, eff. Nov. 1, 1973.

637:6 Theft of Lost or Mislaid Property. A person commits theft when:

I. He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return the same to the owner, and

II. He has the purpose to deprive the owner of such property when he obtains the property or at any time prior to taking the measures designated in paragraph I.

Source. 1971, 518:1, eff. Nov. 1, 1973.

637:7 Receiving Stolen Property.

I. A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, with a purpose to deprive the owner thereof.

II. The knowledge or belief required for paragraph I is presumed in the case of a dealer who:

(a) Is found in possession or control of property stolen from 2 or more persons on separate occasions; or

(b) Has received other stolen property within the year preceding the receiving charged; or

(c) Being a dealer in property of the sort received, retained or disposed, acquires it for a consideration which he knows is far below its reasonable value, or

(d) Purchases property from a law enforcement officer working in an undercover capacity, or an agent of such law enforcement officer, where such property has been explicitly represented as stolen.

III. As used in this section, "receives" means acquiring possession, control or title or lending on the security of the property; and "dealer" means a person in the business of buying or selling goods.

Source. 1971, 518:1. 2001, 174:1, eff. Jan. 1, 2002.

637:7–a Possession of Property Without Serial Number.

I. No person shall knowingly remove, deface, alter, change, destroy, obliterate or mutilate, or cause to be removed, defaced, altered, changed, destroyed, obliterated or mutilated the identifying number or numbers or any other identifying mark on any machine, mechanical or electrical device or any other property. Anyone doing so with the intent thereby to conceal the identity of the item or to defraud a manufacturer, seller or purchaser, or to hinder competition in the areas of sales and servicing, or to prevent the detection of a crime shall be guilty of a misdemeanor.

II. Any person who buys, receives, possesses, sells or disposes of any machine, mechanical or electrical device or any other property knowing that the identification number or numbers or any other identifying mark on the item have been removed, defaced, altered, changed, destroyed, obliterated or mutilated shall be guilty of a misdemeanor. However, if a person discovering that the identification number or numbers or any other identifying mark have been removed, defaced, altered, changed, destroyed, obliterated or mutilated shall report the same to the nearest police station, he shall not be charged with violating this section. Further, said provisions do not apply to those persons who, on August 13, 1977, are lawfully in possession of that type of property described in paragraph I which does not have identifying numbers or marks or from which the identifying marks or numbers have been lost inadvertently.

III. The provisions of this section do not apply to those cases or instances where any of the changes or alterations enumerated in paragraph I have been customarily made or done in an established practice in the ordinary and regular conduct of business by the original manufacturer, or by his duly appointed direct representative, or under specific authorization from the original manufacturer.

IV. When property described in paragraph I comes into the custody of a law enforcement officer, it shall be considered stolen or embezzled property, and prior to being disposed of, shall have an identifying number engraved on it or embedded in it.

Source. 1977, 187:1, eff. Aug. 13, 1977.

637:8 Theft of Services.

I. A person commits theft if he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor. "Deception" has the same meaning as in RSA 637:4, II, and "threat" the same meaning as in RSA 637:5, II.

II. A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts such services to his own benefit or to the benefit of another who he knows is not entitled thereto.

III. As used in this section, "services" includes, but is not necessarily limited to, labor, professional service, public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming house and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, gas, electricity, water or steam, admission to entertainment, exhibitions, sporting events or other events for which a charge is made.

IV. This section shall not apply to the attachment of private equipment to residential telephone lines unless the telephone company can prove that the attached equipment will cause direct harm to the telephone system. Attached equipment which is registered with the public utilities commission shall not require a protective interconnecting device. If the telephone company cites this section in its directories or other customer informational material, said company shall duplicate the entire section verbatim therein.

Source. 1971, 518:1. 1977, 175:1, eff. Aug. 7, 1977.

637:9 Unauthorized Use of Propelled Vehicle or Rented Property.

I. A person is guilty of theft if:

(a) Having custody of a propelled vehicle pursuant to an agreement between himself or another and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

(b) Having custody of a propelled vehicle pursuant to a rental or lease agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time and place, he abandons the vehicle or willfully refuses or neglects to redeliver it to the owner in such manner as he may have agreed; or

(c) Having custody of any property pursuant to a rental or lease agreement whereby such property is to be returned in a specified manner, intentionally fails to comply with the terms of the agreement concerning return so as to render such failure a gross deviation from the agreement.

II. [Repealed.]

III. As used in this section, "propelled vehicle" means any automobile, airplane, motorcycle, motorboat or any other motor-propelled vehicle or vessel, or any boat or vessel propelled by sail, oar or paddle.

Source. 1971, 518:1. 1985, 176:1. 1992, 269:22, I, eff. July 1, 1992.

637:10 Theft by Misapplication of Property.

I. A person commits theft if he obtains property from anyone or personal services from an employee upon agreement, or subject to a known legal obligation, to make a specified payment or other disposition to a third person, whether from that property or its proceeds or from his own property to be reserved in an equivalent or agreed amount, if he purposely or recklessly fails to make the required payment or disposition and deals with the property obtained or withheld as his own.

II. Liability under paragraph I is not affected by the fact that it may be impossible to identify particular property as belonging to the victim at the time of the failure to make the required payment or disposition.

III. An officer or employee of the government or of a financial institution is presumed:

(a) To know of any legal obligation relevant to his liability under this section, and

(b) To have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of his accounts.

IV. As used in this section:

(a) "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(b) "Government" means the United States, any state or any county, municipality or other political unit within territory belonging to the United States, or any department, agency, or subdivision

of any of the foregoing, or any corporation or other association carrying out the functions of government or formed pursuant to interstate compact or international treaty.

Source. 1971, 518:1, eff. Nov. 1, 1973.

637:10–a Use or Possession of Theft Detection Shielding Devices and Theft Detection Device Removers.

I. A person commits unlawful use of a theft detection shielding device when he or she engages in the following acts:

(a) Knowingly manufactures, sells, offers for sale, or distributes a laminated or coated bag or device specially designed, marketed, and intended to be used to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

(b) Knowingly possesses any laminated or coated bag or device specially designed, marketed, and intended to be used to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit a theft.

II. A person commits unlawful possession of a theft detection device remover when he or she knowingly possesses any tool or device designed to allow the removal of any theft detection device from any merchandise, with the intent to use such tool to remove the detection device from the merchandise without the permission of the merchant or person owning or holding said merchandise.

III. Persons convicted of either the use or possession of theft detection shielding devices or theft detection device removers shall be guilty of a misdemeanor.

Source. 2000, 89:1, eff. April 27, 2000.

637:10–b Fraudulent Retail Transactions.

I. A person shall be guilty of a misdemeanor if such person possesses, uses, transfers, manufactures, alters, counterfeits, or reproduces a retail sales receipt or universal product code label with the purpose to deprive a merchant of goods or merchandise.

II. A person shall be guilty of a class B felony if such person possesses, uses, transfers, manufactures, alters, counterfeits, or reproduces 5 or more retail sales receipts or universal product code labels, or any combination of 5 or more sales receipts or universal product code labels, or possesses a device designed or adapted to manufacture counterfeit retail sales receipts or universal product code labels with the purpose to deprive a merchant of goods or merchandise.

Source. 2009, 209:4, eff. Jan. 1, 2010.

637:10–c Organized Retail Crime Enterprise. A person is guilty of a class B felony, and a class A felony for a second or subsequent offense, if he or she conspires with one or more persons to engage for profit in a scheme or course of conduct of theft as defined in RSA 637:3–a, II or RSA 637:10–b. A conviction under this section shall not merge with the conviction for any offense that is the object of the conspiracy.

Source. 2010, 239:13, eff. July 1, 2010.

637:11 Penalties.

I. Theft constitutes a class A felony if:

(a) The value of the property or services exceeds $1,500, or

(b) The property stolen is a firearm, or

(c) The actor is armed with a deadly weapon at the time of the theft, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II–g.

II. Theft constitutes a class B felony if:

(a) The value of the property or services is more than $1,000 but not more than $1,500, or

(b) The actor has been twice before convicted of theft of property or services, as a felony or class A misdemeanor, or

(c) The theft constitutes a violation of RSA 637:5, II(a) or (b), or

(d) The property or services stolen are from 3 separate business establishments within a 72–hour period, or

(e) The property is stolen with intent to resell or distribute. It would be prima facie evidence that the offense constitutes theft with intent to resell or distribute when the theft consists of goods or merchandise in quantities that would not normally be purchased for personal use or consumption, or

(f) The property received in violation of RSA 637:7 consists of goods or merchandise in quantities that would not normally be purchased for personal use or consumption, or

(g) The actor has twice before been convicted of offenses under RSA 637:3–a, II and the present and prior convictions were based on offenses committed within a 36-month period.

III. Theft constitutes a misdemeanor if the value of the property or services does not exceed $1,000.

Source. 1971, 518:1. 1977, 187:2. 1979, 266:1. 1990, 95:6. 1992, 269:14, 22, II. 2001, 174:2. 2010, 239:3, eff. July 1, 2010.

CHAPTER 644

BREACHES OF THE PEACE AND RELATED OFFENSES

644:8–c Animal Use in Science Classes and Science Fairs.

I. In this section:

(a) "Animal" means any member of the kingdom of Animalia.

(b) "Vertebrate animal" means any animal belonging to the subphylum Vertebrata of the phylum Chordata, and specifically includes all mammals, fishes, birds, reptiles and amphibians.

II. Live vertebrate animals shall not be used in experiments or observational studies, with the following exceptions:

(a) Observational studies may be made of the normal living patterns of wild animals, in the free living state or in zoological parks, gardens, or aquaria.

(b) Observational studies may be made of the living patterns of vertebrate animals in the classroom.

(c) Observational studies on bird egg embryos are permitted. However, if normal bird embryos are to be allowed to hatch, satisfactory humane consideration shall be made for disposal of the baby birds.

(d) Vertebrate animal cells such as red blood cells or other tissue cells, plasma or serum, or anatomical specimens, such as organs, tissues, or skeletons, may be used in experiments or observational studies.

III. No school principal, administrator or teacher shall allow any live vertebrate animal to be used in any elementary or secondary school, or in any activity associated with such school, such as science fairs, as part of a scientific experiment or procedure in which the health of the animal is interfered with, or in which pain, suffering, or distress is caused. Such experiments and procedures include, but are not limited to, surgery, anesthetization, and the inducement by any means of painful, lethal, or pathological conditions through techniques that include, but are not limited to:

(a) Administration of drugs;

(b) Exposure to pathogens, ionizing radiation, carcinogens, or to toxic or hazardous substances;

(c) Deprivation; or

(d) Electric shock or other distressing stimuli.

IV. All experiments on live vertebrate animals which are not prohibited by this section shall be carried out under the supervision of a competent science teacher who shall be responsible for ensuring that the student has the necessary comprehension for the study to be undertaken.

V. No person shall, in the presence of a pupil in any elementary or secondary school, perform any of the procedures or experiments described in paragraph III or exhibit any vertebrate animal that has been used in such manner. Dissection of any dead animal, or portions thereof, shall be confined to the presence of students engaged in the study to be promoted by the dissections.

VI. Science fair projects originating in other states that do not conform with the provisions of this section shall not be exhibited within the state.

VII. Any live animal kept in any elementary or secondary school shall be housed and cared for in a humane and safe manner and shall be the personal responsibility of the teacher or other adult supervisor of the project or study.

VIII. Ordinary agricultural procedures taught in animal husbandry courses shall not be prohibited by this section.

IX. Any person who violates this section is guilty of a misdemeanor.

Source. 1985, 54:1, eff. June 22, 1985.

644:8–e Willful Interference With Organizations or Projects Involving Animals or With Animal Facilities.

I. Whoever willfully causes bodily injury or willfully interferes with any property, including animals or records, used by any organization or project involving animals, or with any animal facility shall be guilty of a class A misdemeanor.

II. Whoever in the course of a violation of paragraph I causes serious bodily injury to another individual or economic loss in excess of $10,000 shall be guilty of a class B felony, and may be subject to an order of restitution pursuant to RSA 651:63.

III. For the purposes of this section:

(a) "An organization or project involving animals" means:

(1) A commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, education, or testing.

(2) Any lawful competitive animal event, including but not limited to conformation shows or obedience trials, field trials, agility events, hunts, sled races, or training activities.

(3) Any fair or similar event intended to advance the agricultural arts and sciences.

(b) "Animal facilities" means any vehicle, building, structure, research facility, or premises where an animal is kept, handled, housed, exhibited, bred or offered for sale.

(c) "Economic loss" means "economic loss" as defined in RSA 651:62, III.

IV. Nothing in this section shall be construed to restrict any constitutional, statutory, regulatory or common law right.

Source. 1993, 170:1, eff. May 24, 1993.

CHAPTER 646–A

DESECRATION OF THE FLAG

646–A:1 Definitions. In this chapter:

I. "Desecration" means the act of diverting from a sacred purpose or use to which a flag has been devoted by another individual or group of individuals. The act of desecration shall include burning, defacing, mutilating, destroying or trampling upon the flag.

II. "Flag of the United States" means any flag that is the commonly accepted "stars and stripes" or that flag described in Executive Order #10834 of President Eisenhower, August 25, 1959, and succeeding attachments to such Executive Order.

III. "Properly displayed" means any flag of the United States attached to a public or private building by means of a pole or any other attachment which renders the flag of the United States to be displayed according to commonly accepted flag etiquette; any flag of the United States displayed in a cemetery to mark a memorial or veteran's gravesite; any flag of the United States displayed for a certain period of time to mark a national holiday; any flag of the United States which is historic and is maintained in a display case for public viewing; or any flag of the United States displayed in accordance with Public Law 623, approved June 22, 1942 and amendments thereto.

Source. 1990, 135:2, eff. April 19, 1990.

646–A:2 Desecration Prohibited.

I. It shall be unlawful to knowingly desecrate a flag of the United States while it is properly displayed.

II. It shall be unlawful to knowingly desecrate a flag of the United States while it is the property of another.

Source. 1990, 135:2, eff. April 19, 1990.

646–A:3 Destruction of a Worn Flag of the United States Allowed. When the flag of the United States is worn or frayed or torn or in such a condition that it is no longer a fitting emblem of the United States, it should be destroyed in a dignified manner, preferably by burning privately.

Source. 1990, 135:2, eff. April 19, 1990.

646–A:4 Penalties. Whoever knowingly casts contempt upon the flag of the United States by desecrating the flag when it is properly displayed or is the property of another shall be guilty of a misdemeanor.

Source. 1990, 135:2, eff. April 19, 1990.

CHAPTER 649–A

CHILD SEXUAL ABUSE IMAGES

649–A:1 Declaration of Findings and Purposes.

I. The legislature finds that there has been a proliferation of exploitation of children through their use as subjects in sexual performances. The care of children is a sacred trust and should not be abused by those who seek to profit through a commercial network based upon the exploitation of children. The public policy of the state demands the protection of children from exploitation through sexual performances.

II. It is the purpose of this chapter to facilitate the prosecution of those who exploit children in the manner specified in paragraph I. In accordance with the United States Supreme Court's decision in New York v. Ferber, this chapter makes the dissemination

of visual representations of children under the age of 16 engaged in sexual activity illegal irrespective of whether the visual representations are legally obscene; and the legislature urges law enforcement officers to aggressively seek out and prosecute those who violate the provisions of this chapter.

Source. 1983, 448:2, eff. Aug. 23, 1983.

649–A:2 Definitions. In this chapter:

I. "Child" means any person under the age of 18 years.

II. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit, or display.

III. "Sexually explicit conduct" means human masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.

IV. "Visual representation" means any visual depiction, including any photograph, film, video, digital image, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) The production of such visual depiction involves the use of a child engaging in or being engaged in sexually explicit conduct; or

(b) Such visual depiction is a digital image, computer image, or computer-generated image of a child engaging in or being engaged in sexually explicit conduct; or

(c) Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in or being engaged in sexually explicit conduct.

V. (a) "Identifiable child" means a person:

(1) Who was a child at the time the visual depiction was created, adapted, or modified; or

(2) Whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(3) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

(b) The term "identifiable child" shall not be construed to require proof of the actual identity of the identifiable child.

VI. "Previous conviction" or "previously convicted" means having been convicted by a jury or a judge, or having plead guilty prior to the commission of the current offense. For purposes of this paragraph, a previous conviction need not have been affirmed on appeal.

VII. "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

Source. 1983, 448:2. 2008, 323:1, eff. Jan. 1, 2009.

649–A:3 Possession of Child Sexual Abuse Images.

I. No person shall knowingly:

(a) Buy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct; or

(b) Bring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct.

II. An offense under this section shall be a class A felony if such person has had no previous convictions in this state or another jurisdiction for the conduct prohibited by paragraph I. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed ½ of the maximum sentence.

III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:

(a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:

(1) Took reasonable steps to destroy each such visual depiction; or

(2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

Source. 1983, 448:2. 1991, 27:1. 1998, 361:1. 2008, 323:1, eff. Jan. 1, 2009.

649–A:3–a Distribution of Child Sexual Abuse Images.

I. No person shall:

(a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell, exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually explicit conduct;

(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.

II. (a) If such person has had no previous convictions in this state or another state for the conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed ½ of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed ½ of the minimum.

(b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under subparagraph I(b) with having less than 3 images or visual representations, the defendant will be guilty of a class B felony.

III. Nothing in this chapter shall be construed to limit any law enforcement agency from possessing or displaying or otherwise make available any images as may be necessary to the performance of a valid law enforcement function.

Source. 2008, 323:2, eff. Jan. 1, 2009.

649–A:3–b Manufacture of Child Sexual Abuse Images.

I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.

II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed ½ of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, a person may be sentenced to life imprisonment or for such term as the court may order.

Source. 2008, 323:2, eff. Jan. 1, 2009.

649–A:4 Exemption. A person shall not be guilty of a violation under this chapter if he is a librarian, or a paid or volunteer member of a library staff working under the supervision of a librarian, engaged in the normal course of his employment, or if he is regularly employed by anybody as a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other nonmanagerial or nonsupervisory capacity in a motion picture theatre; provided that he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of a sexual performance for sale, rental or exhibition or in the promotion, presentation or direction of any sexual performance, and provided further that he is not in any way responsible for acquiring such material for sale, rental or exhibition.

Source. 1983, 448:2, eff. Aug. 23, 1983.

649–A:5 Justifiable Dissemination. It is an affirmative defense to prosecution under this chapter that dissemination was:

I. Restricted to institutions or persons having scientific, medical, educational, governmental or other similar justification for possessing a visual representation of a child engaging in sexual activity; or

II. Of the same material available in the same or another form in any public library in the state.

Source. 1983, 448:2. 1998, 361:2, eff. Jan. 1, 1999.

649–A:6 Proving Age of Child. Whether a child depicted in a visual representation is a minor for the purposes of this chapter is a question of fact for the jury and may be found by expert or lay testimony, or by viewing the images.

Source. 2008, 323:3, eff. Jan. 1, 2009.

649–A:7 Discovery.

I. In any criminal proceeding, any material that constitutes a visual representation of a child engaging in or being engaged in sexually explicit conduct shall remain in the care, custody, and control of the state or the court.

II. The state shall provide ample opportunity for the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, or any expert retained in anticipation of criminal litigation or for preparation for trial, to inspect, view, and examine the property or material at a state facility.

III. Upon a defense motion or by agreement of the parties establishing that it is necessary to copy, photograph, duplicate, or otherwise reproduce such material or property in order to prepare a defense, the court may authorize such action, provided that the court's order include a protective order prohibiting disclosure of the material or property to any one other than the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, or any expert retained in anticipation of criminal litigation or for preparation for trial. The court protective order shall require that all such material or property provided to the defense be kept secure against theft and inadvertent disclosure to any other person and be maintained in a manner which deters copying or dissemination. Any person either handling or viewing such material or property shall sign a non-disclosure agreement agreeing to refrain from copying or publishing any visual representation of a child engaging in or being engaged in sexually explicit conduct. Any person who views any of the images shall certify in writing that he or she has not knowingly kept any material or property which would qualify as an image of child sexual abuse under state or federal law, and that all materials, property, and signed non-disclosure agreements shall be returned to the state at the end of the case.

Source. 2008, 323:3, eff. Jan. 1, 2009.

CHAPTER 649–B

COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

649–B:1 Short Title. This chapter shall be known and may be cited as the "Computer Pornography and Child Exploitation Prevention Act of 1998."

Source. 1998, 361:3, eff. Jan. 1, 1999.

649–B:2 Definition. In this chapter, "child" means any person under the age of 16 years.

Source. 1998, 361:3, eff. Jan. 1, 1999.

649–B:3 Computer Pornography Prohibited.

I. No person shall knowingly:

(a) Compile, enter into, or transmit by means of computer;

(b) Make, print, publish, or reproduce by other computerized means;

(c) Cause or allow to be entered into or transmitted by means of computer; or

(d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information,

for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

II. Any person who violates the provisions of this section is guilty of a class B felony.

Source. 1998, 361:3, eff. Jan. 1, 1999.

649–B:4 Certain Uses of Computer Services Prohibited.

I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:

(a) Any offense under RSA 632–A, relative to sexual assault and related offenses.

(b) Indecent exposure and lewdness under RSA 645:1.

(c) Endangering a child as defined in RSA 639:3, III.

II. (a) A person who violates the provisions of paragraph I shall be guilty of a class A felony if such person believed the child was under the age of 13, otherwise such person shall be guilty of a class B felony.

(b) A person convicted under paragraph I based on an indictment alleging that the person has been previously convicted of an offense under this sec-

tion or a reasonably equivalent offense in an out-of-state jurisdiction shall be charged as a class A felony. If the indictment also alleges that the person believed that the child was under the age of 13, the person may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 10 years.

(c) If the person has been previously convicted 2 or more times for an offense under this section or a reasonably equivalent statute in another state, the person may be sentenced to a maximum term not to exceed 30 years.

III. It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.

Source. 1998, 361:3. 2008, 323:4, eff. Jan. 1, 2009.

649–B:5 Owners or Operators of Computer Services Liable.

I. It shall be a class A misdemeanor for any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to permit a subscriber to utilize the service to commit a violation of this chapter.

II. Any out-of-state computer service company doing business in New Hampshire which receives a subpoena from the state of New Hampshire resulting from an investigation of a violation of this chapter shall respond to such subpoena within 14 days. Failure to respond may result in the suspension or revocation of such company's right to do business in New Hampshire.

Source. 1998, 361:3, eff. Jan. 1, 1999.

649–B:6 State Criminal Jurisdiction. A person is subject to prosecution for engaging in any conduct proscribed by this chapter within this state, or for engaging in such conduct outside this state if by such conduct the person commits a violation of this chapter involving a child or an individual the person believes to be a child, residing within this state.

Source. 1998, 361:3, eff. Jan. 1, 1999.

CHAPTER 650

OBSCENE MATTER

General Provisions

Preliminary Hearing

General Provisions

650:1 Definitions. In this chapter:

I. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

II. "Knowledge" means general awareness of the nature of the content of the material.

III. "Material" means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

IV. Material is "obscene" if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominant appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive; and

(c) It lacks serious literary, artistic, political or scientific value.

V. "Predominant appeal" shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

VI. "Sexual conduct" means human masturbation, sexual intercourse, actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, any depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

VII. "Child" means a person under the age of 18.

Source. 1971, 518:1. 1976, 46:3. 1977, 199:3. 1994, 60:1, eff. Jan. 1, 1995.

650:2 Offenses.

I. A person is guilty of a misdemeanor if he commits obscenity when, with knowledge of the nature of content thereof, he:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene material; or

(b) Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or

(c) Publishes, exhibits or otherwise makes available any obscene material; or

(d) Possesses any obscene material for purposes of sale or other commercial dissemination; or

(e) Sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

II. A person who commits any of the acts specified in subparagraphs (a) through (e) of paragraph I with knowledge that such act involves a child in material deemed obscene pursuant to this chapter is guilty of:

(a) A class B felony if such person has had no prior convictions in this state or another state for the conduct described in this paragraph;

(b) A class A felony if such person has had one or more prior convictions in this state or another state for the conduct described in this paragraph.

III. For the second and for each subsequent violation of paragraph I, such person shall be guilty of a class B felony.

Source. 1971, 518:1. 1976, 46:4. 1977, 199:2. 1983, 448:3. 1994, 60:2, eff. Jan. 1, 1995.

650:3 Exemption. A motion picture projectionist or motion picture machine operator who is regularly employed by anybody to operate a projecting machine in a public motion picture theatre shall not be guilty of a violation under this chapter because of the picture which is being projected if he is required to project it as part of his employment.

Source. 1971, 518:1, eff. Nov. 1, 1973.

650:4 Justifiable and Non-Commercial Private Dissemination. It is an affirmative defense to prosecution under this chapter that dissemination was restricted to:

I. Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

II. Non-commercial dissemination to personal associates of the accused who are not under 18 years of age.

Source. 1971, 518:1, eff. Nov. 1, 1973.

650:5 Evidence; Adjudication of Obscenity. In any prosecution under this chapter, evidence shall be admissible to show:

I. The character of the audience for which the material was designed or to which it was directed;

II. What the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed;

III. The degree of public acceptance of the material in this state;

IV. Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and

V. The good repute of the author, creator, publisher or other person from whom the material originated;

VI. Expert testimony and testimony of the author, creator, publisher or other person from whom the material originated, relating to factors entering into determination of the issue of obscenity.

Source. 1971, 518:1. 1976, 46:5, eff. June 1, 1976.

Preliminary Hearing

650:6 Preliminary Hearing.

I. No recognized or established school, museum, public library or governmental agency, nor any person acting as an employee or agent of such institution, shall be arrested, charged or indicted for any violation of a provision of this chapter until such time as the material involved has first been the subject of an adversary hearing wherein such institution or person is made a defendant, and, after such material is declared by the court to be obscene matter, such institution or person continues to engage in the conduct prohibited by this chapter. The sole issue at the hearing shall be whether the material is obscene matter.

II. The adversary hearing prescribed in paragraph I of this section may be initiated only by complaint of the county attorney or the attorney general. Hearing on the complaint shall be held in the superior court of the county in which the alleged violation occurs. Notice of the complaint and of the hearing shall be given by registered mail or personal service. The notice shall state the nature of the violation, the date, place and time of the hearing, and the right to present and cross-examine witnesses. In addition to the defendant, any other interested party may appear at the hearing in opposition to the complaint and may present and cross-examine witnesses.

For the purposes of this paragraph, the term "interested party" includes, but is not limited to the manufacturer of the material alleged to be harmful to minors.

III. The state or any defendant may appeal from a judgment. Such appeal shall not stay the judgment. Any defendant engaging in conduct prohibited by this chapter subsequent to notice of the judgment finding the material to be obscene matter shall be subject to criminal prosecution notwithstanding the appeal from the judgment.

Source. 1979, 397:2, eff. Aug. 22, 1979.

CHAPTER 651

SENTENCES

General Provisions

Sentence to County Correctional Facility

Restitution

General Provisions

651:1 Applicability.

I. The provisions of this chapter govern the sentencing for every offense, whether defined within or outside the code, except as provided by RSA 630.

II. This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Any appropriate order exercising that authority may be included as part of the judgment of conviction.

Source. 1971, 518:1. 1973, 370:1, eff. Nov. 1, 1973.

651:2 Sentences and Limitations.

I. A person convicted of a felony or a Class A misdemeanor may be sentenced to imprisonment, probation, conditional or unconditional discharge, or a fine.

II. If a sentence of imprisonment is imposed, the court shall fix the maximum thereof which is not to exceed:

(a) Fifteen years for a class A felony,

(b) Seven years for a class B felony,

(c) One year for a class A misdemeanor,

(d) Life imprisonment for murder in the second degree, and, in the case of a felony only, a minimum which is not to exceed ½ of the maximum, or if the maximum is life imprisonment, such minimum term as the court may order.

II–a. A person convicted of murder in the first degree shall be sentenced as provided in RSA 630:1–a.

II–b. A person convicted of a second or subsequent offense for the felonious use of a firearm, as provided in RSA 650–A:1, shall, in addition to any punishment provided for the underlying felony, be given a minimum mandatory sentence of 3 years imprisonment. Neither the whole nor any part of the additional sentence of imprisonment hereby provided shall be served concurrently with any other term nor shall the whole or any part of such additional term of imprisonment be suspended. No action brought to enforce sentencing under this section shall be continued for sentencing, nor shall the provisions of RSA 651–A relative to parole apply to any sentence of imprisonment imposed.

II–c. [Repealed.]

II–d. A person convicted of manslaughter shall be sentenced as provided in RSA 630:2, II.

II–e. To the minimum sentence of every person who is sentenced to imprisonment for a maximum of more than one year shall be added a disciplinary period equal to 150 days for each year of the minimum term of the sentence, to be prorated for any part of the year. The presiding justice shall certify, at the time of sentencing, the minimum term of the sentence and the additional disciplinary period required under this paragraph. This additional disciplinary period may be reduced for good conduct as provided in RSA 651–A:22 and for earned time as provided in RSA 651–A:22–a. There shall be no addition to the sentence under this section for the period of pre-trial confinement for which credit against the sentence is awarded pursuant to RSA 651–A:23.

II–f. A person convicted of violating RSA 159:3–a, I shall be sentenced as provided in RSA 159:3–a, II and III.

II–g. If a person is convicted of a felony, an element of which is the possession, use or attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for the crime.

III. A person convicted of a class B misdemeanor may be sentenced to conditional or unconditional discharge, a fine, or other sanctions, which shall not include incarceration or probation but may include monitoring by the department of corrections if deemed necessary and appropriate.

III–a. A person convicted of a violation may be sentenced to conditional or unconditional discharge, or a fine.

IV. A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. The limitations on amounts of fines authorized in subparagraphs (a) and (b) shall not include the amount of any civil penalty, the imposition of which is authorized by statute or by a properly adopted local ordinance, code, or regulation. The amount of any fine imposed on:

(a) Any individual may not exceed $4,000 for a felony, $2,000 for a class A misdemeanor, $1,200 for a class B misdemeanor, and $1,000 for a violation.

(b) A corporation or unincorporated association may not exceed $100,000 for a felony, $20,000 for a misdemeanor and $1,000 for a violation. A writ of execution may be issued by the court against the corporation or unincorporated association to compel payment of the fine, together with costs and interest.

(c) If a defendant has gained property through the commission of any felony, then in lieu of the amounts authorized in paragraphs (a) and (b), the fine may be an amount not to exceed double the amount of that gain.

V. (a) A person may be placed on probation if the court finds that such person is in need of the supervision and guidance that the probation service can provide under such conditions as the court may impose. The period of probation shall be for a period to be fixed by the court not to exceed 5 years for a felony and 2 years for a class A misdemeanor, provided that the court may extend or modify the period of probation in accordance with subparagraph VII(a). Upon petition of the probation officer or the probationer, the period may be terminated sooner by the court if the conduct of the probationer warrants it.

(b) In cases of persons convicted of felonies or class A misdemeanors, or in cases of persons found to be habitual offenders within the meaning of RSA 259:39 and convicted of an offense under RSA 262:23, the sentence may include, as a condition of probation, confinement to a person's place of residence for not more than one year in case of a class A misdemeanor or more than 5 years in case of a felony. Such home confinement may be monitored by a probation officer and may be supplemented, as determined by the department of corrections or by the county department of corrections, by electronic monitoring to verify compliance.

(c) Upon recommendation by the department of corrections or by the county department of corrections, the court may, as a condition of probation, order an incarceration-bound offender placed in an intensive supervision program as an alternative to incarceration, under requirements and restrictions established by the department of corrections or by the county department of corrections.

(d) Upon recommendation by the department of corrections or by the county department of corrections, the court may sentence an incarceration-bound offender to a special alternative incarceration program involving short term confinement followed by intensive community supervision.

(e) The department of corrections and the various county departments of corrections shall adopt rules governing eligibility for home confinement, intensive supervision and special alternative incarceration programs.

(f) Any offender placed in a home confinement, intensive supervision or special alternative incarceration program who violates the conditions or restrictions of probation shall be subject to immediate arrest by a probation officer or any authorized law enforcement officer and brought before the court for an expeditious hearing pending further disposition.

(g) The court may include, as a condition of probation, restitution to the victim as provided in RSA 651:62–67 or performance of uncompensated public service as provided in RSA 651:68–70.

(h) In cases of a person convicted of a felony or class A misdemeanor, a court may require such person to be screened and/or evaluated for risk of substance use disorders at an impaired driver care management program (IDCMP) approved by the department of health and human services, and to comply with the treatment plan developed by the IDCMP as established under RSA 265–A:40, if the evidence demonstrates that substances were a contributing factor in the commission of the offense and if such person has the ability to pay the fees for the program in full.

(i) The court may include, as a condition of probation, a jail sentence of up to 30 days that a probation/parole officer may impose in segments of one to 7 days over the course of the probation period, in response to any violation of a condition of

probation, in lieu of a violation of probation hearing. Such jail sanction shall be served at the county jail facility closest to or in reasonable proximity to where the probationer is under supervision.

VI. (a) A person may be sentenced to a period of conditional discharge if such person is not imprisoned and the court is of the opinion that probationary supervision is unnecessary, but that the defendant's conduct should be according to conditions determined by the court. Such conditions may include:

(1) Restrictions on the defendant's travel, association, place of abode, such as will protect the victim of the crime or insure the public peace;

(2) An order requiring the defendant to attend counselling or any other mode of treatment the court deems appropriate;

(3) Restitution to the victim; and

(4) Performance of uncompensated public service as provided in RSA 651:68–70.

(b) The period of a conditional discharge shall be 3 years for a felony and one year for a misdemeanor or violation. However, if the court has required as a condition that the defendant make restitution or reparation to the victim of the defendant's offense or that the defendant perform uncompensated public service and that condition has not been satisfied, the court may, at any time prior to the termination of the above periods, extend the period for a felony by no more than 2 years and for a misdemeanor or violation by no more than one year in order to allow the defendant to satisfy the condition. During any period of conditional discharge the court may, upon its own motion or on petition of the defendant, discharge the defendant unconditionally if the conduct of the defendant warrants it. The court is not required to revoke a conditional discharge if the defendant commits an additional offense or violates a condition.

VI–a. [Repealed.]

VI–b. A person sentenced to conditional discharge under paragraph VI may apply for annulment of the criminal record under RSA 651:5.

VII. (a) If a probationer violates his or her probation, the court may order any of the following:

(1) Continue the sentence of probation.

(2) Modify the conditions of the probation.

(3) Extend the period of probation, provided the probationer agrees to the extension and the original period of probation plus any extension shall not exceed the probation periods authorized in paragraph V.

(4) Revoke the sentence of probation.

(b) When a sentence of probation or a conditional discharge is revoked, the probationer may be fined, as authorized by paragraph IV, if a fine was not imposed in addition to the probation or conditional discharge. Otherwise, the probationer shall be sentenced to imprisonment as authorized by paragraph II.

VIII. A person may be granted an unconditional discharge if the court is of the opinion that no proper purpose would be served by imposing any condition or supervision upon the defendant's release. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

Source. 1971, 518:1. 1973, 370:2. 1974, 34:13, 14. 1977, 397:1; 403:2. 1979, 126:6; 377:8. 1981, 397:1. 1982, 36:2. 1983, 382:8. 1986, 156:4. 1988, 19:4. 1989, 295:2. 1990, 95:1. 1991, 355:102. 1992, 19:1; 269:8–10; 284:85, 86, XIII. 1994, 192:1, 2. 1995, 237:4. 1996, 93:2–9. 1998, 366:3. 1999, 158:4. 2006, 163:1; 260:33. 2010, 247:12; Sp. Sess., 1:24. 2011, 268:2. 2012, 228:10. 2013, 156:8. 2014, 166:2, eff. Sept. 9, 2014; 176:10, eff. July 1, 2014. 2017, 35:1, 2, eff. July 8, 2017.

Sentence to County Correctional Facility

651:17–a Transfer of Youthful Offender. Any person under the age of 18 who has been certified as an adult pursuant to RSA 169–B:24 and sentenced to the state prison pursuant to RSA 651:15 or to a county correctional facility pursuant to RSA 651:17, may be transferred to the youth development center established under RSA 621 for service of his or her sentence until he or she reaches the age of 18. Thereafter, any remaining portion of the sentence shall be served at the state prison or county correctional facility. The department of corrections, county correctional facilities, and the department of health and human services shall develop a memorandum of agreement which sets forth the roles and responsibilities of the parties when such a transfer occurs.

Source. 2016, 303:2, eff. July 1, 2016.

Restitution

651:62 Definitions. As used in this subdivision, unless the context otherwise indicates:

I. "Claimant" means a victim, dependent, or any person legally authorized to act on behalf of the victim.

II. "Dependent" means any person who was wholly or partially dependent upon the victim for care and support when the crime was committed.

III. "Economic loss" means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including:

(a) Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services for the victim or, in the case of the death of the victim, for the victim's spouse and immediate family;

(b) Loss of income by the victim or the victim's dependents;

(c) The value of damaged, destroyed, or lost property;

(d) Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim's dependents;

(e) Reasonable expenses related to funeral and burial or crematory services for the decedent victim.

IV. "Offender" means any person convicted of a criminal or delinquent act.

V. "Restitution" means money or service provided by the offender to compensate a victim for economic loss, or to compensate any collateral source subrogated to the rights of the victim, which indemnifies a victim for economic loss under this subdivision.

VI. "Victim" means a person or claimant who suffers economic loss as a result of an offender's criminal conduct or the good faith effort of any person attempting to prevent or preventing the criminal conduct.

Source. 1981, 329:2. 1994, 190:1. 1996, 286:7, eff. July 1, 1997.

651:63 Restitution Authorized.

I. Any offender may be sentenced to make restitution in an amount determined by the court. In any case in which restitution is not ordered, the court shall state its reasons therefor on the record or in its sentencing order. Restitution may be ordered regardless of the offender's ability to pay and regardless of the availability of other compensation; however, restitution is not intended to compensate the victim more than once for the same injury. A restitution order is not a civil judgment.

II. Restitution ordered shall be in addition to any other penalty or fine and may be a condition of probation or parole. Restitution, if ordered, may also be a condition of any work release program administered under RSA 651:19 or RSA 651:25.

III. The making of a restitution order shall not affect the right of a victim to compensation under RSA 21–M:8–h, except to the extent that restitution is actually collected pursuant to the order. The offender shall reimburse the victims' assistance fund for any payments made by the fund to the victim pursuant to RSA 21–M:8–h after the restitution order is satisfied. Refused or unclaimed restitution payments shall be made to the victims' assistance fund.

IV. The court's determination of the amount of restitution shall not be admissible as evidence in a civil action. The court shall reduce any civil damage awards by restitution ordered and paid to the victim. Restitution orders shall survive bankruptcy.

V. The court shall add 17 percent to the total restitution payment as an administrative fee to be paid by the offender. Such administrative fee shall be divided into the following components, to be designated as follows: 15 percent shall be continually appropriated to a special fund for the division of field services, department of corrections, $22,500 of which shall lapse to the general fund at the end of each quarter should that amount be received, to maximize restitution collections, directly or through agents of contractors selected by the department; and 2 percent for the victims' assistance fund. Unexpended account balances in the special fund for the division of field services in excess of $50,000 at the end of the fiscal year shall lapse to the general fund. Administrative fees shall be paid by the offender in addition to and when each restitution payment is made.

VI. Restitution, administrative fines and fees, and other fees collected, except for supervision fees pursuant to RSA 504–A:13, shall be allocated on a prorata basis by the commissioner of corrections or his or her designee when payments are insufficient to cover the full amount due for each of these balances, except that restitution to victims shall have priority over all other allocations.

VII. On or before July 1, 1997, and each year thereafter until July 1, 2000, the division of field services, department of corrections, shall submit an annual budget plan to the joint legislative fiscal committee. The division of field services, department of corrections, shall have the authority to hire temporary personnel and to procure equipment and expend relevant operating expenses as may be necessary to implement this chapter.

Source. 1981, 329:2. 1996, 286:7. 1999, 261:6. 2008, 120:33, eff. Aug. 2, 2008.

651:64 Time and Method of Restitution.

I. The time and method of restitution payments or performance of restitution services shall be specified by the department of corrections. Monetary restitution may be by lump sum, or by periodic installments in any amounts. The court shall not be required to reduce the total obligation as a result of the offender's inability to pay. The offender shall bear the burden of demonstrating lack of ability to pay. Restitution shall be paid by the offender to the department of corrections unless otherwise ordered by the court. Monetary restitution shall not bear interest. Restitution shall be made to any collateral source or subrogee, if authorized by that source and after restitution to the victim, and to the victims' assistance fund, if applicable, has been satisfied. Restitution shall be a continuing obligation of the offender's estate and shall inure to the benefit of the victim's estate, provided that no indebtedness shall pass to any heir of the offender's estate.

II. The department of corrections shall have continuing authority over the offender for purposes of enforcing restitution until the restitution order is satisfied.

III. The department may garnish the offender's wages for the purpose of ensuring payment of victim restitution.

Source. 1981, 329:2. 1994, 190:2. 1996, 286:7, eff. July 1, 1997.

651:65 Civil Actions. This subdivision does not bar, suspend, or otherwise affect any right or liability for damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action constitutes an economic loss. Any restitution ordered and paid shall be deducted from the amount of any judgment awarded in a civil action brought by the victim or other authorized claimant against the offender based on the same facts. If the restitution ordered and made was work restitution, the reasonable value of the services may be deducted from any such judgment.

Source. 1981, 329:2, eff. Aug. 16, 1981.

651:66 Revocation of Restitution. The supervising agency, or the offender who has been sentenced to pay restitution and has not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced him for a revocation of any unpaid portion of the restitution. If the court finds that the circumstances which warranted the imposition of the restitution have changed, or that it would otherwise be unjust to require payment, the court may revoke the unpaid portion of the restitution in whole or in part, or modify the time and method of payment.

Source. 1981, 329:2, eff. Aug. 16, 1981.

651:67 Failure to Make Restitution.

I. Any offender who is sentenced to make restitution under RSA 651:63, and who purposely violates the court's order by either failing to make restitution or by defaulting in the payment or performance of the restitution authorized, may be prosecuted for contempt.

II. In the case of a juvenile offender, restitution must be paid before the juvenile's eighteenth birthday, or for any person sentenced pursuant to RSA 169–B:4, before his nineteenth birthday. Any offender who fails to make restitution as ordered before the termination of juvenile court jurisdiction may be prosecuted, as an adult, for contempt.

Source. 1981, 329:2. 1985, 130:1, eff. Jan. 1, 1986.

TITLE LXIII

ELECTIONS

CHAPTER 652

GENERAL PROVISIONS

Terms and Definitions

Time Computation

Terms and Definitions

652:9 School District Election. "School district election" shall mean an election to choose a school district officer.

Source. 1979, 436:1, eff. July 1, 1979.

652:12 Vacancy. A "vacancy" shall occur in a public office if, subsequent to his or her election and prior to the completion of his or her term, the person elected to that office:

I. Either dies, resigns, or ceases to have domicile in the state or the district from which he or she was elected; or

II. Is determined by a court having jurisdiction to be insane or mentally incompetent; or

III. Is convicted of a crime which disqualifies him or her from holding office; or

IV. Fails or refuses to take the oath of office within the period prescribed in RSA 42:6 or to give or renew an official bond if required by law; or

V. Has his or her election voided by court decision or ballot law commission decision; or

VI. Is a member of the general court of New Hampshire and a member of a military reserve or national guard unit; and

(a) The member was called to serve in an emergency; and

(b) Service in such unit causes the member to be unable to perform his or her legislative duties, as determined by the house of representatives in the case of a member of the house of representatives and by the senate in the case of a member of the senate, for longer than 180 consecutive days; and

(c) The selectmen of any town or ward in the district from which the member is elected request of the governor and council that the office be declared vacant.

Source. 1979, 436:1. 1991, 216:1. 1994, 70:5. 2003, 22:2, eff. April 24, 2003.

Time Computation

652:18 Days Included and Excluded.

I. Except where specifically stated to the contrary, when a period or limit of time is to be reckoned from a day or date, that day or date shall be excluded from and the day on which an act should occur shall be included in the computation of the period or limit of time.

II. Whenever the election laws refer to a period or limit of time, Saturdays, Sundays, and holidays shall be included, except as provided in paragraph I. However, when the last day for performing any act under the election laws is a Saturday, Sunday or official state holiday, the act required shall be deemed to be duly performed if it is performed on the following business day.

Source. 1979, 436:1. 1994, 4:2, eff. May 27, 1994; 348:2, eff. July 1, 1994.

652:19 Days Included.

[Repealed 1994, 348:3, eff. July 1, 1994.]

History

Former RSA 652:19, which was derived from 1979, 496:1, related to days included for purposes of election laws. See now RSA 652:18.

652:20 End of Day. Whenever the election laws require a filing with or an action by an official, such filing or action shall be performed before 5 o'clock in the afternoon of the stipulated day. During the afternoon of the stipulated day, the school district clerk or his designee, or the town clerk or his designee, shall arrange his time so as to be available between the hours of 3 o'clock and 5 o'clock.

Source. 1979, 436:1. 1985, 7:1, eff. May 31, 1985.

CHAPTER 653

ELECTION OF OFFICERS AND DELEGATES

Election Dates

Election Dates

653:7 State General Election. The state general election shall be held on the first Tuesday following the first Monday in November of every even-numbered year.

Source. 1979, 436:1, eff. July 1, 1979.

CHAPTER 654

VOTERS AND CHECKLISTS

Eligibility

Eligibility

654:1 Voter; Office Holder.

I. Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

I–a. A student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives while attending such institution of learning if such student's claim of domicile otherwise meets the requirements of RSA 654:1, I.

II. Any elected or appointed official for whom one of the qualifications for his or her position is eligibility to be a voter in the area represented or served shall be considered to have resigned if the official moves his or her domicile so that he or she can no longer qualify to be a voter in the area represented or served. Any vacancy so created shall be filled as prescribed by law.

Source. 1979, 396:1; 436:1. 2003, 289:23. 2007, 9:1. 2009, 288:1. 2012, 285:1, eff. Aug. 26, 2012.

654:2 Temporary Absence or Presence.

I. A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of fact and intention coupled with a verifiable act or acts carrying out that intent. A voter can have only one domicile for voting purposes. No person shall be deemed to have lost a domicile by reason of his or her presence or absence while the voter or his or her spouse is employed in the service of the United States; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a teacher in or student of any seminary of learning; nor while confined in any public prison or other penal institution; nor while a patient or confined for any reason in any nursing, convalescent home or hospital, old folks or old age home, or like institution or private facility.

II. (a) A person present in New Hampshire for temporary purposes shall not gain a domicile for voting purposes. A person who maintains a voting domicile where he or she came from, to which he or she intends to return to as his or her voting domicile after a temporary presence in New Hampshire, does not gain a domicile in New Hampshire regardless of the duration of his or her presence in New Hampshire.

(b) A person who has been present and residing in one town or ward in New Hampshire for 30 or fewer days is presumed to be present for temporary purposes unless that person has the intention of making the place in which the person resides his or her one place, more than any other, from which he or she engages in the domestic, social, and civil activities of participating in democratic self-government including voting, and has acted to carry out that intent.

(c) For the purposes of this chapter, temporary purposes shall include, but are not limited to, being present in New Hampshire for 30 or fewer days for the purposes of tourism, visiting family or friends, performing short-term work, or volunteering or working to influence voters in an upcoming election.

(d) For the purposes of voter registration under RSA 654:7, IV(c), an applicant shall demonstrate an intent to make a place his or her domicile by providing documentation showing that the applicant has a domicile at the address provided on the voter registration form. Such documentation may include, but is not limited to:

(1) Evidence of residency, as set forth in RSA 654:1, I–a, at an institution of learning in that place;

(2) Evidence of renting or leasing an abode at that place for a period of more than 30 days, to include time directly prior to an election day;

(3) Evidence of purchasing an abode at that place;

(4) A New Hampshire resident motor vehicle registration, driver's license, or identification card issued under RSA 260:21, RSA 260:21–a, or RSA 260:21–b listing that place as his or her residence;

(5) Evidence of enrolling the person's dependent minor child in a publicly funded elementary or secondary school which serves the town or ward of that place, using the address where the registrant resides;

(6) Identifying that place as the person's physical residence address on state or federal tax forms, other government-issued identification, or other government forms that show the domicile address;

(7) Evidence of providing the address of that place to the United States Post Office as the person's permanent address, provided it is not a postal service or commercial post office box;

(8) Evidence of obtaining public utility services for an indefinite period at that place; or

(9) Evidence of arranging for a homeless shelter or similar service provider located in the town or ward to receive United States mail on behalf of the individual using that facility's address as the individual's domicile address for voting purposes.

(e) An applicant whose domicile is at an abode rented, leased, or owned by another and whose name is not listed on the rental agreement, lease, or deed may provide a written statement from a person who is listed on the rental agreement, lease, or deed, or other reasonable proof of ownership or control of the property or his or her agent who manages the property that the applicant resides at that address, signed by the owner or manager of the property under penalty of voting fraud if false information is provided.

III. An individual applying for registration as a voter 30 or fewer days before an election shall use the election day registration form required by RSA 654:7, IV(c) which shall require the applicant to provide the date he or she established his or her voting domicile in New Hampshire. The registration form shall require the voter to identify and provide evidence of a verifiable action he or she has taken carrying out his or her intent to make the place claimed on the voter registration form his or her domicile.

IV. A person may register on election day through use of an acknowledgment of domicile evidence obligation on the registration form and vote if he or she does not have any document in his or her possession at the polls providing evidence of an action carrying out his or her intent to make the address claimed as his or her voting domicile. A person relying on an acknowledgment of domicile evidence obligation to register must mail or present evidence of an action taken before registering to vote to carry out his or her intent to make the address claimed his or her domicile to the town or city clerk within 10 days following the election, or within 30 days in towns where the clerk's office is open fewer than 20 hours weekly.

V. The supervisors of the checklist, as soon as practical following an election, shall determine which registrants of that election acknowledged there was no evidence of intent to be domiciled at their address or relied solely on an acknowledgment of domicile evidence obligation to register and vote, and, of those registrants, those who failed to mail or present evidence of having taken some action to carry out their intent to establish domicile at the address listed on their voter registration applications to the clerk by the deadline. The supervisors shall attempt to verify that each such person was domiciled at the address claimed on election day by means including, but not limited to:

(a) Examining public records held by the town or city clerk, municipal assessing and planning offices, tax collector, or other municipal office that may house public records containing domicile confirmation; or

(b) Requesting 2 or more municipal officers or their agents or state election officers or their agents to visit the address and verify that the individual was domiciled there on election day. In unincorporated places that have not organized for the purposes of conducting elections, county officers may be asked to perform this function; or

(c) Referring the registrant's information to the secretary of state, who shall cause such further investigation as is warranted.

VI. Any case where supervisors are unable to verify the applicant's domicile or where evidence exists of voting fraud shall be promptly reported to the secretary of state and to the attorney general, who shall cause such further investigation as is warranted. After receiving confirmation from the secretary of state that an individual is not domiciled at the address provided, the supervisors shall also initiate removal of the person from the checklist by sending the person the notice required by RSA 654:44.

Source. 1979, 436:1. 2003, 289:24. 2014, 104:1, eff. Aug. 10, 2014. 2017, 205:1, eff. Sept. 8, 2017.

CHAPTER 669

TOWN ELECTIONS

General Provisions

669:1 Election Dates.

I. All towns shall hold an election annually for the election of town officers on the second Tuesday in March, except those towns which have adopted an alternative date under RSA 40:14 or those towns which have adopted the provisions of RSA 31:94–a and have, by majority vote at a previous town meeting, decided to elect officers on the second Tuesday in May.

II. Notwithstanding the provisions of paragraph I of this section, any town which has adopted a municipal charter under the provisions of RSA 49–B:1–6 may establish the second Tuesday in March, the second Tuesday in May, or the first Tuesday after the first Monday in November in odd-numbered years as the date for the election of town officers.

III. No town election shall be held in conjunction with the biennial election.

IV. Any local political subdivision which has not adopted RSA 40:13, the official ballot referendum form of meeting, but whose voting checklist comprises all or part of the checklist for a school district which has adopted an April or May election date under RSA 40:14, may, by vote of the legislative body, vote to coordinate its elections with the school district's elections and to hold its elections on the same April or May date as the school district. Such local political subdivision may, in addition, vote to hold the second session of its annual meeting, for transacting all business not required to be voted on by official ballot, within 2 weeks of the election date at a time and date determined by the governing body. The joint elections shall be held at a time and place determined by, and shall be supervised by, the election officials of the local political subdivision, coordinated as set forth in RSA 671:25 and RSA 671:26, with costs allocated in the same manner as in previous years or as may be mutually agreed upon by the governing bodies. A vote under this paragraph may be rescinded by the local political subdivision in like manner. No vote under this section shall take effect until the annual election next following such vote.

Source. 1979, 410:1. 1987, 299:6. 1988, 223:12. 1991, 370:7. 2000, 16:9, 10, eff. April 30, 2000.

669:5 Voters and Checklists. An updated checklist shall be used at all town meetings and elections for the same purposes a checklist is used at a state election and to insure that only qualified voters participate in town meeting discussions and votes, by voice or otherwise. The supervisors shall prepare, post, and revise the checklist for a town meeting or election in the same manner as for a state election as provided in RSA 654:25–654:31, provided, however, that the session for correction shall be held on Saturday 6 to 13 days prior to the election. The supervisors shall also hold one session for correction of the checklist on the day immediately prior to the first day of the filing period for candidates for town office, as provided in RSA 669:19 or 669:42, as applicable, from 7:00 p.m. to 7:30 p.m. and at the discretion of the supervisors for extended hours.

Source. 1979, 410:1. 1981, 571:1. 1987, 219:2. 1996, 36:11. 1998, 194:4. 2001, 272:3. 2003, 27:5, eff. July 1, 2003.

669:7 Incompatibility of Offices.

I. No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway agent. No person shall at the same time hold any 2 of the following offices: town treasurer, moderator, trustee of trust funds, selectman and head of the town's police department on full-time duty. No person shall at the same time hold the offices of town treasurer and town clerk. No full-time town employee shall at the same time hold the office of selectman. No official handling funds of a town shall at the same time hold the office of auditor.

No selectman, moderator, town clerk or inspector of elections shall at the same time serve as a supervisor of the checklist. No selectman, town manager, school board member except a cooperative school board member, full-time town, village district, school district except a cooperative school district, or other associated agency employee or village district commissioner shall at the same time serve as a budget committee member-at-large under RSA 32.

I–a. No person shall at the same time file a declaration of candidacy for any 2 or more elected offices that are incompatible under paragraph I.

II. The provisions of paragraph I refer to the actual holding of office, and are not to be construed to prevent the transfer between offices of information obtained in the regular conduct of business nor to prevent the personnel in any office from furnishing clerical assistance to any other office.

Source. 1979, 410:1. 1981, 282:3. 1983, 132:1. 1993, 123:1. 2000, 308:3. 2014, 99:1, eff. Aug. 10, 2014.

Officers Elected

669:14 Use of Ballot. Town officers who are to be elected by ballot as provided in RSA 669:15 and all other officers that a town has voted at some previous meeting to elect by ballot shall be elected by means of the partisan or non-partisan official ballot systems if such an official ballot system shall be in effect in a town. In towns where no such official ballot system is in effect, town officers who are to be elected by ballot as provided in RSA 669:15 and such other officers as the town votes to elect by ballot shall be elected by unofficial ballot at the town business meeting pursuant to RSA 669:54–669:60.

Source. 1979, 410:1, eff. July 1, 1979.

By Official Ballot

669:19 Nominations; Nonpartisan Ballot System. In a town which has adopted the nonpartisan ballot system as provided in RSA 669:13, all candidates shall file a declaration of candidacy with the town clerk during the filing period for town candidates. All candidates who file on the last day of the filing period shall do so in person before the town clerk. The filing period shall begin on the seventh Wednesday and end on the Friday of the following week before the town election. Such declaration of candidacy shall be prepared by the town clerk in substantially the following form: I, _____, declare that I am domiciled in the town of _____, and that I am a registered voter therein; that I am a candidate for the office of _____ and hereby request that my name be printed on the official nonpartisan ballot of the town of _____.

Source. 1979, 410:1. 1983, 154:1. 1987, 299:4. 1988, 126:2. 1994, 4:31. 2008, 148:2. 2011, 40:1, eff. July 8, 2011.

669:20 Nomination Petitions.

[Repealed 2008, 148:4, I, eff. Aug. 5, 2008.]

History

Former RSA 669:20, which was derived from 1979, 410:1, related to nomination petitions.

669:21 Number of Petitions.

[Repealed 2008, 148:4, II, eff. Aug. 5, 2008.]

History

Former RSA 669:21, which was derived 1979, 410:1, related to the number of petitions.

669:22 Withdrawal. Where a candidate had duly filed according to RSA 669:19 for a non-partisan town election or where a party nominee has been certified to the clerk as provided in RSA 669:50 for a partisan town election, no withdrawal or declination of a candidate shall be accepted by the town clerk subsequent to the last dates for filing except if the candidate dies or shall make oath that he does not qualify for the public office for which he or she is filed because of age, domicile, or incapacitating physical disability acquired subsequent to his or her filing. If a candidate dies or withdraws as provided in this section, the town clerk shall not print the name of that candidate on the ballot. If the ballots have been printed, the clerk shall remove that name using pasters.

Source. 1979, 410:1. 1987, 276:6. 2008, 148:3, eff. Aug. 5, 2008.

669:23 Preparation of Voting Materials. The town clerk shall prepare the official ballots for the town and shall arrange the names of candidates upon said ballots in parallel columns. Immediately above the names of each block of candidates shall be printed the title of the office for which they are candidates, such as "For Selectman." Below the title of each office shall be printed in small but easily legible type the words "Vote for not more than (here insert a number designating how many persons are to be voted for)." Directly to the right of the name of each candidate there shall be a square. Whenever there are 2 or more candidates for the same office the names shall be printed upon the ballot in the alphabetical order of their surnames according to the alphabetization procedure established in RSA 656:5–a. Following the names printed on the ballot under the title of each office, there shall be as many blank lines as there are persons to be elected to that office.

Source. 1979, 410:1. 2001, 80:1. 2010, 330:6, eff. July 20, 2010.

669:24 Paper, Uniformity, Endorsement. The ballots shall be printed on plain white paper, in weight not less than that of ordinary printing paper; provided, however, that if more than one ballot is used during any town election, each ballot shall be of a different color than any other ballot used at the election. There shall be no impression or mark to distinguish one ballot from another. The names of all candidates shall be printed in uniform type and the ballots shall be folded so that their width and length when folded shall be uniform. On the back, or at the top of the face, of each ballot shall be printed the words "Official Ballot for the Town of _____," the date of the election, and a facsimile of the signature of the town clerk who prepared the ballot. For ballots transmitted electronically, the words "Official Ballot for the Town of _____" shall be located at the top of the face of the ballot.

Source. 1979, 410:1. 1991, 370:2. 2010, 317:62, eff. July 18, 2010.

669:25 Conduct. In towns which have adopted an official ballot system, the town election shall be conducted in the same manner as a state general election as provided in RSA 658 and 659, except that RSA 659:77, III–V, 659:78, and 659:98, II and III shall not apply, and except that all duties required to be performed by the secretary of state under those chapters shall be performed by the town clerk, and except that no copy of marked or unmarked checklists need be forwarded to the state archives or federal district court as provided in RSA 659:102. Polling hours for a town meeting or election shall be set by the selectmen or by a vote of the town.

Source. 1979, 410:1. 1981, 454:10. 2010, 317:63, eff. July 18, 2010.

669:26 Absentee Voting. Every town which has adopted an official ballot system for town elections as provided in RSA 669:12 or 669:13 shall provide for absentee voting. Any eligible voter who is absent from such a town on the day of a town election, or who cannot appear in public on election day because of his or her observance of a religious commitment, or who, by reason of physical disability, is unable to vote in person may vote at a town election in accordance with the provisions of this section and RSA 669:27–669:29. A person who is unable to appear at any time during polling hours at his or her polling place because of an employment obligation shall be considered absent for purposes of this section and RSA 669:27–669:29. For the purposes of this section, the term "employment" shall include the care of children and infirm adults, with or without compensation.

Source. 1979, 308:7; 410:1. 1981, 454:11. 2006, 136:3. 2010, 317:64, eff. July 18, 2010. 2016, 130:4, eff. May 27, 2016.

669:27 Forms. Prior to each such election, the clerk shall prepare in such quantities as he may deem necessary the following forms:

I. Official absentee voting ballots, with the words "absentee ballot" printed on them, similar in form to the official ballot to be used at said election, and similarly endorsed and printed on paper of the same color as that used for official ballots;

II. Blank forms of application for absentee ballots worded similar in form to those required by RSA 657:4.

III. Envelopes of sufficient size to contain the ballots specified in paragraph I, on which shall be printed an affidavit similar in form to that required by RSA 657:7 or 657:8, as applicable.

Source. 1979, 308:8; 410:1. 1981, 392:4. 1987, 276:7. 2003, 289:47. 2006, 136:4. 2010, 317:65, eff. July 18, 2010.

669:28 Instructions; Information. The secretary of state shall prepare for the use of the clerks such printed information and instructions, subject to the approval of the attorney general, as he shall deem appropriate to carry into effect the purposes hereof. The secretary of state shall furnish such material to the clerks of all towns, cities, village districts and school districts.

Source. 1979, 410:1, eff. July 1, 1979.

669:29 Application of Statutes. The procedure for absentee voting in town elections shall be the same as in state elections as provided in RSA 657:2, 657:6, 657:7, 657:8, 657:12, and 657:14 through 657:24. With respect to the provisions of RSA 657:19, absentee ballots shall not be required to be sent to absent uniformed services voters or absent voters temporarily residing outside the United States at least 45 days prior to town elections, but shall be sent by the clerk as long before election day as is practical.

Source. 1979, 410:1. 1981, 169:2; 454:12. 2010, 317:66, eff. July 18, 2010.

Recounts

669:30 Recounts; Application. Any person for whom a vote was cast and recorded for any office at a town election may, no later than the Friday following the election, apply in writing to the town clerk for a recount of the ballots cast for such office, the clerk shall appoint a time for the recount not earlier than 5 days nor later than 10 days after the receipt of said application.

Source. 1979, 410:1. 1981, 454:13. 1994, 4:32, eff. May 27, 1994.

669:31 Notice; Fee.

I. The clerk shall notify each of the candidates for the office for which there is to be a recount at least 3 days prior to the day appointed for the recount of ballots. No other notice shall be required.

II. The applicant shall pay to the town clerk, for the use of the town, the following fee:

(a) If the difference between the vote cast for the applying candidate and a candidate declared elected is less than one percent of the total votes cast, the fee shall be $10.

(b) If the difference between the vote cast for the applying candidate and a candidate declared elected is between one percent and 2 percent of the total votes cast, the fee shall be $20.

(c) If the difference between the vote cast for the applying candidate and a candidate declared elected is between 2 percent and 3 percent of the total votes cast, the fee shall be $40.

(d) If the difference between the vote cast for the applying candidate and a candidate declared elected is greater than 3 percent of the total votes cast, the candidate shall pay the fee as provided in RSA 669:31, II(c) and shall agree in writing with the town clerk to pay any additional costs of the recount.

III. If any person who has applied for a recount is declared elected by reason of the recount, the town clerk shall return to the person within 10 days of the recount all fees paid at the time of applying.

IV. If any person who has applied for a recount loses the recount by a margin of less than one percent of the total votes cast, the town clerk shall return to the person within 10 days of the recount any fees that were paid in excess of those required by subparagraph II(a).

Source. 1979, 410:1. 1981, 454:14. 2003, 34:1, eff. July 1, 2003.

669:32 Board of Recount. At the time and place so appointed and notified, the clerk shall publicly break the seal of and open the package in which the ballots of said election are kept; and, thereupon, said ballots shall be recounted by the clerk, the moderator, and the selectmen of said town who shall constitute the board of recount. When counting the ballots, the board of recount or their assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots. Any member of the board of recount who is one of the candidates for the office being recounted shall disqualify himself or herself from the board of recount for all official duties of said board. The moderator shall appoint an assistant who shall take the same oath as, serve in the same capacity as, and have all the powers of the recount official whom he or she has replaced.

Source. 1979, 410:1. 1981, 454:15. 2006, 41:5, eff. June 17, 2006.

669:33 Preservation of Ballots After Recount.

I. Upon the conclusion of the recount, the clerk shall place the ballots and all envelopes or wrappers which had previously contained them in a suitable container showing the contents and the date when and the reason why it was opened; and said clerk shall retain said ballots until the expiration of 60 days from the date of the recount unless some action is pending which makes their further preservation necessary or unless enjoined by action brought before the superior court.

II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91–A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

Source. 1979, 410:1. 1981, 454:16. 2003, 289:62, eff. Sept. 1, 2003.

CHAPTER 671

SCHOOL DISTRICT ELECTIONS

General Provisions

Regular School Districts

Cooperative School Districts

General Provisions

671:1 Applicability. The officers of all school districts, including cooperative school districts, shall be elected according to the provisions of this chapter.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:2 Election Dates. School district officers shall be elected either at the town meeting as provided in RSA 671:22–26 or at an annual meeting of the district held between the dates set forth in RSA 197:1. Notwithstanding any other provision of law, no election for school district officers shall be held in conjunction with the biennial election. The prohibition in this section against holding an election for school district officers in conjunction with the biennial election shall not apply to the election of the board of education members of the Concord union school district as provided in 1961, 355 as amended by 1983, 123, or any successor charter thereto, or to the election of the Laconia board of education members as provided in section 9:01 of the city charter of Laconia as amended by 1975, 357.

Source. 1979, 321:1. 1981, 250:4. 1991, 370:8. 2004, 254:10. 2011, 255:2, eff. Sept. 11, 2011.

671:3 Term of Office. Except as otherwise provided, the term of any officer elected under the provisions of this chapter shall begin upon the officer's election and qualification for office and shall end upon the election and qualification of the officer's successor.

Source. 1979, 321:1. 1997, 176:1, eff. Aug. 11, 1997.

Regular School Districts

671:4 Board. A school district which is not a cooperative school district as defined in RSA 195:1 may have a school board of 3, 5, 7, or 9 members, as it shall determine by vote at any annual meeting. They shall serve for a term of 3 years. Insofar as possible, an equal number of the members shall be elected at each school district election. Whenever such a district determines to change the number of board members, it shall also determine the number of members to be elected each year. Such change shall not take effect until the school district election in the year next following the one in which the change is voted. The board will increase or decrease in membership so that there will always be an uneven number of members until the desired number is reached. The school board of a district which does not otherwise vote shall have 3 members.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:5 Auditors. At each district election, each district which is not a cooperative school district as defined in RSA 195:1 shall elect one or more auditors. In a district voting to elect 2 or more auditors, their terms shall be staggered so that one auditor shall be elected each year for a term of office of the same number of years as there are auditors; provided, however, that, in the first year, the auditors shall be chosen for varying terms so that the term of one auditor shall expire in the next succeeding year, the term of the second auditor, the next year, and so on for the number of years as there are number of auditors. When voters of the district direct the school board to request an audit by independent public accountants from outside the district, they shall not be required to choose auditors for the year covered by said audit.

Source. 1979, 321:1. 2010, 262:2, eff. Sept. 4, 2010.

671:6 Other Officers. Except as provided under RSA 671:6–a, at each school district election, each school district which is not a cooperative school district as defined in RSA 195:1 shall elect a school district clerk, moderator, treasurer, and such optional officers as the voters of the district shall have voted to elect to manage the affairs of the district. The moderator shall take office upon the adjournment of the regular school district meeting held in the year of the moderator's election and upon the moderator's qualification for office, whichever is later. The treasurer shall take office upon the close of the fiscal year

for the district and upon the treasurer's qualification for office, whichever is later. An optional officer may not be elected by official ballot until the annual district election first following the establishment of the office. The school district may, by vote, determine to elect a temporary officer or authorize the school board to appoint a temporary officer to serve until the next annual district election.

Source. 1979, 321:1. 1981, 285:2. 1997, 176:2, eff. Aug. 11, 1997.

671:6–a Optional Term.

I. At any annual school district meeting under an article in the warrant placed there by petition, the voters may vote to determine if they are in favor of having 2-year or 3-year terms for the school district clerk, moderator and treasurer. If the school district has adopted an official ballot, the clerk shall cause the following question to be printed on said ballot: "Are you in favor of changing the terms of the school district clerk, moderator and treasurer from one year to (here insert term option) years, beginning with the terms of the school district clerk, moderator and treasurer to be elected at next year's regular school district meeting?" Said question shall be printed in the form prescribed by RSA 656:13. If the school district has not adopted an official ballot, the clerk shall cause the same question to be printed upon special ballots which shall be used to determine the vote of the school district. If a majority of those voting on the question vote in favor of 2-year or 3-year terms, at the next annual meeting after the vote of approval, the school district shall elect a school district clerk, moderator and treasurer for 2-year or 3-year terms in accordance with the results of such vote.

II. After the 2-year or 3-year terms for school district clerk, moderator and treasurer have been established, at any annual school district meeting held the year before the end of the 2-year or 3-year term, under an article in the warrant placed there by petition, the voters may vote to determine if they are in favor of changing the 2-year or 3-year terms for the school district clerk, moderator and treasurer. If the school district has adopted an official ballot, the clerk shall cause the following question to be printed on said ballot: "Are you in favor of changing the terms of the school district clerk, moderator and treasurer from (here insert term option) years to (here insert term option) year(s), beginning with the terms of the school district clerk, moderator and treasurer who shall be elected at next year's regular school district meeting?" The question shall be printed in the form prescribed by RSA 656:13. If the school district has not adopted an official ballot, the clerk shall cause the same question to be printed upon special ballots which shall be used to determine the vote of the school district. If a majority of those voting on the question vote in favor of changing the terms, at the next annual school district meeting, the voters shall elect the clerk, moderator and treasurer in accordance with the result of such vote.

III. The terms of the school district clerk, moderator and treasurer shall all be for one year, for 2 years, or for 3 years. The terms of only one or 2 of such officers shall not be changed independently of the other one or 2 officers.

IV. The power of choosing one year, 2-year, or 3-year terms for the school district clerk, moderator and treasurer shall not extend to any other officers of the school district.

Source. 1981, 285:1. 1997, 176:3, eff. Aug. 11, 1997.

671:7 Cooperative School District Planning Committee. Any school district which votes at any annual or special district meeting to create a cooperative school district planning committee under RSA 195:18 shall elect the members of said committee as provided in RSA 195:18.

Source. 1979, 321:1. 1996, 158:16, eff. July 1, 1996.

Cooperative School Districts

671:8 Composition of Cooperative School Boards. The number, composition, method of selection, and terms of members of cooperative school boards shall be as provided in the bylaws or articles of agreement of the cooperative school district, as the case may be, in accordance with RSA 195:19–a.

Source. 1979, 321:1. 1996, 158:16, eff. July 1, 1996.

671:9 Reapportionment. Any cooperative school district organized under any of the provisions of RSA 195 or pursuant to any special act may at any regular or special meeting vote to change the number, composition, method of selection, and terms of office of members on the board of the district in accordance with the provisions of RSA 195:19–b.

Source. 1979, 321:1. 1996, 158:16, eff. July 1, 1996.

671:10 Budget Committee Members. The voters of any cooperative school district which has voted at a previous meeting to elect a budget committee under RSA 195:12–a shall elect members of the budget committee as provided in RSA 195:12–a.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:11 Moderator. Except as provided under RSA 671:11–a, at every school district election, a cooperative school district shall elect a moderator and

such other officers as the voters of the district have voted to elect to manage the district's affairs. Any optional officers shall be chosen as provided in RSA 671:6.

Source. 1979, 321:1. 1999, 75:1, eff. July 27, 1999.

671:11–a Optional Term for Moderator.

I. At any annual school district meeting under an article in the warrant placed there by petition, the voters may vote to determine if they are in favor of having 2-year or 3-year terms for the moderator. If the school district has adopted an official ballot, the clerk shall cause the following question to be printed on said ballot: "Are you in favor of changing the term of the moderator from one year to (here insert term option) years, beginning with the term of the moderator to be elected at next year's regular school district meeting?" Said question shall be printed in the form prescribed by RSA 656:13. If the school district has not adopted an official ballot, the clerk shall cause the same question to be printed upon special ballots which shall be used to determine the vote of the school district. If a majority of those voting on the question vote in favor of 2-year or 3-year terms, at the next annual meeting after the vote of approval, the school district shall elect a moderator for a 2-year or 3-year term in accordance with the results of such vote.

II. After the 2-year or 3-year term for moderator has been established, at any annual school district meeting held the year before the end of the 2-year or 3-year term, under an article in the warrant placed there by petition, the voters may vote to determine if they are in favor of changing the 2-year or 3-year term for the moderator. If the school district has adopted an official ballot, the clerk shall cause the following question to be printed on said ballot: "Are you in favor of changing the term of the moderator from (here insert term option) years to (here insert term option) year(s), beginning with the term of the moderator who shall be elected at next year's regular school district meeting?" The question shall be printed in the form prescribed by RSA 656:13. If the school district has not adopted an official ballot, the clerk shall cause the same question to be printed upon special ballots which shall be used to determine the vote of the school district. If a majority of those voting on the question vote in favor of changing the term, at the next annual school district meeting, the voters shall elect the moderator in accordance with the result of such vote.

III. The term of the moderator shall be for one year, 2 years, or 3 years.

IV. The power of choosing one-year, 2-year, or 3-year terms for the moderator shall not extend to any other officers of the school district.

Source. 1999, 75:2, eff. July 27, 1999.

671:12 First Meeting. The organizational meeting of a cooperative school district shall be conducted in accordance with RSA 195:18, IX.

Source. 1979, 321:1. 1996, 158:17, eff. July 1, 1996.

671:13 Area School Planning Committee. Any school district which votes at any annual or special meeting to create and to elect an area school planning committee under RSA 195–A:3 shall, at the same meeting, elect the members of said committee.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:14 Qualifications. Any person domiciled in the school district who is qualified to vote as provided in RSA 654:1 through 654:6 and who is on the school district checklist shall be entitled to vote at any school district election.

Source. 1979, 321:1. 1997, 176:4. 2010, 317:68, eff. July 18, 2010.

671:15 Checklist. An updated checklist shall be used at all school district elections and meetings for the same purposes as checklists are used by towns as provided in RSA 669:5. The supervisors of the town checklist, acting as supervisors of the school district checklist, shall correct, certify, and post the checklist for the district as provided in RSA 654:25–654:31.

Source. 1979, 321:1. 1981, 571:4. 2003, 27:6, eff. July 1, 2003. 2017, 64:1, eff. Aug. 1, 2017.

671:16 Checklists in Other Districts.

[Repealed 2017, 64:2, I, eff. Aug. 1, 2017.]

History

Former RSA 671:16, which was derived from 1979, 321:1, related to checklists in other districts.

671:17 Special Provisions for Cooperative School Districts.

I. At the organizational meeting of the cooperative school district, the checklists for each pre-existing district shall be used in accordance with RSA 195:19–c. The school board of any pre-existing district which does not have a checklist shall make a list of the legal voters in the district for use at such meeting as supervisors are required to do in towns as provided in RSA 654:25–654:31. Thereafter, the cooperative school board shall make, correct and post a list of the legal voters of the cooperative school district acting as supervisors are required to do; except that such list shall indicate with respect to each voter the pre-existing district in which the voter is domiciled. Notwithstanding the foregoing provi-

sions, whenever each of the pre-existing school districts is coextensive with the town in which it is located, the cooperative school district may, at an annual cooperative school district meeting, under an article in the warrant for such meeting, vote that the supervisors of each town, acting as the supervisors of the cooperative school district, shall make, correct and post in each pre-existing district a checklist of the voters in each pre-existing district and shall certify to the same acting as supervisors of the cooperative school district and shall attend the cooperative school district meeting. At each cooperative school district election, the checklists prepared by the supervisors in each pre-existing district in accordance with this section shall be used.

II. An updated checklist shall be used at all cooperative school district elections and meetings for the same purposes as checklists are used by towns as provided in RSA 669:5.

III. Notwithstanding any other provision of law, any registered voter on a town or city checklist, domiciled within a cooperative school district, shall be eligible to vote at any cooperative school district election or meeting in the district where the voter is domiciled. The supervisors of the checklists for the various cities and towns within a cooperative school district shall make an appropriate notation on their respective checklists with respect to which school district a registered voter is entitled to vote in.

IV. Notwithstanding any other provision of law, any cooperative school district, which uses the checklists of the cities and towns within the district for an election or meeting pursuant to paragraph III, shall not be required to maintain a separate school district checklist or conduct sessions of the supervisors of the checklist.

Source. 1979, 321:1. 1981, 571:5. 1991, 220:1. 1996, 158:18. 1997, 176:5, eff. Aug. 11, 1997.

Nominations

671:18 Qualifications. To become a candidate for any school district office, a person must be a registered voter in the district. No person holding the office of member of the school board shall at the same time hold the office of district moderator, treasurer, or auditor. No person employed on a salaried basis by a school administrative unit or by any school district within a school administrative unit shall be a school board member in any district of the school administrative unit. Salaried positions shall include, but are not limited to, the following: teacher, custodian, administrator, secretary, school bus driver (if paid by the district), school lunch worker and teacher's aide.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:19 Filing. All the provisions of RSA 669:19–669:22 relative to filing for office and withdrawal of candidacy for a non-partisan town election shall apply to school district elections except that in those statutes where there is a reference to a town or a town clerk, it shall be read to refer to a school district or a school district clerk.

Source. 1979, 321:1, eff. Aug. 21, 1979.

Preparation of Ballots

671:20 By School District Clerk. The school district clerk shall prepare ballots for school district elections in the same manner as town clerks for non-partisan town elections, as provided in RSA 669:23 and 669:24, except that the ballot shall be of a different color than any other ballot used at the election.

Source. 1979, 321:1, eff. Aug. 21, 1979.

Absentee Voting

671:21 Absentee Voting.

I. A school district shall provide for absentee voting in the same manner as towns as provided in RSA 669:26–669:29 except that all duties performed therein by the town clerk shall be performed by the school district clerk.

II. Notwithstanding the provisions of paragraph I, if any school district votes to elect its district officers by separate ballot at the town election as provided in RSA 671:22, II, then for either the town election or the school district election an application for an absentee ballot shall be sufficient in order to receive an absentee ballot for both the town election and the school district election. If a town adopts the provisions of RSA 671:22, II, all forms relative to applications for absentee ballots, all absentee ballots, and all returns of absentee ballots shall be made only available at and only returnable to, as applicable, the office of each town clerk of each town comprising the school district.

III. Each town clerk shall make facilities in the town clerk's office available for the school district clerk to perform school district functions in connection with absentee voting. It shall be the duty of the school district clerk to post a notice at the school district clerk's office informing voters that all absentee voting procedures for school district elections shall be handled only through the town clerk's office.

Source. 1979, 321:1. 1983, 102:1. 1997, 176:6, eff. Aug. 11, 1997.

Conduct of Election: Coordination With Town Election

671:22 Election at Town Meeting.

I. As used in this section, the words, "any school district" shall mean (a) a school district which is coextensive with the town in which it is located, or (b) a cooperative school district composed of preexisting districts which were each coextensive with the towns in which they are located, or (c) a cooperative school district which is composed of a preexisting cooperative district as defined in (b) and other school districts as defined in (a).

II. Any school district as defined in paragraph I may at any annual or special meeting under an article in the warrant for such meeting vote to elect its district officers by separate ballot at the town election in such town, and may rescind such action in like manner. Such action shall not take effect until the calendar year next following the year in which such vote is taken. The newly elected officers shall take office at the close of the town meeting at which they are elected; provided, however, that if the annual school district meeting is held subsequent to this town meeting, they shall take office at the close of the annual school district meeting and that the treasurer shall take office at the close of the fiscal year of the school district.

III. Nothing herein shall preclude other appropriate coordination of school district and town elections consistent with all the applicable requirements of law where school district and town meetings are simultaneously in session and school districts have duly voted to adopt as official for school district purposes the town checklist, polling place, and election machinery.

IV. Nothing in the provisions for election of school district officers at town meetings shall be construed as affecting any city charter, nor is a city authorized to adopt the provisions hereof.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:23 Warrant. Where a school district has voted to elect its district officers at the town election, the school board shall post a special warrant for the election of such officers, as provided in RSA 671:27.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:24 Checklist.

[Repealed 2017, 64:2, II, eff. Aug. 1, 2017.]

History

Former RSA 671:24, which was derived from 1979, 321:1 and 1987, 276:10, related to checklist of the town.

671:25 Duties of Clerk of School District. The clerk of the school district shall prepare the official ballots for the school district as provided in RSA 671:20 and shall deliver the same to the town moderator before the opening of the polls at the town election. The ballots shall be of a color different from that of any other ballot being used at the town election.

Source. 1979, 321:1. 1997, 176:7, eff. Aug. 11, 1997.

671:26 Counting Ballots. The town election officials shall act in like capacity for the school district in conducting the school district election. After the close of the polls, the town election officials shall turn all school district ballots over to the moderator of the school district, who shall then proceed to count the ballots publicly with the assistance of such legal voters of the district as the moderator of the school district shall appoint. Provided, however, that, in the case of cooperative school districts, the town election officials, immediately after the close of the polls, shall count the ballots for school district officers and, within 24 hours, forward to the school district clerk a list of the number of votes received by each candidate for school district office. The list shall be signed by the town clerk and witnessed by the town moderator. Upon receipt of the list, the cooperative school district clerk shall record the results from each town and shall, when the results from all towns within the district have been recorded, determine and announce the names of the winning candidates.

Source. 1979, 321:1. 1997, 176:8, eff. Aug. 11, 1997.

671:26–a Coordinating Certain Town and School District Elections. To facilitate voting for future annual meetings, to reduce costs, and to best accommodate the voters of the town, the legislative body of a town, which has not adopted the official ballot referendum form of meeting, although the school district has adopted the official ballot referendum form of meeting, may authorize coordination of future town elections with the school district elections. The joint elections shall be held at a time and place determined by, and shall be supervised by, the election officials of the town, as provided in RSA 671:26. The town and the school board shall allocate the costs of the joint elections in the same manner as in previous years, or as mutually agreed upon by the governing body of the town and the school board.

Source. 1997, 330:4, eff. June 23, 1997.

Conduct of Election: Elections at School District Meeting

671:27 Posting Warrant. A warrant for the school district election shall be posted by the school

board, in the same manner as the selectmen for town elections as provided in RSA 669:2; provided that, in a cooperative school district, a copy of the warrant shall be posted in at least one public place in each preexisting district, as well as at the place of meeting. If a school board shall unreasonably neglect or refuse to warn an election, a justice of superior court, upon petition of 10 or more voters, or 1/10 of the voters of the district, whichever is less, may issue such warrant and cause it to be posted.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:28 Inspectors. The school board of each school district, at some time prior to the school district election each year, may appoint 4 inspectors of election as additional election officers to act with the clerk, moderator and school board. If the number of voters qualified to vote at an election shall exceed 2,000, the school board may appoint for such election 2 additional inspectors for each additional 2,000 qualified voters or fraction thereof. If the number of voters qualified to vote at any school district election shall exceed 4,000, the school board may appoint such additional inspectors as they may deem necessary for the efficient conduct of the election, so long as the total number of election officials shall not exceed 24. The inspectors shall be qualified voters at said election. They shall assist the school district moderator in counting votes for school district officers and questions.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:29 Additional Polling Places for Cooperative School Districts. The board of a cooperative school district may authorize the establishment of additional polling places within the building wherein the annual meeting is held. Said additional polling places shall be equipped and laid out in the same manner as the central polling place, and shall be supervised by the election officials of the several towns as provided in RSA 671:26.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:30 Non-Partisan Ballot System. Every school district in the state, except one having a special statute relative to election of its district offices, shall use the non-partisan ballot system for the election of district officers, in the same manner as in towns as provided in RSA 669:19–669:25, except that all references to towns or town clerks shall be read to refer to school districts or school district clerks.

Source. 1979, 321:1, eff. Aug. 21, 1979.

671:31 Reports by Clerk. The clerk of every school district, after the annual meeting, shall forthwith report the names and post office addresses of all school district officers to the commissioner of revenue administration and to the commissioner of education. If any school district officer has not been chosen or appointed at that time, the school district clerk shall promptly make like reports when such officer is chosen or appointed so that the commissioner of revenue administration and the commissioner of education shall at all times be informed of the names and mailing addresses of all school district officers.

Source. 1979, 321:1, eff. Aug. 21, 1979.

Post-Election Procedure

671:32 Recount; Tie Vote. Tie votes and recounts in school district elections shall be handled in the same manner as in town elections as provided in RSA 40:4–c and 40:4–d and in RSA 669:30–669:36, except as specified herein:

I. The school district clerk shall have all the duties and powers of the town clerk;

II. The board of recount shall be composed of the school district clerk, the school district moderator, and the members of the school board. The school district moderator shall be the chairperson of the board of recount; and

III. The fee for the recount shall be paid to the school district clerk for conducting the recount.

Source. 1979, 321:1. 1999, 5:1. 2002, 95:1. 2015, 159:2, eff. Aug. 25, 2015.

671:33 Vacancies.

I. Vacancies among members of cooperative or area school planning committees shall be filled by the moderator for the unexpired term.

II. (a) The school board shall fill vacancies occurring on the school board, except as provided in subparagraph (b), and in all other district offices for which no other method of filling a vacancy is provided. Appointees of the school board shall serve until the next district election when the voters of the district shall elect a replacement for the unexpired term. In the case of a vacancy of the entire membership of the school board, or if the remaining members are unable, by majority vote, to agree upon an appointment, the selectmen of the town or towns involved shall appoint members by majority vote in convention.

(b) In a cooperative school district, the remaining school board members representing the same town or towns as the departed member shall fill a vacancy on the school board, provided that there are at least 2 such members. If there are less than 2 remaining members on the cooperative school

board representing the same town or towns as the departed member, or if the remaining members are unable, by majority vote, to agree upon an appointment, the selectmen of the town or towns involved shall fill the vacancy by majority vote in convention. If the selectmen are unable to fill the vacancy then the cooperative school district moderator shall make the appointment. A member appointed to fill a vacancy under this subparagraph shall serve until the next district election when the voters of the district shall elect a replacement for the unexpired term.

III. Vacancies in the office of moderator shall be filled by vote at a school meeting or election, provided that, until a replacement is chosen, the school district clerk shall serve as moderator or shall appoint a moderator pro tempore.

IV. In a cooperative school district, the remaining budget committee members representing the same town or towns as the departed member shall fill a vacancy on the budget committee, provided that there are at least 2 such members. If there are less than 2 remaining members on the budget committee representing the same town or towns as the departed member, or if the remaining members are unable, by majority vote, to agree upon an appointment, the selectmen of the town or towns involved shall fill the vacancy by majority vote in convention. If the selectmen are unable to fill the vacancy then the cooperative school district moderator shall make the appointment. If the vacancy is for the cooperative school board representative to the cooperative school district budget committee, such vacancy shall be filled by the cooperative school board. A member appointed to fill a vacancy under this subparagraph shall serve until the next district election when the voters of the district shall elect a replacement for the unexpired term.

Source. 1979, 321:1. 1997, 176:9. 2005, 49:1. 2012, 239:1. 2013, 114:1, eff. Aug. 24, 2013. 2017, 3:2, eff. May 30, 2017.

TITLE LXIV

PLANNING AND ZONING

CHAPTER 674

LOCAL LAND USE PLANNING AND REGULATORY POWERS

Capital Improvements Program

674:5 Authorization. In a municipality where the planning board has adopted a master plan, the local legislative body may authorize the planning board to prepare and amend a recommended program of municipal capital improvement projects projected over a period of at least 6 years. As an alternative, the legislative body may authorize the governing body of a municipality to appoint a capital improvement program committee, which shall include at least one member of the planning board and may include but not be limited to other members of the planning board, the budget committee, or the town or city governing body, to prepare and amend a recommended program of municipal capital improvement projects projected over a period of at least 6 years. The capital improvements program may encompass major projects being currently undertaken or future projects to be undertaken with federal, state, county and other public funds. The sole purpose and effect of the capital improvements program shall be to aid the mayor or selectmen and the budget committee in their consideration of the annual budget.

Source. 1983, 447:1. 2002, 90:1, eff. July 2, 2002.

674:6 Purpose and Description. The capital improvements program shall classify projects according to the urgency and need for realization and shall recommend a time sequence for their implementation. The program may also contain the estimated cost of each project and indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the implementation and operation of each project. The program shall be based on information submitted by the departments and agencies of the municipality and shall take into account public facility needs indicated by the prospective development shown in the master plan of the municipality or as permitted by other municipal land use controls.

Source. 1983, 447:1, eff. Jan. 1, 1984.

674:7 Preparation.

I. In preparing the capital improvements program, the planning board or the capital improvement program committee shall confer, in a manner deemed appropriate by the board or the committee, with the mayor or the board of selectmen, or the chief fiscal officer, the budget committee, other municipal officials and agencies, the school board or boards, and shall review the recommendations of the master plan in relation to the proposed capital improvements program.

II. Whenever the planning board or the capital improvement program committee is authorized and directed to prepare a capital improvements program, every municipal department, authority or agency, and every affected school district board, department or agency, shall, upon request of the planning board or the capital improvement program committee, transmit to the board or committee a statement of all capital projects it proposes to undertake during the term of the program. The planning board or the capital improvement program committee shall study each proposed capital project, and shall advise and make recommendations to the department, authority, agency, or school district board, department or agency, concerning the relation of its project to the capital improvements program being prepared.

Source. 1983, 447:1. 1995, 43:1. 2002, 90:2, eff. July 2, 2002.

674:8 Consideration by Mayor and Budget Committee. Whenever the planning board or the capital improvement program committee has prepared a capital improvements program under RSA 674:7, it shall submit its recommendations for the current year to the mayor or selectmen and the budget committee, if one exists, for consideration as part of the annual budget.

Source. 1983, 447:1. 2002, 90:3, eff. July 2, 2002.

Zoning

674:16 Grant of Power.

I. For the purpose of promoting the health, safety, or the general welfare of the community, the local

legislative body of any city, town, or county in which there are located unincorporated towns or unorganized places is authorized to adopt or amend a zoning ordinance under the ordinance enactment procedures of RSA 675:2–5. The zoning ordinance shall be designed to regulate and restrict:

(a) The height, number of stories and size of buildings and other structures;

(b) Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;

(c) The density of population in the municipality; and

(d) The location and use of buildings, structures and land used for business, industrial, residential, or other purposes.

II. The power to adopt a zoning ordinance under this subdivision expressly includes the power to adopt innovative land use controls which may include, but which are not limited to, the methods contained in RSA 674:21.

III. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate and control the timing of development as provided in RSA 674:22.

IV. Except as provided in RSA 424:5 or RSA 422–B or in any other provision of Title XXXIX, no city, town, or county in which there are located unincorporated towns or unorganized places shall adopt or amend a zoning ordinance or regulation with respect to antennas used exclusively in the amateur radio services that fails to conform to the limited federal preemption entitled Amateur Radio Preemption, 101 FCC 2nd 952 (1985) issued by the Federal Communications Commission.

V. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate and control accessory uses on private land. Unless specifically proscribed by local land use regulation, aircraft take offs and landings on private land by the owner of such land or by a person who resides on such land shall be considered a valid and permitted accessory use.

Source. 1983, 447:1. 1985, 103:19. 1989, 266:14, 15. 1995, 176:1. 1996, 218:1, eff. Aug. 9, 1996.

674:17 Purposes of Zoning Ordinances.

I. Every zoning ordinance shall be adopted in accordance with the requirements of RSA 674:18. Zoning ordinances shall be designed:

(a) To lessen congestion in the streets;

(b) To secure safety from fires, panic and other dangers;

(c) To promote health and the general welfare;

(d) To provide adequate light and air;

(e) To prevent the overcrowding of land;

(f) To avoid undue concentration of population;

(g) To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;

(h) To assure proper use of natural resources and other public requirements;

(i) To encourage the preservation of agricultural lands and buildings and the agricultural operations described in RSA 21:34–a supporting the agricultural lands and buildings; and

(j) To encourage the installation and use of solar, wind, or other renewable energy systems and protect access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation; and encouragement of the use of solar skyspace easements under RSA 477. Zoning ordinances may establish buffer zones or additional districts which overlap existing districts and may further regulate the planting and trimming of vegetation on public and private property to protect access to renewable energy systems.

II. Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

III. Except as provided in RSA 424:5 or RSA 422–B or in any other provision of Title XXXIX, no city, town, or county in which there are located unincorporated towns or unorganized places shall adopt a zoning ordinance or regulation with respect to antennas used exclusively in the amateur radio service that fails to conform to the limited federal preemption entitled Amateur Radio Preemption, 101 FCC 2nd 952 (1985) issued by the Federal Communications Commission.

Source. 1983, 447:1. 1989, 42:2. 1995, 176:2. 2000, 279:2. 2002, 73:2. 2011, 85:2, eff. July 15, 2011.

Site Plans

674:43 Power to Review Site Plans.

I. A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or resubdivision of the site.

II. The ordinance or resolution which authorizes the planning board to review site plans shall make it the duty of the city clerk, town clerk, village district clerk or other appropriate recording official to file with the register of deeds of the county in which the municipality is situated a certificate of notice showing that the planning board has been so authorized, giving the date of such authorization.

III. The local legislative body of a municipality may by ordinance or resolution authorize the planning board to delegate its site review powers and duties in regard to minor site plans to a committee of technically qualified administrators chosen by the planning board from the departments of public works, engineering, community development, planning, or other similar departments in the municipality. The local legislative body may further stipulate that the committee members be residents of the municipality. This special site review committee may have final authority to approve or disapprove site plans reviewed by it, unless the local legislative body deems that final approval shall rest with the planning board, provided that the decision of the committee may be appealed to the full planning board so long as notice of appeal is filed within 20 days of the committee's decision. All provisions of RSA 676:4 shall apply to actions of the special site review committee, except that such a committee shall act to approve or disapprove within 60 days after submissions of applications, subject to extension or waiver as provided in RSA 676:4, I(f). If a municipality authorizes a site review committee in accordance with this paragraph, the planning board shall adopt or amend its regulations specifying application, acceptance and approval procedures and defining what size and kind of site plans may be reviewed by the site review committee prior to authorizing the committee.

IV. The local legislative body of a municipality may by ordinance or resolution establish thresholds based on the size of a project or a tract below which site plan review shall not be required. If a municipality establishes a size limit below which site plan review shall not be required, the planning board shall adopt or amend its regulations to clearly reflect that threshold. Nothing in this paragraph shall preclude the planning board from establishing such thresholds in the absence of action by the legislative body.

V. Site plan review shall not be required for a collocation or a modification of a personal wireless service facility, as defined in RSA 12–K:2.

Source. 1983, 447:1. 1987, 256:2. 1988, 9:1. 1995, 303:3. 2005, 33:1. 2013, 267:10, eff. Sept. 22, 2013.

Governmental Use of Property

674:54 Governmental Land Uses.

I. In this section, "governmental use" means a use, construction, or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, the community college system of New Hampshire, or by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.

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

formity of the proposal with normally applicable land use regulations to the sponsor of the governmental use within 30 days after the hearing.

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

II–b. The construction and operation of any solid waste disposal facility on land owned or occupied by any city or town within another city or town shall be subject to local land use regulations to the same extent as if the land were owned and occupied by a private entity. Nothing in this paragraph shall affect the construction and operation of a solid waste facility on land owned by a solid waste management district formed under RSA 53–A or RSA 53–B or any combination of municipalities authorized by an act of the general court, if the land is located within a city or town that is part of the district.

III. This section shall not apply to:

(a) The layout or construction of public highways of any class, or to the distribution lines or transmission apparatus of governmental utilities, provided that the erection of a highway or utility easement across a parcel of land, shall not, in and of itself, be deemed to subdivide the remaining land into 2 or more lots or sites for conveyance for development purposes in the absence of subdivision approval under this title. For purposes of this subparagraph, "transmission apparatus" shall not include wireless communication facilities.

(b) The erection, installation, or maintenance of poles, structures, conduits and cables, or wires in, under, or across any public highways under RSA 231, or licenses or leases for telecommunication facilities in, under, or across railroad rights of way. For purposes of this subparagraph, "structures" shall not include wireless communications facilities.

IV. In the event of exigent circumstances where the delay entailed by compliance with this section would endanger public health or safety, the governor may declare a governmental use exempt from the requirements of this section.

Source. 1996, 262:1. 1998, 281:2. 2007, 29:1, eff. May 14, 2007; 361:32, eff. July 17, 2007.

CHAPTER 675

ENACTMENT AND ADOPTION PROCEDURES

General Provisions

675:1 General Requirements.

I. The following shall be adopted under RSA 675:6:

(a) Every master plan or amendment to a master plan proposed under RSA 674:1;

(b) Subdivision regulations proposed under RSA 674:35;

(c) Site plan review regulations proposed under RSA 674:44; and

(d) Historic district regulations proposed under RSA 674:46–a.

II. Zoning ordinances proposed under RSA 674:16, historic district ordinances proposed under RSA 674:46 and building codes proposed under RSA 674:51 shall be adopted in accordance with the procedures required under RSA 675:2–5.

III. If an official map is established, it shall be established according to the procedures required under RSA 674:10.

Source. 1983, 447:1. 1985, 103:24, eff. Jan. 1, 1986.

Zoning Ordinance, Historic District Ordinance and Building Code Enactment Procedures

675:2 Method of Enactment in Cities and Towns Operating Under Town Council Form of Government.

I. In cities or in towns operating under the town council form of government, and in counties in which there are located unincorporated towns or unorganized places, the local legislative body shall determine the manner in which a zoning ordinance, historic district ordinance, or a building code is established and amended; provided, however, that any question concerning the establishment and amendment of a zoning ordinance, historic district ordinance, or a

building code may be placed on a ballot separate from the ballot used to elect city or town officers. The planning board shall forward to the town clerk all proposed amendments to a zoning ordinance, historic district ordinance, or building code not later than the fifth Tuesday prior to the date for electing city or town officers.

II. No zoning ordinance, historic district ordinance, or building code shall be established or amended until after a public hearing is held in accordance with the procedures required under RSA 675:7 on the proposed zoning ordinance, historic district ordinance, building code or amendment.

Source. 1983, 447:1. 1985, 103:24; 266:1. 1989, 266:25. 1990, 54:1, eff. June 5, 1990.

675:3 Method of Enactment in Certain Towns and Village Districts.

I. Any town not operating under the town council form of government, or any village district which is specifically authorized by law to enact a zoning ordinance, shall establish and amend a zoning ordinance, historic district ordinance, or building code upon the affirmative vote by ballot of a majority of the legal voters present and voting on the day of the meeting, as provided in paragraph VII. Any proposed zoning ordinance, as submitted by a planning board or any amendment to an existing zoning ordinance as proposed by a planning board, board of selectmen or village district commission shall be submitted to the voters of a town or village district in the manner prescribed in this section.

II. No zoning ordinance, historic district ordinance, or building code shall be established or amended at a town or village district meeting until after the planning board holds at least one public hearing on the proposed ordinance, code or amendment. Notice for the time and place of each public hearing shall be the same as that provided in RSA 675:7.

III. After the public hearing the planning board shall, by vote, determine the final form of the ordinance, amendment, or amendments to be presented to the town or village district, which ordinance or amendment may include editorial revisions and textual modifications resulting from the proceedings of that hearing.

IV. An additional public hearing shall be held if the proposal is substantively altered by the planning board after public hearing. Subsequent public hearings shall be held at least 14 days after the prior public hearing and with the notice provided in RSA 675:7.

V. Official copies of the final proposal to adopt or amend the zoning ordinance, historic district ordinance, or building code shall be placed on file and made available to the public at the town or village clerk's office not later than the fifth Tuesday prior to the date when action is to be taken. An official copy of the proposal shall be on display for the voters at the meeting place on the date of the meeting.

VI. Each village district must be specifically authorized to zone by the legislature.

VII. If the town or village district has adopted an official ballot for the election of its respective officers, the issue as to the adoption of the proposed ordinance, building code, or amendment shall be presented to the voters of the town or village district by having the town or village district clerk prepare an official ballot separate from the official ballot used to elect town or village district officers which shall include the following question, or by including the following question on the official ballot as prepared by the town or village district clerk:

"Are you in favor of the adoption of the zoning ordinance, historic district ordinance, or building code (or amendment to the existing town (village district) zoning ordinance, historic district ordinance, or building code) as proposed by the planning board?" In the event that there shall be more than a single proposed amendment to be submitted to the voters at any given meeting, the issue as to the several amendments shall be put in the following manner: "Are you in favor of the adoption of Amendment No. ___ as proposed by the planning board for the town (village district) zoning ordinance (historic district ordinance or building code) as follows: (Here insert topical description of substance of amendment.)?" If such action is to be taken at a meeting other than the one at which officers are to be elected, the clerk shall prepare a special ballot containing the question or questions above stated, and the meeting shall open not later than noon and shall remain open at least 8 hours. If such action is to be taken at a meeting in a town or village district which has not adopted an official ballot, the clerk may prepare a special ballot likewise separate from the ballot used to elect town or village district officers for the use of voters in voting on the question. If a majority of the voters present and voting on any question as herein provided shall vote in the affirmative, the ordinance or amendment thereto shall be declared to have been adopted. When submitting any question to the vot-

ers under this section, there shall be 2 squares printed after the question, one with the word "yes" beside it and another with the word "no" beside it.

VIII. If an amendment is submitted by the selectmen or village district commissioners, the ballot shall so indicate. A notation on the ballot stating the planning board's approval or disapproval shall immediately follow the question's description.

IX. The method for amending a zoning ordinance, historic district ordinance or building code, as set forth in this section, may also be utilized to repeal such ordinance or code. The ballot question shall use the word "repeal" in place of the words "adoption" or "amendment."

Source. 1983, 447:1. 1985, 103:24; 266:2. 1990, 54:2. 1996, 43:1, eff. June 23, 1996.

675:4 Method of Enactment by Petition.

I. Twenty-five or more voters may petition for an amendment to a zoning ordinance, historic district ordinance, or a building code. Petitioned amendments shall be voted only at the annual town or village district meeting. A petition to amend a zoning ordinance, historic district ordinance, or a building code shall be submitted to the board of selectmen or the village district commissioners during the period between 120 and 90 days prior to the annual town or village district meeting. The petition shall be in correct warrant article form, as determined by the selectmen or village district commissioners, to amend the zoning ordinance, historic district ordinance, or building code. The selectmen or the village district commissioners shall submit the petitions to the planning board in a timely manner.

II. The planning board at its first regular meeting following the petition period shall set the date of the public hearing for each petitioned amendment which is received and shall hold a public hearing on each petitioned amendment. Notice for the time and place of the public hearing shall be the same as that provided in RSA 675:7.

III. Each petitioned amendment shall be placed on a ballot which may be separate from the ballot used to elect town or village district officers. A notation on the ballot stating the planning board's approval or disapproval shall immediately follow the question's description. Any petitioned question receiving an affirmative vote of a majority of the legal voters present and voting shall be adopted, except as provided in RSA 675:5. The planning board shall forward to the town or village district clerk all proposed amendments to a zoning ordinance, historic district ordinance, or building code under this section not later than the fifth Tuesday prior to the date for electing town or village district officers.

IV. The town or village district clerk shall include each question on a petitioned amendment on the appropriate official or special ballot, or separate official ballot, in the same manner as provided in paragraph III and in RSA 675:3, VII.

V. The method for amending a zoning ordinance, historic district ordinance or building code, as set forth in this section, may also be utilized to repeal such ordinance or code. The ballot question shall use the word "repeal" in place of the word "amendment."

Source. 1983, 447:1. 1985, 103:24; 266:3. 1990, 54:3. 1996, 43:2, eff. June 23, 1996.

675:4–a Adoption of Emergency Temporary Zoning and Planning Ordinance in Certain Towns.

I. In any town which does not have a planning board, as provided by RSA 674, or a zoning ordinance, as provided in this subdivision, or in any town which has a planning board, but which does not have in effect a zoning ordinance, the selectmen, upon recommendation of the planning board, or upon written application to them for this purpose signed by 5 percent of the voters of the town, shall call a special town meeting, warning the same as provided by law, to act upon the following question: "Shall the town adopt the provisions of RSA 674:24–29 entitled 'Emergency Temporary Zoning and Planning Ordinance'?"

II. The provisions of RSA 675 relating to method of enactment shall not apply; provided, however, that there shall be a public hearing, with notice as provided in RSA 675:7, not more than 7 calendar days before the proposed special town meeting. There shall be reasonable opportunity for debate of such question at such town meeting before balloting commences. Voting shall be by ballot, with the use of the checklist used at the most recent annual meeting plus any new registrations, and the polls shall remain open at least 2 hours after debate has ended for the casting of ballots. If the question in paragraph I receives affirmative votes amounting at least to a majority of those present and voting, the provisions of RSA 674:24–29 shall take effect forthwith in the town and shall remain in effect until 2 annual town meetings shall have been held or the voters of the town consider a zoning ordinance as provided for by this chapter, whichever period of time is the lesser.

III. If no zoning ordinance has been considered and no zoning ordinance under the applicable provi-

sions of this chapter has been proposed for action by the time of the second such annual town meeting, the selectmen shall include in the warrant for such meeting the following proposal to be put as a question to be voted upon by ballot after discussion: To see if the town will vote to continue for one additional year the temporary zoning ordinance enacted under the provisions of RSA 674:24–29. If a majority of those present and voting on said article vote in the affirmative, the provisions of RSA 674:24–29 shall remain in effect in the town for one year from the date of such meeting. If a majority of those present and voting on the article vote in the negative, the provisions of RSA 674:24–29 shall cease to be in effect.

Source. 1985, 103:24, eff. Jan. 1, 1986.

675:5 Zoning Ordinance Protest Petition.

I. Zoning regulations, restrictions and boundaries may from time to time be amended or repealed.

I–a. A favorable vote of ⅔ of all the members of the legislative body present and voting shall be required to act upon any amendment or repeal in the case of a protest against such zoning change signed by either:

(a) The owners of 20 percent of the area of the lots included in such proposed change; or

(b) The owners of 20 percent of the area within 100 feet immediately adjacent to the area affected by the change or across a street from such area.

I–b. Paragraph I–a shall apply only to amendments which alter the boundary locations separating previously defined zoning districts, or to amendments which alter the regulations or restrictions of an area not larger than ⅓ of the land area within the municipality.

I–c. The area of streets, commons, or land owned by a governmental entity shall not be included in any calculation under this section.

II. In order to have any protest considered pursuant to paragraph I–a:

(a) The owners signing the petition shall identify themselves on the petition by name and address, and by address of the property involved, or by lot and map number, or by whatever other means is used within the town or village district to identify the land in question, so that the selectmen or commissioners may identify such owners as interested and affected parties; and

(b) The signed protest petition shall be submitted to the selectmen or village district commissioners at least 7 days prior to the town or village district meeting; provided, however, that each protest petition shall apply to only one article on the warrant. A notice of receipt of the protest petition shall be posted at the polling place, and the moderator shall announce at the opening of the town meeting that a protest petition has been received.

Source. 1983, 447:1. 1985, 103:24. 1989, 44:1–3, eff. June 11, 1989.

675:6 Method of Adoption. Every local master plan, subdivision regulation, site plan review regulation and historic district regulation referred to in this title shall be adopted or amended by the planning board or historic district commission, as appropriate, in the following manner:

I. The board or commission, as appropriate, shall hold a public hearing prior to adoption or amendment. Notice for the time and place of the hearing shall be as provided in RSA 675:7.

II. The board or commission, as appropriate, may adopt or amend the master plan or regulation upon completion of the public hearing by an affirmative vote of a majority of its members.

III. No master plan, regulation, amendment or exception adopted under this section shall be legal or have any force and effect until copies of it are certified by a majority of the board or commission and filed with the city clerk, town clerk, or clerk for the county commissioners.

IV. The historic district commission may adopt or amend regulations only after the commission has held a public hearing within the district. Notice for the time and place shall be as provided in RSA 675:7. The adopted regulations shall be certified by a majority of the historic district commission members and filed with the city clerk, town clerk, or clerk for the county commissioners.

Source. 1983, 447:1. 1985, 103:24. 1989, 266:26, eff. July 1, 1989.

675:7 Notice Requirements for Public Hearing.

I. Notice shall be given for the time and place of each public hearing held under RSA 675:2–4 and RSA 675:6 at least 10 calendar days before the hearing. The notice required under this section shall not include the day notice is posted or the day of the public hearing. Notice of each public hearing shall be published in a paper of general circulation in the municipality and shall be posted in at least 2 public places. Any person owning property in the municipality may request notice of all public hearings on proposed amendments to the zoning ordinance, and the municipality shall provide notice, at no cost to the person, electronically or by first class mail.

I–a. If a proposed amendment to a zoning ordinance would change a boundary of a zoning district and the change would affect 100 or fewer properties, notice of a public hearing on the amendment shall be sent by first class mail to the owners of each affected property. If a proposed amendment to a zoning ordinance would change the minimum lot sizes or the permitted uses in a zoning district that includes 100 or fewer properties, notice of a public hearing on the amendment shall be sent by first class mail to the owner of each property in the district. Notice by mail shall be sent to the address used for mailing local property tax bills, provided that a good faith effort and substantial compliance shall satisfy the notice by mail requirements of this paragraph.

I–b. In the case of a petitioned zoning amendment as authorized in RSA 675:4, the petitioners shall be responsible for the cost of notice by mail under paragraph I–a. If the full cost of notice is not paid at the time of submission, the municipality shall inform the voter whose name appears first on the petition of the cost of notice within 5 business days, and the balance shall be paid within another 5 business days. If full payment is not made and received within 5 business days, the selectmen or village district commissioners may, in their discretion, decide to accept or decline the petition for submission. Failure by the municipality to inform the responsible person of the cost of notice shall be deemed a waiver of the payment requirement.

II. The full text of the proposed master plan, zoning ordinance, building code, subdivision regulation, site plan review regulation and historic district regulation, ordinance, or amendment need not be included in the notice if an adequate statement describing the proposal and designating the place where the proposal is on file for public inspection is stated in the notice. The notice of a hearing on a proposed amendment to a zoning ordinance to be sent electronically or by first class mail shall include a statement describing, to the greatest extent practicable and in easily understood language, the proposed changes to the zoning ordinance, the areas affected, and any other information calculated to improve public understanding of the proposal.

Source. 1983, 447:1. 1985, 103:24. 2014, 161:8, eff. July 10, 2014. 2017, 231:1, eff. Sept. 16, 2017.

675:8 Filing of Zoning Ordinances, Historic District Ordinances, Building Codes, Subdivision Regulations, Site Plan Review Regulations, and Amendments. All zoning ordinances, historic district ordinances, building codes, subdivision regulations, site plan review regulations, historic district regulations and their amendments shall be placed on file with the city, town, or village district clerk, or, in the case of unincorporated towns or unorganized places, with the clerk for the county commissioners for public inspection.

Source. 1983, 447:1. 1985, 103:24. 1989, 266:27, eff. July 1, 1989.

675:9 Place for Filing Documents; Reporting of Adoptions or Amendments. A copy of each master plan, zoning ordinance, historic district ordinance, capital improvement plan, building code, subdivision regulation, historic district regulation, site plan review regulation or amendment which is adopted by a municipality shall be placed in a central file with the office of strategic initiatives; provided, however, that failure to file these documents or amendments with the office of strategic initiatives shall not affect the validity of the document. Every municipality which adopts a master plan, zoning ordinance, historic district ordinance, capital improvement plan, building code, subdivision regulation or site plan review regulation or amendment thereto, shall inform the office of strategic initiatives of such adoption or amendment. The office of strategic initiatives is hereby authorized to gather this information by way of an annual survey of the municipalities or other such means as may be deemed appropriate. The office of strategic initiatives shall periodically create lists and reports of the information gathered for use by the municipalities and the general public.

Source. 1983, 447:1. 1985, 103:24. 1987, 50:1. 1989, 266:28. 2002, 8:12, III. 2003, 319:9. 2004, 257:44. 2011, 224:122, eff. July 1, 2011. 2017, 156:64, eff. July 1, 2017.