

## DISCLAIMER

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### Hazardous Substances – Underground Storage Tanks

**146-C:1 Definitions.** – In this chapter:

I. "Department" means the department of environmental services.

I-a. "Council" means the water supply and pollution control council established under RSA 21-O:7.

I-b. "Commissioner" means the commissioner of the department of environmental services.

II. "Discharge" means the release or addition of any oil or hazardous substance to land, groundwater or surface water.

III. "Disposal" means deposit, discharge, injection, dumping, spilling, leaking, leaching, or placing of oil or hazardous substance into or on any land, groundwater or surface water.

IV. "Existing facility" means a facility the construction or installation of which began prior to September 17, 1985.

V. "Facility" means an assemblage of tanks, pipes, pumps, vaults, fixed containers, and appurtenant structures, singly or in any combination, which are used or designed to be used for the storage, transmission, or dispensing of oil or a hazardous substance, and which are within the size, capacity, and other specifications prescribed by rules adopted by the department pursuant to RSA 146-C:9, VI.

VI. "Failure" means a condition which may or does allow the uncontrolled passage of oil or a hazardous substance into or out of a facility, and includes, but is not limited to, a discharge to the groundwater or surface water of the state without a permit issued pursuant to RSA 146-C:4.

VII. "Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations.

VII-a. "Hazardous substance" means material defined as a regulated substance under 42 U.S.C. 6991(2)(A) in addition to any material designated as a hazardous substance pursuant to RSA 146-C:9, VI-a.

VII-b. (a) "Fiduciary" means a person:

(1) Who is acting in any of the following representative capacities, but only to the extent such person is acting in such representative capacity: an executor or administrator

of an estate, including a voluntary executor or a voluntary administrator; a guardian; a conservator; a trustee under a will under which the trustee takes title to, or otherwise controls or manages, property for the purpose of protecting or conserving such property under the ordinary rules applied in the courts of the state of New Hampshire; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; an assignee or a trustee acting under an assignment made for the benefit of creditors; a trustee under a revocable or irrevocable donative or estate-planning inter vivos trust; or a trustee, pursuant to an indenture agreement or similar financing agreement, for debt securities, certificates of interest of participation in any such debt securities, or any successor thereto; and

(2) Who holds legal title to, controls, or manages, directly or indirectly, any facility as a fiduciary for purposes of administering an estate or trust of which such facility is a part; and

(3) Who is otherwise not engaged in petroleum production, refining, or marketing.

(b) Any person or entity acting as trustee of a business trust, a realty trust, a real estate trust, a nominee trust, or any similar trust shall not be considered a "fiduciary" under this chapter.

VII-bb. "Foreclosure" means any foreclosure by a holder of a mortgage lien, or, in the case of a tax lien, the conveyance of property by tax deed by a municipality, county or state pursuant to the procedures of RSA 80:20-RSA 80:42-a or of RSA 80:58-RSA 80:86.

VII-c. "Holder" means a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at the facility and who is otherwise not engaged in petroleum production, refining or marketing.

VII-d. "Indicia of ownership" means evidence of a mortgage lien, a security interest, or other interests in real or personal property securing payment or performance of a loan or other obligation.

VII-dd. "Mortgage interest" and "mortgage lien" mean a mortgage lien, tax lien, or other lien or encumbrance securing the payment of money or performance of an obligation.

VII-e. "Primarily to protect a mortgage interest or security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation.

VIII. "Life expectancy" means the time period within which a failure is not expected to occur as determined by the department.

IX. [Repealed.]

X. "New facility" means a facility the construction or installation of which begins on or after September 17, 1985, including, but not limited to, facilities which replace existing facilities, facilities which are moved from one location to another, and facilities which are substantially modified after September 17, 1985.

XI. "Nonresidential," when referring to a facility, means a facility which serves any commercial, industrial, institutional, municipal, public, or other building, including, but not limited to, service stations, hotels and motels, hospitals, nursing homes, and correctional institutions, but not including residential buildings.

XII. "Oil" means "oil" as defined in RSA 146-A:2.

XIII. "Operator" means the person who has responsibility for the care, custody, and control of the daily operation of a facility.

XIII-a. "Class A operator" means the individual or individuals designated by the owner to have primary statutory and regulatory responsibility for the operation and maintenance of the facility. The "class A operator" may hold more than one class of operator position.

XIII-b. "Class B operator" means the individual or individuals designated by the owner to implement applicable regulatory requirements and implement the daily aspects of the operation, maintenance, and recordkeeping for the facility. The "class B operator" may hold more than one class of operator position.

XIII-c. "Class C operator" means the individual or individuals designated by the owner to have primary responsibility for responding to alarms, emergencies presented by spills or releases, and other problems associated with the operation of the facility. The "class C operator" may hold more than one class of operator position.

XIII-d. "Approved training program" means an operator training program meeting the requirements of RSA 146-C:18.

XIV. "Owner" means the person in possession of or having legal ownership of a facility. In addition, for facilities no longer in use, "owner" includes the person having had legal ownership of such facility immediately prior to discontinuance of its use.

XIV-a. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity.

XIV-b. "Red-tagged storage tank or facility" means one or more oil storage tanks at a facility identified by means of a department-issued identification tag as being non-compliant with department rules issued under RSA 146-C:9, VI for spill prevention, overfill protection, release detection, leak monitoring, or corrosion protection.

XV. "Residential building" means any house, apartment, trailer, manufactured housing, or other structure occupied by individuals as a domicile.

XVI. "Substantial modification" means the construction or installation of any addition to a facility or any restoration or renovation of a facility which: increases or decreases the on-site storage capacity of the facility; significantly alters the physical configuration of the facility; or impairs or improves the physical integrity of the facility or its monitoring systems. On-site abandonment is specifically excluded as a "substantial modification" of a facility.

XVII. "Surface water" means perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, watercourses, and other bodies of water, natural or artificial.

XVII-a. "Tax lien" means a tax lien arising under RSA 80:19, the rights acquired by the grantee in a tax sale pursuant to RSA 80:20-RSA 80:42-a, and a tax lien acquired or transferred pursuant to RSA 80:58-RSA 80:86.

XVIII. "Underground storage facility" means a facility or facility component that is 10 percent or more below the surface of the ground and is not fully visible for inspection.

**Source.** 1986, 182:1. 1988, 249:1-3. 1990, 208:1-3, 14. 1991, 92:22-29. 1993, 323:6, 7. 1994, 199:7-9. 1995, 216:2. 1996, 228:26, 27, 106. 2000, 76:2, eff. June 20, 2000. 2007, 376:1, eff. July 1, 2007. 2010, 102:1, eff. May 26, 2010.

**146-C:4 Underground Storage Facility Permit Required. –**

I. No person shall own or operate an underground storage facility in this state without a permit issued by the department. The permit to operate may be revoked in accordance with RSA 541-A:30 for just cause, including, but not limited to, the operation or ownership of an underground storage facility in violation of the department's rules. The revocation shall not take effect until the owner or operator has had an opportunity to be heard by the council, provided such request is made within 20 days of the issuance of the department's decision to revoke the permit. Appeal of a decision revoking a permit to operate shall be governed by RSA 21-O:14. Any appeal brought pursuant to RSA 541 shall not stay a decision by the council which affirms the department's revocation of a permit.

II. The department shall issue or deny a permit to all facilities registered under RSA 146-C:3 within 90 days of the receipt of the complete registration information. A permit issued under this section shall be displayed on the premises of the underground storage facility at all times.

III. [Repealed.]

**Source.** 1986, 182:1. 1990, 3:73. 1991, 92:32. 1996, 228:28, 106. 2003, 187:5, 6, I, eff. July 1, 2003. 2010, 55:1, eff. May 18, 2010.

**146-C:16 Appeals. –**

I. A facility owner may request, in writing, that the department rescind the delivery prohibition imposed under RSA 146-C:14. The department, shall approve a request to rescind the delivery prohibition, upon determining the following:

(a) The facility owner or operator has corrected the operational deficiencies identified during the inspection conducted under RSA 146-C:15, I;

(b) Fines and penalties assessed by the department against the facility owner or operator, if any, have been paid; and

(c) The department has re-inspected the facility and determined the storage tank or facility is in compliance, or an owner or operator has provided satisfactory documentation that operational deficiencies were corrected. Upon notification by the owner or operator documenting to the satisfaction of the department that the deficiencies were corrected:

(1) The department may provide written notification to the owner or operator to remove the red tag.

(2) The department shall inspect the underground storage tank or facility within 5 business days of notification to determine whether the tank or facility is now in compliance with department rules, regardless of whether it has authorized removal of the red tag by the owner or operator. If, upon inspection, the department determines that the system is in compliance and the department has not already authorized the removal of the red tag, the department shall immediately remove the red tag.

(3) Upon removal of the red tag, the department shall document the level of stored product in the tank or facility. If the red tag was removed by the owner or operator as authorized by the department, the owner or operator shall document the level of stored product in the tank or facility at the time of red tag removal. The removed red tag shall be sent back to the department with documentation of the level of product in the tank or

facility at the time of removal. The red-tagged documentation shall be returned to the department within 5 days of the removal of the red tag, or sooner if the department requests it.

II. Nothing in this section shall affect any authority of the department or the attorney general to enforce state law relative to oil discharges or storage tank compliance, or to seek injunctive relief, cost recovery, penalties, and any other sanctions for non-compliance with applicable requirements.

III. Any appeal of department action under this section shall not stay or suspend the department's action.

**Source.** 2007, 376:2, eff. July 1, 2007. 2010, 55:2, eff. May 18, 2010.

**146-C:17 Operator Training Required. –**

I. Effective August 8, 2012, no person shall operate an underground storage facility without designated class A, B, and C operators who have been trained and certified in accordance with an approved training program.

II. (a) By August 8, 2012, owners of then-existing facilities shall submit to the department for each underground storage facility owned in the state a statement signed by both the owner and the designated operators in a format approved by the department identifying the designated class A and B operators, the name of the approved training program by which they are trained, the date that they were certified by the approved training program, and the expiration date regarding their certification.

(b) For facilities that begin operation after August 8, 2012, the information in subparagraph (a) shall be submitted prior to beginning operation.

III. Effective August 8, 2012, owners shall post at each underground storage facility operator response guidelines meeting the requirements of RSA 146-C:19, I.

IV. Effective August 8, 2012, owners shall post at each underground storage facility, and revise when changes occur, a listing of class C operators assigned to that facility that includes the latest date of training, the expiration date regarding the training, and an identification of the approved training program or the name of the certified class A or B operator that trained each class C operator.

V. After August 8, 2012, owners shall revise and resubmit to the department a signed statement that includes the information required in paragraph II whenever there is a change in designated class A or B operators or a change of approved training programs, or when a designated operator has been retrained as ordered by the department pursuant to RSA 146-C:21, within 30 days of the change for each affected underground storage facility.

VI. After August 8, 2012, newly designated class A and B operators shall be trained in accordance with an approved training program within 30 days of being designated. Newly designated class C operators shall be trained in accordance with an approved training program or by a certified class A or B operator before assuming the responsibilities of the class C operator.

VII. Class A, B, and C operators who have been trained and certified by an approved operator training program that has since had its approval revoked pursuant to RSA 146-C:20 shall remain trained and certified unless they are directed by the department to

retrain pursuant to RSA 146-C:21 or their certification expires pursuant to the previously approved training program curriculum.

**Source.** 2010, 102:2, eff. May 26, 2010.

**146-C:18 Operator Training Program Requirements.** – An operator training program may be provided by the department, approved by the department pursuant to paragraph I or paragraph III, or deemed approved pursuant to paragraph II, to meet the requirements of this section. The department may charge a fee to cover expenses for operator training that are not paid by federal grants.

I. An operator training program shall be approved in writing by the department. The department shall approve a program if after submittal of the training curriculum and instructor's qualification to the department for review, the department finds that it meets the following minimum requirements:

(a) Class A operator training shall include:

(1) Familiarization with applicable state statutes and rules as they specifically apply to facility registration and permitting, financial responsibility documentation requirements, spill prevention, overfill prevention, release detection, corrosion protection, emergency response, product compatibility, notification requirements, release and suspected release reporting, temporary and permanent closure requirements, and operator training.

(2) Certification that the operator has passed an appropriately administered and evaluated test demonstrating such knowledge.

(3) After the initial training, at least biennial retraining.

(b) Class B operator training shall include:

(1) Familiarization with the implementation of applicable statutes and regulations.

(2) Familiarization with components of underground storage facilities, material of underground storage facility components, methods of underground storage facility release detection and release prevention, underground storage facility spill prevention, overfill prevention, release detection, corrosion protection, emergency response, product compatibility, reporting and recordkeeping requirements, and class C operator requirements.

(3) Familiarization with conducting and documenting monthly maintenance inspections pursuant to RSA 146-C:19 and yearly maintenance inspections as applicable.

(4) Certification that the operator has passed an appropriately administered and evaluated test demonstrating such knowledge.

(5) After the initial training, at least biennial retraining.

(c) Class C operator training shall include:

(1) Familiarization with taking the appropriate action pursuant to operator response guidelines in responding to emergencies and alarms.

(2) Familiarization with the facility layout.

(3) Familiarization with reading alarm enunciation panels.

(4) Certification of understanding signed by the operator and trainer.

(5) After the initial training, at least biennial retraining.

II. The following operator training programs shall be deemed approved by the department:

(a) For class A operator training, current certification as an underground storage facility operator by the International Code Council.

(b) For class B operator training, current certification as an underground storage facility system installer or retrofitter by the International Code Council.

(c) For class C operator training, training to take appropriate action pursuant to the posted operator response guidelines in responding to emergencies and alarms, a physical tour of the facility, and training in reading the alarm enunciation panel by the designated trained class A or B operator at the facility; provided that, after the initial training, there is at least biennial retraining or refresher training.

III. The department may approve operator training programs conducted or approved by other states as meeting New Hampshire requirements.

IV. Nothing in this section shall prohibit or prevent a class A, B, or C operator from training additional facility employees to assist with the class C operator's responsibilities for responding to alarms, emergencies presented by spills or releases, and other problems associated with the operation of the facility.

**Source.** 2010, 102:2, eff. May 26, 2010.

**146-C:19 Additional Operator Requirements. –**

I. Written operator response guidelines shall include spill reporting procedures, contact phone numbers, malfunctioning equipment lock-out/tag-out and notification procedures, and initial mitigation protocol for emergencies.

II. Monthly visual inspections meeting the following minimum requirements shall be conducted at all underground storage facilities:

(a) Inspections shall be conducted by or under the direction of the class A or B operator.

(b) The results of each inspection shall be recorded in a monthly inspection report. The records shall be maintained and made available for department inspection and copying for a period of not less than 3 years.

(c) The following items shall be inspected and shall be reported on the inspection report as no defect, defect, and how any defect was resolved:

(1) Inspect all vent risers for visible damage and repair as necessary.

(2) Inspect each pressure/vacuum vent cap and if the cap is missing or damaged, replace the cap.

(3) Inspect each spill bucket for the presence of oil, water, or debris; remove and dispose of any oil, water, or debris in accordance with all applicable federal, state, and local requirements; and repair each spill bucket as necessary.

(4) Inspect each coaxial fill adaptor cap, 2-point fill adaptor cap, and dry break adaptor cap for looseness, the presence of a gasket, and tightness of fit, and tighten, repair, or replace as necessary.

(5) Inspect each coaxial fill adaptor, 2-point fill adaptor, and dry break adaptor for tightness of fit, and tighten or replace as necessary.

(6) Inspect each dry break poppet valve for a continuous seal, that it depresses evenly across the valve seat, and that it reseats properly and if not, repair or replace as necessary.

(7) Inspect each motor fuel dispenser hose for tears, leaks, holes, kinks, crimps, or

defects of any kind and replace as necessary.

(8) Inspect each motor fuel dispenser nozzle for leaks, obstruction of vapor recovery holes, or defects of any kind and replace as necessary.

(9) Inspect each motor fuel dispenser cabinet interior for leaking components and the presence of oil, water, or debris; remove and dispose of any oil, water, or debris in accordance with all applicable federal, state, and local requirements; and repair each component as necessary. If a motor fuel dispenser cabinet interior has a liquid-tight containment sump with continuous leak detection monitoring provided by either a dispenser sump sensor or the attached piping sump sensor, the motor fuel dispenser cabinet interior inspection may be conducted annually and the results reported in the associated monthly inspection report.

(10) Inspect each oil transfer and dispensing area for the presence of oil spills and report and remediate any spill in accordance with all applicable federal, state, and local requirements.

(11) Inspect each alarm enunciation panel for proper operation of product monitoring and leak detection systems and repair or replace system components as necessary.

(d) Deficiencies discovered during the visual inspection shall be repaired or otherwise resolved within 30 days.

III. The class B operator shall ensure that tanks, pumps, and appurtenances that will store or dispense oil are compatible with the oil or oil blends to be stored or dispensed.

IV. Delegation of the responsibilities of this section to designated operators shall not relieve the owner from liability for noncompliance with the requirements of this section.

**Source.** 2010, 102:2, eff. May 26, 2010

**146-C:20 Revocation of Operator Training Program Approval. –**

I. If the department determines that an approved operator training program has proven insufficient to adequately train operators as evidenced by inadequately trained operators, significant operational compliance issues, or inability to document that training has been provided, then the department shall revoke the approval of the operator training program.

II. An operator training program may be re-approved if it is demonstrated that all operator training program defects have been corrected and if a revised curriculum and instructor's qualification is submitted to the department and meets the requirements of RSA 146-C:18.

III. An approved operator training program may withdraw as an approved operator training program by making such a request in writing to the department.

**Source.** 2010, 102:2, eff. May 26, 2010.

**146-C:21 Repeating Operator Training. –** If the department determines that a facility is not in significant operational compliance with the release prevention and release detection measures of applicable state rules and statutes, or other requirements of this chapter or the implementing rules, then the department shall direct that the responsible

class A or B operator be retrained and recertified in accordance with an approved training program, within 30 days or within such other time as the department specifies.

**Source.** 2010, 102:2, eff. May 26, 2010.

## **Hazardous Substances – Radon Gas/Lead Paint Recordation**

### CHAPTER 477 CONVEYANCES OF REALTY AND INTERESTS THEREIN

#### SECTION 477:4-A NOTIFICATION REQUIRED; RADON GAS AND LEAD PAINT.

#### CHAPTER 130-A LEAD PAINT POISONING PREVENTION AND CONTROL

#### **477:3-b Limitations on Possibilities of Reverter, Rights of Re-entry, and Executory Interests. –**

I. This section applies only to legal future interests in real property created by deed, will, or power of appointment and not to any beneficial interests created by or through trusts. This section shall not apply to rights of forfeiture or re-entry held by lessors or mortgagees, nor to conveyances of standing trees governed by RSA 477:35-a or RSA 477:35-b, nor to options to purchase real estate, whatever their form.

II. (a) After December 31, 2008, no legal possibility of reverter, right of re-entry, or executory interest in real property may be retained or created unless either the grantor or the grantee is a public or charitable organization. Any language purporting to retain or create such a future interest shall be void. Language which also creates a covenant may be enforced as such by an action at law or equity but without forfeiture.

(b) For purposes of this section, an organization is public or charitable if it is:

- (1) The state of New Hampshire.
- (2) A political subdivision or municipal corporation of the state of New Hampshire.
- (3) A corporation organized under RSA 292, a religious organization, or a not-for-profit corporation chartered by act of the New Hampshire general court or United States Congress.
- (4) A nonprofit organization qualified under section 501(c) of the Internal Revenue Code of the United States, as amended.
- (5) A trustee as defined in RSA 7:21, VIII.

III. Renewal declarations shall be required in certain cases.

(a) Unless the original grantor or grantee of the interest was, or the present owner of the interest is, a public or charitable organization, any existing possibility of reverter, right of re-entry, or executory interest in real property shall become void unless renewal declarations are filed in the appropriate registry of deeds as hereinafter provided. Covenants as such are not subject to renewal and remain enforceable by an action at law or equity but without forfeiture.

(b) Times of filing future interests under this section shall be as follows:

- (1) A declaration of renewal of an existing possibility of reverter, right of re-entry,

or executory interest in real property that was retained by or granted to a natural person need not be recorded while owned by that person. Any subsequent heir, devisee, grantee, creditor, or other successor to such interest shall record a declaration within 3 years after acquiring it or the interest shall become void.

(2) A declaration of renewal of an existing possibility of reverter, right of re-entry, or executory interest in real property other than those retained by or granted to a natural person shall be filed on or before January 2, 2011, and if such declaration is not filed within such time, the interest shall become void.

(3) A declaration shall be recorded once in every 25 years after the initial declaration is filed, and any interest for which such a declaration is not filed shall become void 25 years after the filing of the last renewal declaration.

(c) A declaration shall be signed and acknowledged by the declarant in the same manner as a deed and contain:

(1) A statement that the declarant owns all or part of a future interest reserved or created by a specified instrument and the declarant's current mailing address.

(2) The date of that instrument and the book and page, probate file, or other specific place where the instrument is recorded.

(3) The names of the owner or owners of the property rights subject to the future interest as of the time the declaration is filed.

(d) Each declaration shall be indexed in the grantor index under the name or names of the persons stated therein to be the owners of the property right subject to the future interest at the time of filing.

(e) The original declaration shall be returned to the declarant after recording in the same manner as a deed.

(f) A declaration which is actually recorded and correctly indexed shall be effective despite failure to name all present owners of the property subject to the future interest so long as at least one owner was correctly identified.

(g) The fee for filing a declaration shall be the same as for a deed.

IV. Unclaimed future interests of defunct public or charitable organizations shall be treated in the following manner: Whenever it shall appear that a public or charitable organization holding a possibility of reverter, right of re-entry, or executory interest has been defunct for more than 3 years with no successor to the future interest provided for or action commenced to determine a successor, the director of charitable trusts shall either commence such an action or, if it appears to be in the public interest, release the future interest to the owners of the underlying estate, with or without conditions.

**Source.** 2008, 228:2, eff. Jan. 1, 2009.

**477:4-h Notification Required Prior to Sale, Transfer, Lease, or Rental of Real Property Subject to a Public Utility Tariff Pursuant to RSA 374:61 For the Financing or Amortization of Energy Efficiency or Renewable Energy Improvements. –**

I. Prior to or during the preparation of an offer for the purchase and sale of any interest in real property and in conjunction with an offer to lease or rent real property and before signing an agreement to sell, transfer, lease, or rent real property the seller, transferor, lessor, or owner shall disclose in writing to the buyer, transferee, lessee, or occupant if, to

the seller's, transferor's, lessor's or owner's knowledge, any metered public utility services at the premises that the buyer, transferee, lessee, or occupant may be responsible for paying as a condition of such utility service is provided under a tariff with unamortized or ongoing charges for energy efficiency or renewable energy improvements pursuant to RSA 374:61. Such disclosure should include, if known, the remaining term and amount of such charges and any estimates or documentation of gross or net energy or fuel savings resulting from such financed or amortized improvements and investments. The buyer shall acknowledge receipt of the disclosure by signing a copy of the disclosure.

II. In the case of a sale or transfer of real property, the fact that information regarding such required disclosure is not available shall also be conveyed, in writing, when such is the case.

**Source.** 2010, 229:2, eff. Aug. 27, 2010.

**477:25-a Conveyances To or From Trusts Without Naming Trustees. –**

I. In any conveyance of real property or any interest in real property in this state, if the grantee or one or more of the grantees is named as a trust, whether the trust is created under the laws of this state or of any other jurisdiction, and no trustee of that trust is named as a grantee in his or her or its capacity as trustee, then the conveyance is deemed to have been made to all of the trustees of the trust who have accepted the office of trustee in their capacity as trustees of the trust, as though they had been named as grantees. Notwithstanding the foregoing, a trustee who would be deemed by this paragraph to have accepted title to real property but who has not either expressly accepted title or participated in any transaction involving the property other than as allowed by RSA 564-B:7-701(c) may, to the extent not prohibited by the terms of the trust or otherwise, decline to accept such real property by recording an affidavit reciting such nonacceptance and nonparticipation and lack of prohibition and declining to accept title, in the registry in which the conveyance subject to this paragraph was recorded; and upon the recording of such an affidavit, such trustee shall be deemed never to have accepted or held title to the real property that is the subject of such conveyance; but such declination of title by one or more but not all of the trustees shall not prevent the vesting of title to the entire interest conveyed in the remaining trustees. Notwithstanding this right of trustees to decline title, the title of any bona fide purchaser whose title is derived by instrument recorded subsequent to the date of recording of the conveyance subject to this section shall not be adversely affected by the recording of a trustee's affidavit declining title.

II. In any conveyance of real property or any interest in real property in this state, the conveyance is deemed to have been made by all of the persons who signed the instrument of conveyance in the expressly denoted capacity of trustees of the trust, as though they had been named as such in the granting clause as grantors instead of the trust, if:

(a) The granting clause designates or includes as grantor a trust, whether the trust is created under the laws of this state or of any other jurisdiction, and the granting clause does not include as grantors one or more persons expressly described as trustees of the trust;

(b) The signature block designates the trust as a signatory entity, followed by the signatures of one or more persons expressly described as trustees; or

(c) Both subparagraphs (a) and (b) apply.

III. Any person who claims title to any real property or any interest in real property in this state by virtue of the failure of an instrument of conveyance delivered before the effective date of this section to name as grantor or as grantee any trustee of a trust may preserve that claim by recording a notice, within 2 years from the effective date of this section, in the registry of deeds where the instrument of conveyance is recorded. In order for the notice to be effective, it shall contain the name and mailing address of the claimant, the names of the parties to the instrument of conveyance that is claimed to be defective, the names of the current owners of record, the book and page numbers where the instrument of conveyance is recorded, and a statement of the purported defect on which the claim is based. The notice described in this paragraph may be presented for recording by the claimant or by any other person acting on behalf of a claimant who is under a disability or is unable to assert a claim on the claimant's own behalf, but a disability or lack of knowledge of any kind shall not suspend or extend the period for the recording of the notice.

IV. This section shall not apply to any trust that, as determined by the laws of its situs, is an entity capable of holding and conveying title in its own name.

V. Nothing contained in this section shall be construed to recognize trusts created under the laws of this state as entities capable of holding or conveying title to real property in their own names. This section applies to conveyances made before, on, or after the effective date of this section, but nothing contained in this section shall be construed to suggest or require that any instrument delivered before the effective date of this section is invalid. Nothing contained in this section shall be construed to extend the period for the commencement of an action or for the performance of any other required act under any statute of limitations.

VI. Other than as expressly stated, this section shall not be read to mean that a conveyance falling within the terms of paragraph I or II is any more or less valid or has any different effect with regard to the trustees or the trust than if the trustees had been expressly named as such in the granting clause.

**Source.** 2009, 180:1, eff. Sept. 11, 2009.

**477:37 Mortgagee's Consent to Cutting.** – Whenever standing trees have been mortgaged as real estate or are covered by a mortgage of the land on which they stand, the mortgagee may indorse upon said mortgage a consent that the trees may be cut, which consent shall be recorded in the registry of deeds.

**Source.** 1921, 76:1. PL 213:26. RL 259:26. 2008, 322:5, eff. Aug. 31, 2008.

**477:47 Interests in Real Estate.** – Conservation, preservation, and agricultural preservation restrictions are interests in real estate and a document creating such a restriction shall be deemed a conveyance of real estate for purposes of RSA 477:3 and RSA 477:3-a relating to execution and recording. Such a restriction may be enforced by an action at law or by injunction or other proceeding in equity. No grantee or contingent grantee interest in such a restriction shall be created or amended by any document unless it bears the notarized signature of the grantee and any and all contingent grantees.

**Source.** 1973, 391:1. 1979, 301:6. 1992, 138:4, eff. Jan. 1, 1993. 2008, 125:1, eff. Aug. 2, 2008.

## **Hazardous Substances – Lead Paint**

### **130-A:2 Duties of the Commissioner. –**

I. The commissioner shall:

(a) License in accordance with RSA 130-A:12, I, or deny or revoke the licensure of, any lead inspector, lead risk assessor, or lead abatement contractor advertising, offering or otherwise making available services in the state of New Hampshire, whether or not the inspector, contractor, or lead risk assessor is incorporated in the state.

(b) Certify employees of owners or managers of dwellings, dwelling units, or child care facilities, and of lead abatement contractors, who are engaged in lead base substance abatement, or refuse to provide or revoke such certification. Separate certificates shall be issued to workers who supervise other certified workers and to lead clearance testing technicians.

(c) Collect fees for the issuance of licenses and certificates under RSA 130-A:2, I(a), (b), and (h).

(d) Adopt rules required under this chapter.

(e) Implement public education programs for the general public, for owners, managers and occupants of dwelling and dwelling units, for owners and operators of child care facilities, and for physicians and other health care workers providing services to children concerning the prevention and treatment of lead poisoning and relative to the provisions of this chapter and the reporting of lead poisoning under RSA 141-A.

(f) Implement comprehensive case management for cases of lead poisoning when a child's blood lead level meets or exceeds 10 micrograms per deciliter. Case management shall include the coordination of medical services appropriate for the treatment of the reported lead poisoning.

(g) Provide training for and maintain an active program of coordination with health authorities relative to the control of lead base substances in owner-occupied and renter-occupied housing, with specific regard to the conduct of inspections, lead base substance abatement, in-place management, and enforcement activities carried out under this chapter. The commissioner shall make reasonable efforts to ensure that such training programs are held in areas with high incidence of lead exposure hazards, and that property owners are educated about methods to prevent lead exposure hazards before they arise and how hazards can be addressed once identified.

(h) Certify training programs for lead abatement contractors, lead inspectors, lead risk assessors, lead clearance testing technicians, and lead abatement workers.

(i) Develop and implement, in accordance with RSA 130-A:7, an investigation and enforcement program for lead base substances and the reduction of lead exposure hazards.

(j) Develop and maintain a data base on the incidence of lead poisoning in children.

This data base shall be established using data supplied under RSA 130-A:3.

(k) [Repealed.]

(l) Develop educational materials in accordance with RSA 130-A:5.

II. The commissioner may establish, in accordance with rules adopted under RSA 541-A, a notification program relative to lead base substance inspection and abatement activities.

III. The commissioner shall establish, in accordance with rules adopted under RSA 541-A, a window replacement program. The program shall be made available to owners of dwellings and dwelling units and funded by the lead poisoning prevention fund, established in RSA 130-A:15, and other available moneys, when the commissioner determines there are enough moneys in such fund to sustain such a program. Pilot projects may begin as soon as funds are available. The commissioner shall make a report on the parameters of the program, funding acquired and sought, and program expenditures to the health and human services oversight committee, established in RSA 126-A:13, and to the chairperson of the house ways and means committee on or before September 1, 2010.

**Source.** 1993, 325:2. 1995, 310:183. 1997, 165:2, 3. 2000, 96:3, 4. 2002, 63:3, eff. Jan. 1, 2003. 2006, 314:1, 6, eff. Jan. 1, 2007. 2009, 256:1, eff. Sept. 14, 2009; 276:1, eff. Jan. 1, 2010.

### **130-A:5 Investigations. –**

I. The commissioner shall investigate cases of lead poisoning in children reported under RSA 141-A whose blood lead level meets or exceeds 10 micrograms per deciliter of whole venous blood, as reported on 2 separate tests except that a blood lead level may be designated as elevated by the health care provider when the level reported meets or exceeds 10 micrograms per deciliter on the first venous test. With such a declaration, a second test shall not be required. The commissioner may also conduct investigations when there is reason to believe that a lead exposure hazard, as defined in RSA 130-A:1, XVI(b) and (d), for a child exists. Such investigations shall include, but not be limited to:

(a) Requiring additional information and periodic reports from the child's health care provider, the owner or owner's agent of a leased or rented dwelling or dwelling unit occupied by a child, the owner or operator of any child care facility attended by the child, and any lead inspector, lead risk assessor, or lead abatement contractor involved in lead hazard reduction at the child's dwelling, dwelling unit, or child care facility.

(b) Inspections of dwellings or dwelling units or of any child care facility, and testing environmental samples.

(c) Issuing orders requiring the reduction of lead exposure hazards from a leased or rented dwelling or dwelling unit and from a child care facility, or issuing a notice to the owner of a dwelling or dwelling unit.

II. [Repealed.]

III. The commissioner may request health authorities to assist in such investigations.

IV. The commissioner may obtain an administrative inspection warrant under RSA 595-B if consent of the property owner or the owner's agent for an investigation or inspection is denied.

**Source.** 1993, 325:2. 1995, 310:183. 1997, 165:4. 2000, 96:5. 2002, 63:4, eff. Jan. 1, 2003. 2007, 293:1, 15(I), eff. Jan. 1, 2008. 2009, 276:2, eff. Jan. 1, 2010.

**130-A:6 Inspections. –**

I. The commissioner may, as part of an investigation conducted under RSA 130-A:5, conduct an inspection of any leased or rented dwelling or dwelling unit during business hours, or at a time mutually agreed upon with the owner or the owner's agent, for the purposes of identifying the presence of lead base substances. The commissioner shall provide the findings of the inspection to the occupant and to the owner or the owner's agent. If the leased or rented dwelling has multiple units, and if a lead exposure hazard is determined to exist during an investigation conducted under RSA 130-A:5, the commissioner shall conduct inspections of all other dwelling units of the leased or rented dwelling with the owner or owner's agent for the purposes of identifying the presence of lead base substances. The commissioner shall provide the findings of the inspection to the occupant and the owner or the owner's agent. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(a), (b), or (c), the commissioner shall issue an order in accordance with RSA 130-A:7 requiring lead hazard reduction to the owner and, if appropriate, to the owner's agent. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(d), the commissioner may issue an order in accordance with RSA 130-A:7 requiring lead hazard reduction to the owner and, if appropriate, to the owner's agent. The commissioner shall provide a copy of the order to the owner or owner's agent and to the occupant of the dwelling unit. The commissioner shall notify all tenants of the dwelling of lead exposure hazard findings in common areas. Upon request, the owner or owner's agent shall provide a copy of the order to the occupants of any dwellings or dwelling units located within the same lot at no charge.

II. The commissioner may, as part of an investigation conducted under RSA 130-A:5, if the lead-poisoned child spends 10 hours or more a week at the facility, and after making reasonable efforts to notify the owner of a child care facility and the license holder, conduct an inspection of a child care facility constructed prior to 1978, during business hours or at a time mutually agreed to, for the purposes of identifying the presence of lead base substances. The findings of the inspection shall be provided to the owner, to the license holder, and to the health authority. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(a), (b), or (c), the commissioner shall issue an order in accordance with RSA 130-A:7 requiring lead hazard reduction to the owner and to the license holder. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(d), the commissioner may issue an order in accordance with RSA 130-A:7 requiring lead hazard reduction to the owner and to the license holder. The commissioner shall provide a copy of the order to the owner and to the license holder and a notice of findings, to the state child care licensing unit, and to the health authority. The owner or license holder shall provide notice of the findings of lead hazard exposure, provided by the commissioner, to the parents or guardians of children who use the child care facility.

III. The commissioner may, as part of an investigation conducted under RSA 130-A:5 and when the child reported under RSA 141-A resides in a dwelling or dwelling unit owned by the child's parents or guardians, conduct an inspection with the consent of the owner at a time convenient to the owner and provide to the owner the result of the inspection. When a lead exposure hazard is determined to exist, the commissioner shall

provide a notice to the owner and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

IV. The commissioner may, as part of an investigation carried out under RSA 130-A:5, conduct an inspection of structures other than the dwelling or dwelling unit of the child and child care facilities used by the child. The inspection shall be conducted with the consent of the owner, manager, or other person in charge of the facility or structure at a time convenient to the owner, manager or other person in charge. Such inspections shall be made only when there are reasonable grounds to suspect that a lead exposure hazard may exist. The commissioner shall provide to the owner, manager or other person in charge the result of the inspection. When a lead exposure hazard is determined to exist, the commissioner shall provide to the owner, manager or other person in charge, the child's health care provider and the health authority a notice and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

V. The commissioner, or designee, may conduct inspections during lead hazard reduction activity to assure that the activity is conducted in accordance with rules adopted under this chapter.

VI. Inspections shall be carried out in accordance with rules adopted under RSA 130-A:10.

**Source.** 1993, 325:2. 1995, 213:4; 310:183. 1997, 165:5, 6, eff. Aug. 8, 1997. 2007, 293:2, eff. Jan. 1, 2008. 2009, 276:3, eff. Jan. 1, 2010.

### **130-A:6-a Property Owner Notification. –**

I. The department shall make reasonable efforts to notify in writing the owner of a dwelling or dwelling unit where the child resides if lead levels of 6 to 9.9 micrograms per deciliter are found in the child's blood. Such notice to the property owner shall specify that it is neither a finding that a lead exposure hazard exists in the property nor is it an order for lead hazard reduction.

II. Eviction of a tenant based on the presence in the dwelling or dwelling unit of a child with a blood level of 6 to 9.9 micrograms per deciliter shall be unlawful. There shall be a rebuttable presumption that any eviction action, instituted by the owner within 6 months of receipt of the notice sent by the department pursuant to paragraph I, is based on the child's elevated blood lead level; provided that this shall not be construed to alter any cause for eviction under RSA 540:2. If a court finds that an eviction is based on the child's elevated blood lead level, it shall deny the eviction and award damages to the tenant pursuant to RSA 540:14, II. However, if an owner in response to the notice from the department discovers a lead exposure hazard in the dwelling or dwelling unit, the owner may proceed with relocation of the tenants, provided that the owner meets the requirements of RSA 130-A:8-a, I or II.

III. Refusal of a tenant to permit the owner to have access to the dwelling or dwelling unit in order to inspect for lead exposure hazards shall be good cause for eviction pursuant to RSA 540:2, II(e); provided, however, that the owner gives the tenant at least 48 hours' prior written notice, and that the inspection is to be conducted at a reasonable time.

**Source.** 1995, 145:2; 310:175. 1997, 165:7. 2002, 63:5, eff. Jan. 1, 2003. 2007, 293:3, eff. Jan. 1, 2008. 2009, 256:2, eff. Sept. 14, 2009.

**130-A:7 Enforcement. –**

I. Whenever the commissioner has reason to believe that the provisions of RSA 130-A:9, or any rule adopted by the commissioner under this chapter has been violated, the commissioner shall issue a notice of violation. The commissioner may also impose administrative fines under RSA 130-A:14 and may also request injunctive relief under RSA 130-A:17, I.

II. The commissioner, in requiring lead hazard reduction under RSA 130-A:6, I or II, shall do so by written order. The order shall include, as appropriate, the following information:

(a) The findings of the inspection, including the specific locations determined to constitute a lead exposure hazard.

(b) The methods appropriate for lead hazard reduction and copies of rules pertaining to lead hazard reduction adopted under the provisions of this chapter.

(c) The period of time within which lead hazard reduction shall be completed. The time period for lead hazard reduction of an occupied dwelling or dwelling unit shall not exceed 90 days except that the period may be extended at the discretion of the commissioner for the period of time determined to be reasonable by the commissioner under the circumstances of the case.

(d) The standards for reoccupancy of a dwelling or dwelling unit by a child, or the resumption of operations of a child care facility, after the conduct of lead hazard reduction.

(e) Responsibility for verification by a lead inspector or lead risk assessor of lead hazard reduction to the commissioner.

III. Any person subject to an order issued under this section may petition the superior court to review such order. The commissioner may also impose administrative fines under RSA 130-A:14 and may request injunctive relief under RSA 130-A:17, I in the event that an order, served by the commissioner, is not followed or a fine imposed by the commissioner is not paid.

IV. Any order issued by the commissioner that requires lead hazard reduction shall be binding upon and enforceable against the person to whom the order was issued and any other individual or entity that may acquire ownership of, or an interest in, the property that is subject to the order.

V. Interim controls, as defined in this chapter, may be used as an acceptable alternative to lead hazard abatement only with the prior written approval of the commissioner and if a lead exposure hazard reduction plan or any other subsequent plan is adopted and in place at the department to address compliance with the intent of this section. When interim controls are approved and maintained in response to an order, the person to whom the order was issued, and any other individual or entity that may acquire ownership of the property that is subject to the order, shall submit to the commissioner a certificate of compliance for interim controls from a licensed risk assessor annually prior to the expiration of the current certificate. When a certificate of compliance for interim controls is not issued by a licensed risk assessor prior to expiration of the current certificate or when an inspection by the commissioner, or designee, reveals that the property no longer

meets the requirements of interim controls, the commissioner shall require submission of a certificate of compliance for abatement. The commissioner shall adopt rules, under RSA 541-A, for the procedures for interim controls.

VI. Any order issued by the commissioner shall be recorded in the registry of deeds for the county in which the property is situated and, upon recordation, the order shall run with the property.

**Source.** 1993, 325:2. 1995, 310:183. 1997, 165:8. 2000, 96:6, eff. June 26, 2000. 2006, 314:2-4, eff. Jan. 1, 2007. 2007, 293:4, eff. Jan. 1, 2008. 2009, 276:4, eff. Jan. 1, 2010.

**130-A:9 Prohibitions. –**

I. No person shall perform or cause to be performed lead base substance abatement, in-place management, or interim controls in a dwelling or dwelling unit, or in any child care facility, in any manner other than as provided for in rules adopted under RSA 130-A:10.

II. No person shall perform or cause to be performed a lead inspection or lead risk assessment, as defined in HE-P 1600, in a dwelling or dwelling unit or in a child care facility in any manner other than as provided for in rules adopted under RSA 130-A:10.

III. No child or pregnant woman shall be present in a leased or rented dwelling or dwelling unit, or in a child care facility, during the period of lead hazard reduction when the method of reduction causes the release of lead base substances which may be inhaled or ingested. The dwelling or dwelling unit or the child care facility shall not be reoccupied until an inspection is performed which indicates the lead exposure hazard has been reduced. The commissioner shall include this prohibition in any order issued under RSA 130-A:7.

IV. No person performing inspections or lead risk assessments, as defined in HE-P 1600, for the presence of lead base substances as a lead inspector or lead risk assessor after lead hazard reduction shall perform or have performed the lead hazard reduction.

V. No person shall advertise or otherwise offer or make available services as a lead inspector, lead risk assessor, or lead abatement contractor without being licensed under RSA 130-A:12.

VI. No person shall engage any individual for lead base substance abatement who has not been tested and certified under RSA 130-A:12. However, individuals not certified under RSA 130-A:12, II, may engage in activities related to a lead exposure hazard reduction plan, such as, but not limited to, installation of exterior siding, carpet or paving, or application of encapsulants, provided that the individual does not engage directly in lead based substance abatement and the plan is reviewed and approved by a contractor licensed under RSA 130-A:12, I.

VII. No training program shall be offered in this state for the purposes of training lead inspectors, lead risk assessors, lead abatement contractors, lead clearance testing technicians, or lead abatement workers that has not been certified under RSA 130-A:12.

**Source.** 1993, 325:2. 1995, 310:183. 1997, 165:10, 11. 2000, 96:7, eff. June 26, 2000. 2007, 293:5, eff. Jan. 1, 2008.

**130-A:10 Rulemaking. –** The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. Qualifications and procedures for licensure of lead inspectors, lead risk assessors, and lead abatement contractors, in accordance with RSA 130-A:12. The rules shall provide for reciprocity with other states having similar standards.

II. Standards and procedures for the testing and certification of lead abatement workers and lead clearance testing technicians, in accordance with RSA 130-A:12. The rules shall provide for reciprocity with other states having similar standards.

III. The conduct of inspections and inspection standards for lead inspectors and lead risk assessors, including procedures for issuing certificates of inspection and certifications of compliance and for the review and validation of such certificates or certifications by the department for any person who so requests.

IV. Fees to be collected for the issuance of licenses to lead inspectors, lead risk assessors, lead abatement contractors, for certification of lead abatement workers and lead clearance testing technicians, for testing resulting from investigations, for certifications of training programs, exam and training fees, for notifications under RSA 130-A, and other environmental fees. Property owners who own more than 4 but fewer than 7 dwelling units shall pay a fee for licensure which is 1/2 of that paid by other lead abatement contractor licensees. Such reduced fee license shall only be valid for work on dwellings or dwelling units owned by such license holder.

V. Procedures for the conduct of investigations carried out under RSA 130-A:5, including the conduct of inspections and establishment of a blood lead level requiring an inspection.

VI. Procedures for issuing orders under RSA 130-A:7, including procedures for extending the time available for lead hazard reduction and interim controls for leased or rented dwellings where no child resides or frequents regularly at the time of inspection and issuance of the order.

VII. Procedures for notification activities carried out under RSA 130-A:14.

VIII. Procedures for lead hazard reduction, in-place management, and interim controls for interior and exterior surfaces. The procedures shall include methods of abatement and the measures necessary to protect the health and safety of lead abatement workers and to control the release of lead base substances to the environment. The commissioner shall allow for the use of alternate procedures that result in the same level of protection as otherwise provided by the rules adopted under this chapter.

IX. A schedule of administrative fines which may be imposed under RSA 130-A:14 for a violation of this chapter or the rules adopted pursuant to it.

X. Procedures for notice and opportunity for a hearing prior to the imposition of an administrative fine imposed under RSA 130-A:14.

XI. Standards for training programs for lead inspectors, lead risk assessors, lead abatement contractors, lead clearance testing technicians, or lead abatement workers.

XII. Procedures for reporting of laboratory test results under RSA 130-A:3.

XIII. Standards and procedures for certifying laboratories performing tests to detect or measure lead in human body fluids or tissues.

XIV. Paints and other substances which may be approved as encapsulants.

XV. Standards and procedures for granting a variance from compliance with one or more provisions of RSA 130-A.

**Source.** 1993, 325:2. 1995, 213:2, 3; 310:175, 183. 1997, 165:12-15. 2000, 96:8, eff. June 26, 2000. 2007, 293:6, 7, eff. Jan. 1, 2008. 2009, 276:5, 6, eff. Jan. 1, 2010. 2010, Sp. Sess., 1:7, eff. June 10, 2010.

**130-A:12 Licensure; Certification. –**

I. (a) A license to perform as a lead abatement contractor, lead inspector, or lead risk assessor, shall be issued in writing by the department in accordance with rules adopted under RSA 130-A:10, I. The license shall be valid for 12 months from the date of issuance, shall contain the expiration date, and shall contain the official signature of the commissioner or designee. The license or a certified copy of the license shall be available for inspection at any worksite during the period of work of the lead abatement contractor, lead inspector, or lead risk assessor.

(b) Any owner who owns 4 or fewer dwelling units shall not be required to obtain a lead abatement contractor license to perform lead abatement on such owner's dwellings or dwelling units, provided that such owner shall comply with all rules adopted under RSA 130-A:10, I.

II. Lead abatement workers and lead clearance testing technicians shall first obtain a certification from the department. The certification shall be issued in accordance with rules adopted under RSA 130-A:10, II. The certificate shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall contain the official signature of the commissioner or designee. The certificate or a certified copy of the certificate shall be available for inspection at any worksite where the individual is performing lead base substance abatement or conducting clearance testing.

III. Training programs offered in New Hampshire for lead abatement contractors, lead inspectors, lead risk assessors, and individuals seeking certification as lead abatement workers or lead clearance testing technicians shall first be certified by the department in accordance with rules adopted under RSA 130-A:10, XI. Such certification shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall contain the official signature of the commissioner or designee. The certification or a certified copy of the certificate shall be available for inspection during any period of training.

IV. [Repealed.]

**Source.** 1993, 325:2. 1995, 310:175, 183. 1997, 165:16. 2000, 96:9, eff. June 26, 2000. 2007, 293:15(II), eff. Jan. 1, 2008.

**130-A:14 Administrative Fines. –** The commissioner, after notice and opportunity for a hearing, and 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, under 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 lead poisoning prevention fund established in RSA 130-A:15.

**Source.** 1993, 325:2. 1995, 310:183, eff. Nov. 1, 1995. 2007, 293:8, eff. Jan. 1, 2008. 2009, 276:7, eff. Jan. 1, 2010.

**130-A:15 Lead Poisoning Prevention Fund.** – There is hereby established the lead poisoning prevention fund to be used to carry out the provisions of this chapter. The fund shall be composed of fees, fines, gifts, grants, donations, bequests, or other moneys from any public or private source and shall be used to implement and encourage lead paint removal and education, and to support program staff and administrative costs. The fund shall be nonlapsing and shall be continually appropriated to the commissioner of the department of health and human services for the purposes of this chapter.

**Source.** 1993, 325:2. 1995, 310:182, eff. Nov. 1, 1995. 2007, 293:9, eff. Jan. 1, 2008. 2010, Sp. Sess., 1:8, eff. June 10, 2010.

**130-A:17 Injunctive Relief.** –

I. Either the attorney general or the commissioner may bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction or both, to enforce any provision of this chapter, rules adopted under this chapter, or orders issued pursuant to this chapter, including but not limited to, orders of lead hazard abatement and orders imposing administrative fines.

II. The court hearing shall be held on an expedited basis and as soon as the court's docket permits.

III. Either party may request that the court hold a consolidated hearing for both temporary and permanent injunctive relief.

**Source.** 1993, 325:2. 1995, 310:183, eff. Nov. 1, 1995. 2006, 314:5, eff. Jan. 1, 2007. 2009, 276:8, eff. Jan. 1, 2010.

## **Condominium Act**

**356-B:37 Meetings.** –

I. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of the time, place, and purpose or purposes of such meeting. Such notice shall be sent by first class United States mail to all unit owners of record at the address of their respective units and to such other addresses as any of them may have designated to such officer. The secretary or other duly authorized officer of the unit owners' association, who shall also be a member of the board of directors of the unit owners' association, shall prepare an affidavit which shall be

accompanied by a list of the addresses of all unit owners currently on file with the association and shall attest that notice of the association meeting was mailed to all unit owners on that list by first class mail. A copy of the affidavit and mailing list shall be available at the noticed meeting for inspection by all owners then in attendance and shall be retained with the minutes of that meeting. The affidavit required in this section shall be available for inspection by unit owners for at least 3 years after the date of the subject meeting.

II. The board of directors shall make copies of the minutes of board meetings available to the unit owners within 60 days of the board meeting or 15 days of the date such minutes are approved by the board, whichever occurs first. The unit owner shall be responsible for any copying costs, except that, if the association chooses to make the minutes available electronically, there shall be no charge to the unit owner.

**Source.** 1977, 468:1. 1990, 80:1. 1993, 186:1, eff. June 9, 1993. 2009, 184:1, eff. Jan. 1, 2010.

**356-B:46 Lien for Assessments. –**

[Paragraph I effective until January 1, 2011; see also paragraph I set out below.]

I. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The said lien, once perfected, shall be prior to all other liens and encumbrances except (a) real estate tax liens on that condominium unit, (b) liens and encumbrances recorded prior to the recordation of the declaration, and (c) sums unpaid on any first mortgages or first deeds of trust encumbering that condominium unit and securing institutional lenders. The provisions of this paragraph shall not affect the priority of mechanics' and materialmen's liens.

[Paragraph I effective January 1, 2011; see also paragraph I set out above.]

I. (a) The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The said lien, once perfected, shall be prior to all other liens and encumbrances except (1) real estate tax liens on that condominium unit, (2) liens and encumbrances recorded prior to the recordation of the declaration, and (3) sums unpaid on any first mortgages or first deeds of trust encumbering that condominium unit and securing institutional lenders.

(b) The provisions of this paragraph shall not affect the priority of mechanics' and materialmen's liens.

(c) Notwithstanding subparagraph (a), the lien for regular monthly common assessments unpaid with respect to a residential condominium unit during the 6-month

period immediately preceding the filing of the memorandum specified in paragraph III, together with all costs of collection, including reasonable attorney's fees, shall be prior to the first mortgage; provided that the unit owners' association sends, within 70 days of the occurrence of any delinquency, the unit owner and the institutional lender holding the first mortgage written notice of the delinquency by certified mail and first class mail that the account is at least 60 days delinquent; and additionally, sends such lender notice by certified mail and first class mail, at least 30 days prior, of its intent to file said memorandum of lien. The lien shall not include any amounts attributable to special assessments, late charges, fines, penalties, or interest assessed by the unit owners' association, nor shall the lien apply to regular assessments or costs of collection coming due prior to the effective date of this section. In giving the foregoing notices, the unit owners' association may rely on the records of the applicable registry of deeds as to the address of the first institutional lender unless such lender has notified the unit owners' association by certified mail of a different address.

(d) The priority lien rights established under subparagraph (c) shall not entitle or permit the unit owners' association to assert more than one priority lien unless and until the existing priority lien is first discharged by the unit owners' association. The priority lien rights established under subparagraph (c) also shall not apply to any mortgage executed prior to the effective date of this section.

(e) After notification to the first mortgage institutional lender of a delinquency, in addition to any previously agreed to or required escrow amounts, the institutional lender may also require a residential unit owner to place an amount equal to not more than 6 months of current regular assessments in escrow to cover the cost of any delinquency.

II. Notwithstanding any other provision of this section, or any other provision of law, all memoranda of liens arising under this section shall be recorded in the registry of deeds in each county in which any part of the condominium is located. Such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

III. The unit owners' association, in order to perfect the lien given by this section, shall file, before the expiration of 6 months from the time such assessment became due and payable in the registry of deeds in the county in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

(a) A description of the condominium unit in accordance with RSA 356-B:9;

(b) The name or names of the persons constituting the unit owners of that condominium unit;

(c) The amount of unpaid assessments currently due or past due together with the date when each fell due; and

(d) The date of issuance of the memorandum.

It shall be the duty of the register in whose office such memorandum shall be filed as hereinabove provided to record and index the same as provided in paragraph II, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

IV. No suit to enforce any lien perfected under paragraph III shall be brought after 6

years from the time when the memorandum of lien was recorded; provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section; and provided further that nothing herein shall extend the time within which any such lien may be perfected.

V. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees, together with interest at the maximum lawful rate for the sums secured by the lien from the time such sum became due and payable.

VI. When payment or satisfaction is made of a debt secured by the lien perfected by paragraph III, said lien shall be released in the same manner as required by RSA 479:7 for mortgages. For the purposes of this section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor and shall discharge said lien.

VII. Nothing in this section shall be construed to prohibit actions at law to recover sums for which paragraph I creates a lien, maintainable pursuant to RSA 356-B:15.

VIII. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 business days from the receipt of such request shall extinguish the lien created by paragraph I as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the board of directors, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

IX. Notwithstanding any law, rule, or provision of the condominium declaration, bylaws, or rules to the contrary, the unit owners' association may authorize, pursuant to RSA 356-B, its board of directors to, after 30 days' prior written notice to the unit owner and unit owner's first mortgagee of nonpayment of common assessments, terminate the delinquent unit's common privileges and cease supplying a delinquent unit with any and all services normally supplied or paid for by the unit owners' association. Any terminated services and privileges shall be restored upon payment of all assessments.

X. The unit owners' association may collect an amount of up to 6 months' common expense assessments in advance from unit owners and hold the amount so collected in escrow and, upon default by any unit owner in the payment of common expense assessments, apply the same to cure such default.

**Source.** 1977, 468:1. 1994, 163:1, eff. July 22, 1994. 2010, 142:1, eff. Jan. 1, 2011.

**356-B:51 Application for Registration; Fee. –**

I. The application for registration of the condominium shall be filed in a form prescribed by the attorney general and shall contain the following documents and information:

- (a) An irrevocable appointment of the attorney general to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the declarant or his personal representative;
- (b) Site and floor plans which comply with RSA 356-B:20, except that the certificates required with respect thereto need not be signed prior to approval of said application;
- (c) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;
- (d) The declarant's name, address, and the form, date, and jurisdiction of organization, and the address of each of its offices in this state;
- (e) The name, address, and principal occupation for the past 5 years of every officer of the declarant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the declarant or the condominium as of a specified date within 30 days of the filing of the application;
- (f) If the declarant is a closely held corporation, partnership, joint stock company, trust or sole proprietorship, the name, address, and principal occupation of each trustee, stockholder, partner, or person having any beneficial interest therein;
- (g) If the declarant is a publicly held corporation, the name, address and principal occupation of each stockholder owning more than 10 percent of the shares outstanding;
- (h) If the declarant is a subsidiary corporation, the name, address and principal occupation of each stockholder or person having a beneficial interest therein, and the name, address and principal occupation of each stockholder owning more than 10 percent of the shares outstanding in the corporation or corporations to which it is subsidiary;
- (i) A statement of the condition of the title to the condominium, including all easements, conditions, covenants, restrictions, liens and other encumbrances, if any, affecting the condominium property owned by the declarant, with appropriate recording data, as of a specified date within 30 days of the date of application, which statement shall be in the form of a title opinion of a licensed attorney, not under salary to the declarant, or other evidence of title acceptable to the attorney general;
- (j) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign;
- (k) Copies of the declaration and bylaws and of any management contracts or other contracts, including leases, affecting the use, maintenance or administration of, or access to, all or a part of the condominium;
- (l) If there is a blanket encumbrance or lien affecting more than one unit, a statement of the consequences for a purchaser of failure to discharge the blanket encumbrance or lien and the steps, if any, taken to protect the purchaser in case of this eventuality;
- (m) A statement of the zoning, subdivision, and other governmental approvals, if any, affecting the condominium, including building permits and their status, and also, if known, any existing tax and existing or proposed special taxes or assessments which affect the condominium;
- (n) A statement of the existing provisions for access, sewage disposal, water, and other public utilities in the condominium; a statement of any improvements or amenities

which may be constructed, an estimate of their cost and the schedule for their completion, provided, however, that if the declarant will give no assurances as to the construction or completion of said improvements or amenities, a statement that no assurance will be given must be included; and a statement of the plan for financing the construction of said improvements or amenities and the maintenance of the condominium;

(o) A description of the promotion plan for the disposition of the units in the condominium;

(p) The proposed public offering statement;

(q) If the declarant is a corporation, a copy of its articles of incorporation with all amendments thereto;

(r) If the declarant is a trust, a copy of all instruments by which the trust is created together with all amendments thereto;

(s) If the declarant is a partnership, unincorporated association, joint stock company, or any other form or organization, a copy of its articles of partnership or association and all other papers pertaining to its organization, including all amendments thereto;

(t) If the declarant is not the holder of legal title, copies of the appropriate documents required by subparagraphs I(q), (r) or (s) shall be submitted for the holder of legal title;

(u) Any other information including any current financial statement, which the attorney general by his rules reasonably requires for the protection of purchasers. Financial information filed with the attorney general shall not be disclosed publicly except in connection with a hearing, civil action, or criminal action involving the party who submitted the information.

II. A declarant of a condominium of no more than 25 units may make an abbreviated registration, in lieu of these requirements, which shall contain only the documents and information required by RSA 356-B:51, I(a), (c)-(h), (k), (m), (n), (o) and (u); provided, however, that this section shall not apply to a condominium in which time sharing interests are offered.

III. A declarant of a condominium which has been registered under the federal Interstate Land Sales Full Disclosure Act may file, in lieu of the documents and information required by RSA 356-B:51, I(b)-(e) and (i)-(t) and RSA 356-B:52, I, a copy of an effective statement of record, a property report, and any exhibits requested by the agency, filed with the secretary of housing and urban development.

IV. The submission of documents and information required by RSA 356-B:51, I, may be satisfied by the documents and information contained in or attached to the public offering statement.

V. If the declarant registers additional units to be offered for disposition in the same condominium, he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

VI. At any time the attorney general has reasonable cause to believe that the declarant may be unable to complete the development of a condominium, or provide for its maintenance, if responsibility therefor is assumed by the declarant, as represented in its application for registration due to:

(a) Its failure to commence or complete the development of the condominium according to schedules set forth in the application;

(b) Its failure to commence or complete the development of any other condominium

or subdivided lands, as defined in RSA 356-A:1, VI, according to representations authorized and made by the declarant or subdivider in connection with the offering or disposing of any interest therein;

(c) Its failure to set forth a reasonable plan to obtain adequate financing to commence or complete the development of the condominium or provide for its maintenance; or

(d) Its commission of any false, deceptive or misleading acts in connection with the offering or disposing of any interest in any condominium or subdivided lands, as defined above;

he may require the declarant to post a bond in favor of the state or to provide evidence of financial security in such amount as the attorney general determines to be necessary to provide reasonable assurance of the commencement and completion of the development of the condominium. Such bond shall not be accepted unless it is with a surety company authorized to do business in this state. Any person aggrieved by the failure of the declarant to complete the condominium as represented in the application may proceed on such bond against the declarant or surety or both to recover damages.

VII. Each application shall be accompanied by a fee in an amount equal to \$50 per unit, except that the initial application fee shall be not less than \$600 nor more than \$5,000, and the fee for any application for registration of additional units shall be not less than \$400 nor more than \$5,000.

**Source.** 1977, 468:1. 1981, 568:25, II. 1983, 469:82. 1985, 300:7, I(b). 1989, 408:101, eff. July 1, 1989. 2009, 144:239, eff. July 1, 2009.

### **356-B:70 Committee to Study the Laws Relating to Condominium and Homeowners' Associations. –**

I. There is established a committee to study laws relating to condominium and homeowners' associations.

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

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

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

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

IV. The committee shall:

(a) Study laws relevant to condominium and other homeowners' associations.

(b) Study the registration of subdivisions under the land sales full disclosure act, RSA 356-A, and condominiums under the condominium act, RSA 356-B, with the department of justice.

(c) Evaluate the need to distinguish smaller and larger associations in the statutes and to differentiate between condominium associations and homeowners' associations.

(d) Study model laws for possible improvement to New Hampshire laws.

(e) Recommend statutory changes.

(f) Solicit information and testimony from the Community Associations Institute and others with expertise or information relevant to the committee's study.

V. 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.

VI. The committee shall submit 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, 2010 and each November 1 thereafter.

**Source.** 2010, 322:1, eff. July 20, 2010.

## **Planning and Zoning**

**672:1 Declaration of Purpose.** – The general court hereby finds and declares that:

I. Planning, zoning and related regulations have been and should continue to be the responsibility of municipal government;

II. Zoning, subdivision regulations and related regulations are a legislative tool that enables municipal government to meet more effectively the demands of evolving and growing communities;

III. Proper regulations enhance the public health, safety and general welfare and encourage the appropriate and wise use of land;

III-a. Proper regulations encourage energy efficient patterns of development, the use of solar energy, including adequate access to direct sunlight for solar energy uses, and the use of other renewable forms of energy, and energy conservation. Therefore, the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare;

III-b. Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire, and the tradition of using the land resource for agricultural production is an essential factor in providing for the favorable quality of life in the state. Natural features, terrain and the pattern of geography of the state frequently place agricultural land in close proximity to other forms of development and commonly in small parcels. Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

III-c. Forestry, when practiced in accordance with accepted silvicultural principles, constitutes a beneficial and desirable use of New Hampshire's forest resource. Forestry contributes greatly to the economy of the state through a vital forest products industry; and to the health of the state's forest and wildlife resources through sustained forest productivity, and through improvement of wildlife habitats. New Hampshire's forests are an essential component of the landscape and add immeasurably to the quality of life for the state's citizens. Because New Hampshire is a heavily forested state, forestry activities, including the harvest and transport of forest products, are often carried out in close proximity to populated areas. Further, the harvesting of timber often represents the only income that can be derived from property without resorting to development of the

property for more intensive uses, and, pursuant to RSA 79-A:1, the state of New Hampshire has declared that it is in the public interest to encourage preservation of open space by conserving forest and other natural resources. Therefore, forestry activities, including the harvest and transport of forest products, shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation" includes the failure of local land use authorities to recognize that agriculture, forestry, renewable energy systems, and commercial and recreational fisheries, when practiced in accordance with applicable laws and regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them;

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers;

III-f. New Hampshire commercial and recreational fisheries make vital and significant contributions to the food supply, the economy, the environment, and the aesthetic features of the state of New Hampshire, and the tradition of using marine resources for fisheries production is an essential factor in providing for economic stability and a favorable quality of life in the state. Many traditional commercial and recreational fisheries in New Hampshire's rivers and estuarine systems are located in close proximity to coastal development. Such fisheries are a beneficial and worthwhile feature of the New Hampshire landscape and tradition and should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers.

IV. The citizens of a municipality should be actively involved in directing the growth of their community;

V. The state should provide a workable framework for the fair and reasonable treatment of individuals;

V-a. The care of up to 6 full-time preschool children and 3 part-time school age children in the home of a child care provider makes a vital and significant contribution to the state's economy and the well-being of New Hampshire families. The care provided through home-based day care closely parallels the activities of any home with young children. Family based care, traditionally relied upon by New Hampshire families, should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers; and

VI. It is the policy of this state that competition and enterprise may be so displaced or limited by municipalities in the exercise of the powers and authority provided in this title as may be necessary to carry out the purposes of this title.

**Source.** 1983, 447:1. 1985, 68:1; 335:3; 369:1. 1989, 42:1; 170:1. 1990, 174:1; 180:1, 2. 1991, 198:1. 2002, 73:1, eff. June 30, 2002. 2008, 299:3, eff. Jan. 1, 2010; 357:2, 3, eff. July 11, 2009

**672:7 Local Land Use Board.** – "Local land use board" means a planning board, historic district commission, inspector of buildings, building code board of appeals, zoning board of adjustment, or other board or commission authorized under RSA 673 established by a local legislative body.

**Source.** 1983, 447:1, eff. Jan. 1, 1984. 2010, 226:4, eff. Aug. 27, 2010.

**674:36 Subdivision Regulations.** –

I. Before the planning board exercises its powers under RSA 674:35, the planning board shall adopt subdivision regulations according to the procedures required by RSA 675:6.

II. The subdivision regulations which the planning board adopts may:

(a) Provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

(b) Provide for the harmonious development of the municipality and its environs;

(c) Require the proper arrangement and coordination of streets within subdivisions in relation to other existing or planned streets or with features of the official map of the municipality;

(d) Provide for open spaces of adequate proportions;

(e) Require suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system;

(f) Require, in proper cases, that plats showing new streets or narrowing or widening of such streets submitted to the planning board for approval shall show a park or parks suitably located for playground or other recreational purposes;

(g) Require that proposed parks shall be of reasonable size for neighborhood playgrounds or other recreational uses;

(h) Require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health;

(i) Prescribe minimum areas of lots so as to assure conformance with local zoning ordinances and to assure such additional areas as may be needed for each lot for on-site sanitary facilities;

(j) Include provisions which will tend to create conditions favorable to health, safety, convenience, or prosperity; and

(k) 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.

(l) Provide for efficient and compact subdivision development which promotes retention and public usage of open space and wildlife habitat, by allowing for village plan alternative subdivision as defined in RSA 674:21, VI.

(m) Require innovative land use controls on lands when supported by the master plan.

(n) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or

(2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

III. The subdivision regulations of the planning board may stipulate, as a condition precedent to the approval of the plat, the extent to which and the manner in which streets shall be graded and improved and to which water, sewer, and other utility mains, piping, connections, or other facilities shall be installed. The regulations or practice of the planning board:

(a) May provide for the conditional approval of the plat before such improvements and installations have been constructed, but any such conditional approval shall not be entered upon the plat.

(b) Shall provide that, in lieu of the completion of street work and utility installations prior to the final approval of a plat, the planning board shall accept a performance bond, irrevocable letter of credit, or other type or types of security as shall be specified in the subdivision regulations; provided that in no event shall the exclusive form of security required by the planning board be in the form of cash or a passbook. As phases or portions of the secured improvements or installations are completed and approved by the planning board or its designee, the municipality shall partially release said security to the extent reasonably calculated to reflect the value of such completed improvements or installations. Cost escalation factors that are applied by the planning board to any bond or other security required under this section shall not exceed 10 percent per year. The planning board shall, within the limitations provided in this subparagraph, have the discretion to prescribe the type and amount of security, and specify a period for completion of the improvements and utilities to be expressed in the bond or other security, in order to secure to the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.

(c) May provide that in lieu of the completion of street work and utility installations prior to the final approval of the plat, the subdivision regulations may provide for an assessment or other method by which the municipality is put in an assured position to do said work and to make said alterations at the cost of the owners of the property within the subdivision.

**Source.** 1983, 447:1. 1986, 200:2. 1988, 3:1. 2002, 73:3; 236:4. 2004, 71:4, eff. July 6, 2004; 199:4, eff. June 7, 2004. 2009, 292:1, eff. Sept. 29, 2009.

## **Wetlands**

### **Wetlands**

#### **482-A:3 Excavating and Dredging Permit; Certain Exemptions. –**

I. (a) No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department. The permit application together with a detailed plan and a map showing the exact location of the proposed project, along with 4 copies of the permit application, plan and map, shall be submitted to the town or city clerk, accompanied by a filing fee in the form of a check made out by the applicant to the state of New Hampshire.

(b) The permit application fee for minor and major shoreline structure projects shall be \$200 plus an impact fee, based on the area of dredge, fill, or dock surface area proposed, or a combination. The shoreline structure impact fee shall be \$2 per square foot for permanent dock surface area; \$1 per square foot for seasonal dock surface area; and \$.20 per square foot for dredge or fill surface area or both. For projects involving only the repair, reconstruction, or reconfiguration of an existing docking structure, the application fee shall be \$200.

(c) The permit application fee shall be \$200 for minimum impact dredge and fill projects under this chapter. The permit application fee shall be \$.20 per square foot of proposed impact for all minor and major impact dredge and fill projects under this chapter and there shall be a minimum fee of \$200 for all such projects that impact fewer than 1,000 square feet.

(d) At the time the permit application is submitted to the city or town clerk, the applicant shall:

(1) Provide postal receipts or copies, verifying that abutters, as defined in the rules of the department, and except as further provided in said rules, have been notified by certified mail. A postal receipt or copy that verifies submittal of the permit application to the local river management advisory committee, if required under subparagraph (2), shall also be provided. The postal receipts or copies shall be retained by the municipality. The town or city clerk shall immediately sign the application and forward, by certified mail, the application, plan, map, and filing fee to the department. The town or city clerk shall then immediately send a copy of the permit application, plan, and map to the local governing body, the municipal planning board, if any, and the municipal conservation commission, if any, and may require an administrative fee not to exceed \$10 plus the cost of postage by certified mail. One copy shall remain with the city or town clerk, and shall be made reasonably accessible to the public. The foregoing procedure notwithstanding, applications and fees for projects by agencies of the state may be filed directly with the department, with 4 copies of the application, plan, and map filed at the same time with the town or city clerk to be distributed as set forth above.

(2) Submit a copy of the permit application to the local river management advisory committee if the project is within a river corridor as defined in RSA 483:4, XVIII, or a river segment designated in RSA 483:15. The local river management advisory committee shall, under RSA 483:8-a, III(a)-(b), advise the commissioner and consider and comment on the permit application.

(e) Beginning October 1, 2007, and each quarter of the fiscal year thereafter, the

department shall submit a quarterly report to the house and senate finance committees, the house resources, recreation, and economic development committee, and the senate energy, environment, and economic development committee relative to administration of the wetlands fees permit process established by the section.

I-a. In reviewing requests proposed, sponsored, or administered by the department of transportation, there shall be a rebuttable presumption that there is a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design.

II. (a) The department shall submit to the governor and council all requests for permits approved by the department which meet the definition of major projects located in great ponds or public-owned water bodies under the rules of the department which have been approved by the department.

(b) The governor and council shall consider the request for permit transmitted by the department. The governor and council may approve as transmitted or deny the submitted request. Following action by the governor and council the requests shall be returned to the department for permitting, if approved, or filing, if denied.

[Paragraph III effective until July 1, 2011; see also paragraph III set out below.]

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) and RSA 483-B:5-b are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

[Paragraph III effective July 1, 2011; see also paragraph III set out above.]

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

IV. (a) The replacement or repair of existing structures in or adjacent to any waters of the state which does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp is exempt from the provisions of this chapter.

(b) Man-made nontidal drainage ditches, culverts, catch basins, and ponds that have been legally constructed to collect or convey storm water and spring run-off, fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief, and man-made water conveyance systems that are used for the commercial or industrial purpose of collecting,

conveying, storing, and recycling water, may be cleaned out when necessary to preserve their usefulness without a permit from the department. Such drainage facilities, fire ponds, intake areas of any hydrants, or man-made water conveyance systems may be cleaned out by hand or machine; provided, that the facility is neither enlarged nor extended into any area of wetlands jurisdiction of the department of environmental services, dredged spoils are deposited in areas outside wetlands jurisdiction of the department of environmental services, and wetlands or surface waters outside the limits of the constructed drainage facility, fire pond, intake area of a dry hydrant, or man-made water conveyance system are neither disturbed nor degraded.

IV-a. Temporary seasonal docks installed on any lake or pond shall be exempt from the permitting requirements of this section, provided that a notification is sent to the department by the owner of property that includes the name and address of the property owner, the municipality, the waterbody, and tax map and lot number on which the proposed dock will be located. To qualify for an exemption under this paragraph, a temporary seasonal dock shall be:

- (a) The only docking structure on the frontage;
- (b) Constructed to be removed during the non-boating season;
- (c) Removed from the lake bed for a minimum of 5 months of each year;
- (d) Configured to be narrow, rectangular, and erected perpendicular to the shoreline;
- (e) No more than 6 feet wide and no more than 40 feet long if the water body is 1,000 acres or larger, or no more than 30 feet long if the water body is less than 1,000 acres;
- (f) Located on a parcel of land that has 75 feet or more of shoreline frontage;
- (g) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;
- (h) Installed in a manner which requires no modification, regrading, or recontouring of the shoreline, such as installation of a concrete pad for construction of a hinged dock;
- (i) Installed in a manner which complies with RSA 483-B; and
- (j) Installed in a location that is not in, or adjacent to, an area that has been designated as a prime wetland in accordance with RSA 482-A:15.

V. (a) Persons who have complied with notice of intent to cut wood requirements under RSA 79:10, and who have filed an appropriate notice of intent with the department and the department of resources and economic development, shall have satisfied the permitting requirements of this section for minimum impact activities only as defined by rules adopted by the commissioner. Minimum impact notifications issued by the department shall be valid for 2 years.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

- (1) Name and address of property owner;
- (2) Name and address of logger or forester;
- (3) Town, tax map, number and lot number of job site; and
- (4) A copy of the appropriate United States Geological Survey topographic map, or a copy of the appropriate United States Natural Resources Conservation Service soils map, with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(d) The filing of an intent to cut form under RSA 79:10 shall be considered as permission to the department or the department of resources and economic development, or their agents, to enter the property for determining compliance with this chapter.

(e) The certificate issued under RSA 79:10 shall be posted upon receipt. Prior to receipt of such certificate, a copy of the intent to cut form, signed by the appropriate municipal official, shall be available on the job site, and shall be shown to any person who asks to see it.

VI. The permittee shall record, in the registry of deeds for the county or counties in which the real estate is located, each permit granted under this chapter for the installation, construction, or repair of a dock, docking facility, or marina, or for alteration of wetlands associated with a subdivision of 4 or more lots. The permit shall not be effective until so recorded.

VII. No person shall destroy, raze, deface, reduce, alter, build upon or remove any sand or vegetation from any sand dune in this state without a permit from the department; provided, however, that any person may remove sand which blows or drifts onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or which blows or drifts in, on, or around buildings or other structures owned by the person. Upon request of the property owner, the department shall provide a preapplication assessment of any lot of record located in sand dunes.

VIII. Except as set forth in paragraph IX, no person shall operate or ride any mechanized or off highway recreational vehicle on any sand dune in the state of New Hampshire.

IX. This section shall not apply to:

(a) Police vehicles or fire vehicles.

(b) Vehicles used in cases of emergency.

(c) Authorized maintenance vehicles when performing maintenance duties.

(d) Vehicles used by commercial fishermen or commercial lobstermen when engaged in activities related to fishing or lobstering.

X. (a) The maximum cash application fee for the New Hampshire department of transportation shall be \$10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with the New Hampshire department of transportation to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of their standard application fees.

(b) For tidal dredging projects with the primary purpose to improve navigation for a municipality, the maximum application fee for a municipality shall be \$10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with a municipality to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of their standard application fees.

XI. (a) Small motor mineral dredging shall be limited to activities which are classified as minimum impact under rules adopted by the commissioner under RSA 482-A:11 and which do not exceed the following limits:

(1) Power equipment shall be limited to 5 horsepower.

(2) Suction dredges shall be limited to a single 4-inch diameter intake nozzle.

(3) Sluice and rocker boxes shall be limited to 10 square feet.

(b) Any person who wishes to engage in small motor mineral dredging shall obtain a permit from the department. A permit application shall be filed directly with the department, and the procedural requirements of RSA 482-A:3, I and RSA 482-A:11, III shall not apply. Any permit issued by the department under this paragraph shall expire at the end of the calendar year in which it is issued. Any person who engages in panning only shall not be required to obtain a permit but shall be subject to rules of the department. Panning shall include those activities associated with the manual search for minerals in a river bed without the use of motorized equipment.

(c) Any person wishing to engage in mineral dredging which in any way exceeds the limits of small motor mineral dredging shall first obtain, in addition to a wetlands permit, a mining permit from the department of resources and economic development pursuant to RSA 12-E.

(d) The commissioner shall adopt rules, under RSA 541-A, relative to:

(1) Small motor mineral dredging and panning.

(2) The issuance of statewide small motor mineral dredging permits.

(3) Any other matters relative to small motor mineral dredging and panning.

(e) The state shall retain the right to prohibit panning and mineral dredging activity at certain times or in certain locations when such activity would be detrimental to the public interest for reasons including, but not limited to, environmental and wildlife protection.

(f) Any person who has obtained a small motor mineral dredging permit from the department pursuant to this paragraph, or any person who intends to engage in any panning activity shall, prior to engaging in any small motor mineral dredging or panning activity, obtain the written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted.

(g) The department may enter into a cooperative agreement with the fish and game department relative to enforcement of the provisions of this paragraph.

(h) Application fees shall be \$25 for residents of the state of New Hampshire and \$50 for out-of-state applicants. Fees shall be collected by the department and held in accordance with paragraph III.

XII. (a) Persons who construct and maintain recreational trails in accordance with the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of resources and economic development and who have filed an appropriate notice, as described in subparagraph (b), to construct or maintain such trails with the department and the department of resources and economic development shall have satisfied the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

(1) Name and address of organization constructing or maintaining the recreational trail.

(2) Name and address of property owner.

(3) Town, tax map number, and lot number of property.

(4) A copy of the appropriate United States Geological Survey topographic map with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

XIII. (a) All boat docking facilities shall be at least 20 feet from an abutting property line in non-tidal waters, and at least 20 feet in tidal waters.

(b) Boat docking facilities may be perpendicular or parallel to the shoreline or extend at some other angle into a water body, depending on the needs of the landowners, factors related to safe navigation, and the difficulty of construction. However, any boat secured to such a dock shall not extend beyond the extension of the abutter's property line.

(c) Notwithstanding the provisions of subparagraph (a), boat docking facilities may be located closer than 20 feet from an abutter's property line in non-tidal waters and 20 feet in tidal waters, if the owner of the boat docking facility obtains the written consent of the abutting property owner. Such consent shall be signed by all parties, notarized and filed with the dock application with the department of environmental services.

(d) Abutters may apply for a common dock on or near their common property line. Any application for a common dock shall be accompanied by a notarized written agreement which shall be signed by all property owners. Such agreement shall be filed at the registry of deeds and attached to the deed of each property owner.

XIV. (a) In processing an application for permits under this chapter, except for a permit by notification, the department shall:

(1) Within 14 days of receipt by the department, issue a notice of administrative completeness or send notice to the applicant, at the address provided on the application, identifying any additional information required to make the application administratively complete and providing the applicant with the name and telephone number of the department employee to whom all correspondence shall be directed by the designated department employee regarding incompleteness of the application. Each receipt of additional information in response to any notice shall re-commence the 14-day period until the department issues a notice of administrative completeness. Any notice of incompleteness sent under this subparagraph shall specify that the applicant or authorized agent shall submit such information as soon as practicable and shall notify the applicant or authorized agent that if the requested information is not received within 60 days of the notice, the department shall deny the application.

(2) Within 75 days of the issuance of a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact and 105 days for all other projects, request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary. Such request and technical comments may be sent by electronic means if the applicant or authorized agent has indicated an agreement to accept communications by electronic means, either by so indicating on the application or by a signed statement from the applicant or authorized agent that communicating by electronic means is acceptable. Any request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application. The department may grant an extension of this 60-day time period upon request of the applicant.

(3) Where the department requests additional information pursuant to subparagraph

(a)(2), within 30 days of the department's receipt of a complete response to the department's information request:

(A) Approve the application, in whole or in part, and issue a permit; or  
(B) Deny the application and issue written findings in support of the denial; or  
(C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant; or

(4) Where no request for additional information is made pursuant to subparagraph (a)(2), within 75 days from the issuance of the notice of administrative completeness for proposed projects under one acre of jurisdictional impact, or 105 days for all others:

(A) Approve the application, in whole or in part, and issue a permit; or  
(B) Deny the application and issue written findings in support of the denial; or  
(C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(5) Where the department has held a public hearing on an application filed under this chapter, within 60 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.

(b)(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (a)(3), (a)(4), and (a)(5), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.

(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:

(A) Approve the application, in whole or in part, and issue a permit; or  
(B) Deny the application and issue written findings in support of the denial.

(3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, RSA 485-A relating to water quality, and federal requirements.

(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (b)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, and RSA 485-A relating to water quality, and federal requirements.

(c) If extraordinary circumstances prevent the department from conducting its normal function, time frames prescribed by this paragraph shall be suspended until such condition has ended, as determined by the commissioner.

(d) The time limits prescribed by this paragraph shall not apply to an application filed after the applicant has already undertaken some or all of the work covered by the application, or where the applicant has been adjudicated after final appeal, or otherwise does not contest, the department's designation as a chronic non-complier in accordance with rules adopted pursuant to this chapter.

(e) Any request for a significant amendment to a pending application or an existing permit which changes the footprint of the permitted fill or dredge area shall be deemed a new application subject to the provisions of RSA 482-A:3, I and the time limits prescribed by this paragraph. "Significant amendment" means an amendment which changes the proposed or previously approved acreage of the permitted fill or dredge area by 20 percent or more, relocates the proposed footprint of the permitted fill or dredge area, includes a prime wetland or surface waters of the state, includes a wetland of a different classification as classified by the department, or includes non-wetland areas requiring permits for filling and dredging. This meaning of "significant amendment" shall not apply to an application amendment that is in response to a request from the department.

(f) The department may extend the time for rendering a decision under subparagraphs (a)(3)(D) and (a)(4)(D), without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this chapter or any rule adopted or permit or approval issued under this chapter, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this chapter, pursuant to an action initiated under RSA 482-A:13, RSA 482-A:14, or RSA 482-A:14-b. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, but shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

(g) The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

XV. (a) Utility providers who maintain and repair existing utility services within existing rights of way under the Best Management Practices Manual for Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire published by the department of resources and economic development, and who have complied with subparagraphs (b)-(e) shall satisfy the permitting requirements of this section, including any portion located in or adjacent to a prime wetland, for minimum impact activities as

defined by rules adopted by the commissioner.

(b) Appropriate notice to the department shall include the following information:

(1) The name and address of the person, employed by the utility provider responsible for overseeing the maintenance.

(2) A brief written description of the nature of the work to be conducted.

(3) A copy of the appropriate United States Geological Survey topographic map with the locations of the projects indicated.

(c) Appropriate notice to the town clerk of each municipality in which work will occur shall include the name of a utility provider contact and a brief description of the work to be conducted.

(d) A one-time annual filing fee of \$200 per town, not to exceed a maximum of \$10,000, shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(e) No additional fee shall be required for amendments to the notification as long as additional towns are not included in the amendment. Additional towns included in the amendment shall be subject to an additional fee of \$200 per town, not to exceed the annual maximum under subparagraph (d).

**Source.** 1989, 339:1. 1990, 3:84, 85; 83:2. 1991, 20:3; 273:1. 1992, 37:2, 3; 278:3, 6. 1994, 26:1. 1995, 206:2; 236:1, 2. 1996, 250:2; 296:40-42. 1997, 212:1-3. 1998, 224:1, eff. Aug. 23, 1998. 2001, 144:1, eff. July 1, 2001. 2002, 272:15, eff. May 18, 2002. 2003, 224:1, 2, eff. July 1, 2003; 224:3, eff. July 1, 2010. 2004, 2:1, eff. March 5, 2004; 116:4, eff. May 17, 2004. 2005, 29:1, eff. May 10, 2005. 2007, 211:1, eff. Aug. 24, 2007; 263:32, eff. July 1, 2007; 263:33, eff. July 1, 2010; 269:3, eff. July 1, 2007; 269:7, eff. July 1, 2011. 2008, 5:24, eff. July 1, 2008; 363:1, eff. Sept. 9, 2008. 2009, 185:1, eff. Sept. 11, 2009; 201:1, eff. July 15, 2009; 201:2, eff. July 1, 2010 at 12:01 a.m. 2010, 295:1-3, eff. Sept. 11, 2010.

#### **482-A:10 Appeals. –**

I. Any person aggrieved by a decision made by the department under RSA 482-A:3 may apply for reconsideration by the department, and then may appeal to the wetlands council and to the supreme court as provided in this section. A person aggrieved under this section shall mean the applicant and any person required to be noticed by mail in accordance with RSA 482-A:8 and RSA 482-A:9.

I-a. Any person subject to an order of the department under RSA 482-A:6 may appeal to the wetlands council and to the supreme court as provided in this section. The appellant shall not first request reconsideration, but shall file the appeal directly with the council as provided in paragraph IV, within 30 days of the date of the order.

II. A request for reconsideration of a department decision under RSA 482-A:3 shall be filed with the department within 30 days of issuance of the department's decision. The request for reconsideration shall describe in detail each ground for the request for reconsideration.

III. On reconsideration, the department shall receive and consider any new and additional evidence presented, and shall make findings of fact and rulings of law in support of its decision after reconsideration. The department may hold a public hearing in accordance with its rules. Reconsideration hearings shall not be subject to the

requirements of RSA 541-A. Reconsideration hearings shall be noticed in accordance with rules adopted by the department, which notice shall be sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9, and the department shall make a record of the proceedings. The department shall grant or deny the request for reconsideration within 30 days of the department's receipt of the request or explain in writing to the applicant why the request cannot be acted on and a statement of the time reasonably necessary to act on the request. However, if the basis for denial includes failure by the applicant to submit all requested information and the applicant submits all of the requested information with the request for reconsideration, the department shall act on the request within 75 days from the date of the department's receipt of the request for projects where the applicant proposes under one acre of jurisdictional impact, and within 105 days for all other projects.

IV. An appeal from a decision of the department under RSA 482-A:3 after reconsideration, or an appeal from an order issued by the department under RSA 482-A:6, shall be filed with the wetlands council within 30 days of the department's decision or order. An appeal shall be considered timely filed and received by the wetlands council if postmarked or hand delivered to the wetlands council on or before the thirtieth day from the date of the department's decision. Filing of the appeal shall be made by certified mail or hand delivery to the wetlands council, with a copy sent to the department. An appeal to the council shall contain a detailed description of the land involved in the department's decision and shall set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the appeal shall be considered by the council.

V. The council on appeal shall hold an adjudicative hearing as provided in RSA 541-A and the council's rules. The hearing shall be noticed in accordance with RSA 541-A:31, III. For appeals of department decisions under RSA 482-A:3, the notice shall also be sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9. The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. On appeal of requests proposed, sponsored, or administered by the department of transportation, there shall be a rebuttable presumption that there is a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design. All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.

V-a. Any person whose rights will be directly affected by the outcome of the appeal may appear and become a party to the appeal. Any person whose rights may be directly affected by the outcome of the appeal may file a request to intervene as provided in RSA 541-A:32.

VI. On appeal, the council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. The council shall specify the factual and legal basis for its determination and shall identify the evidence in the record created before the council that supports its decision.

VII. Any party aggrieved by a decision of the council may apply to the council for reconsideration as specified in RSA 541.

VIII. Any party aggrieved by a decision of the council after reconsideration may

appeal to the supreme court as specified in RSA 541.

IX. In the case of a remand to the department by the council, the department may accept the council's determination and reissue a decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter, or may appeal as provided in paragraphs VII and VIII.

X. [Repealed.]

XI. [Repealed.]

XII. [Repealed.]

XIII. [Repealed.]

XIV. [Repealed.]

XV. [Repealed.]

XVI. [Repealed.]

XVII. [Repealed.]

XVIII. If a permit is granted with respect to any activity proposed to be undertaken in or adjacent to a prime wetland as mapped, designated, and filed pursuant to RSA 482-A:15, the conservation commission or local governing body may request reconsideration by the department and, if aggrieved by the decision or reconsideration, appeal said decision to the wetlands council and the supreme court in the manner prescribed in this section. The filing of a request for reconsideration shall automatically stay the effectiveness of the department's decision relating to said prime wetland. Said stay shall remain in force until the department has issued its decision after reconsideration.

**Source.** 1989, 339:1. 1991, 20:5. 1996, 296:45, eff. Aug. 9, 1996. 2004, 2:2, 3, eff. Mar. 5, 2004; 243:3, eff. July 1, 2004. 2008, 171:6, 7, 16, eff. July 1, 2008; 363:5, eff. Sept. 9, 2008.

#### **482-A:11 Administrative Provisions. –**

I. The commissioner shall adopt reasonable rules, pursuant to the rulemaking provisions of RSA 541-A, to implement the purposes of this chapter.

II. Decisions of the department or council under this chapter shall be consistent with the purposes of this chapter as set forth in RSA 482-A:1. Before granting a permit under this chapter, the department may require reasonable proof of ownership by a private landowner-applicant. If a permit is granted, the decision of the department may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

III. (a) Upon written notification to the department by a municipal conservation commission that it intends to investigate any notice received by it pursuant to RSA 482-A:3, the department shall not make its decision on the application that is the subject of the notice until it has received and acknowledged receipt of a written report from such commission, or until 40 days from the date of filing with the municipal clerk of such notice, whichever occurs earlier, subject to an extension as permitted by the department. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of the record of the department. Where the department grants an extension, the time limits prescribed by RSA 482-A:3, XIV(b) shall be suspended until a date agreed to by the

applicant and the department. If a conservation commission makes a recommendation to the department in its report, the department shall specifically consider such recommendation and shall make written findings with respect to each issue raised in such report which is contrary to the decision of the department. If notification by a local conservation commission pursuant to this paragraph is not received by the department within 14 days following the date the notice is filed with the municipal clerk, the department shall not suspend its normal action, but shall proceed as if no notification has been made.

(b) Relative to any permit by notification under paragraph VI, the provisions of subparagraph (a) shall be modified as follows:

(1) The 40-day suspended action limit is reduced to 21 days; and

(2) The notification by a municipal conservation commission of intended investigation shall be assumed unless the application filed under RSA 482-A:3 was signed by the conservation commission, or, if one has not been established in the municipality, by the local governing body, in which case the provisions of subparagraph (a) shall not apply.

IV. (a) The department shall not grant a permit with respect to any project to be undertaken in or within 100 feet of an area mapped, designated, and filed as a prime wetland pursuant to RSA 482-A:15 unless the department first notifies the local governing body, the planning board, if any, and the conservation commission, if any, in the municipality within which the wetlands lie, either in whole or in part, of its decision. Any such permit shall not be issued unless the department is able, specifically, to find clear and convincing evidence on the basis of all information considered by the department, and after a public hearing, if a public hearing is deemed necessary under RSA 482-A:8, that the proposed project, either alone or in conjunction with other human activity, will not result in the significant net loss of any of the values set forth in RSA 482-A:1. This paragraph shall not be construed so as to relieve the department of its statutory obligations under this chapter to protect wetlands not so mapped and designated.

(b)(1) A property owner may request from the department a waiver from subparagraph (a), under rules adopted by the department, to perform forest management work and related activities in the forested portion of a prime wetland or its 100-foot buffer. The request for the waiver shall include, but not be limited to:

(A) A sketch of the property depicting the best approximate location of each prime wetland and its 100-foot buffer in which work is proposed and the location of proposed work, including access roads;

(B) A written description of the work to be performed and a copy of the notice of intent to cut, if applicable; and

(C) A list of the prime wetland values as identified by the municipality in designating each prime wetland under RSA 482-A:15.

(2) A waiver shall be issued only when the department is able to determine there will be no significant net loss of wetland values as identified in subparagraph (b)(1)(C) and RSA 482-A:1. If the department determines that the proposed work may cause a significant net loss of wetland values, the department may require the submittal of additional information. The department may place conditions on the waiver that it deems necessary to protect the prime wetland resource and shall set the term of the permit.

(3) At the time that the waiver request is submitted to the department, the applicant shall also submit a copy of the waiver request and all supporting documentation, via certified mail, to the local governing body, the planning board, if any, and the conservation commission, if any, of the municipalities in which any prime wetlands associated with the application are located. Where a prime wetland associated with the application extends into an abutting property, the property owner requesting the waiver shall provide notice to the owner of that abutting property. A waiver shall not be issued by the department prior to 14 days from its receipt of the waiver request. A municipal conservation commission may request an extension on such waiver issuance, not to exceed 14 days.

(4) The department shall adopt rules under RSA 541-A relative to:

(A) The process and criteria for considering and granting waiver requests made pursuant to RSA 482-A:11, IV(b)(1), including:

(i) Methods for determining whether a proposed forest management project may result in a significant net loss of wetland values.

(ii) Conditions that may be placed on a waiver when deemed necessary to protect the prime wetland resource.

(iii) Criteria for granting extensions of waiver issuances pursuant to RSA 482-A:11, IV(b)(3).

(iv) Specified criteria for identifying abutters and subsequent notification.

(B) Filing fees for waiver applications.

(c) A property owner may request a waiver from the department, under rules adopted by the department under RSA 541-A, from the provisions of this chapter to perform work not addressed under subparagraph (b) within a portion of the 100-foot buffer of a prime wetland on his or her property. At the time of the waiver request, the property owner shall notify, by certified mail, the local governing body, the planning board, if any, and the conservation commission, if any, of the municipalities in which the waiver is being sought that a waiver is being sought from the department. Where a buffer associated with the application extends into an abutting property, the property owner requesting the waiver shall provide notice to the owner of that abutting property.

V. Notwithstanding any rules adopted by the commissioner defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the department; all such related projects shall be subject to a public hearing as provided in RSA 482-A:8. A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole.

VI. The commissioner shall adopt rules pursuant to RSA 541-A establishing an expedited application and permitting process or permit by notification process for certain minimum impact projects. The provisions of RSA 482-A:3, I and paragraph III of this section shall apply.

VII. The commissioner shall adopt rules, pursuant to RSA 541-A, identifying those activities within the jurisdiction of RSA 482-A that may be conducted without obtaining a permit, consistent with the provisions of this chapter.

VIII. The commissioner shall adopt rules pursuant to RSA 541-A relative to the waiver of existing standards provided for in RSA 482-A:26, III(b). Such rules shall list the

specific criteria to be used by the commissioner in determining whether a waiver will be granted.

IX. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the circumstances under which the commissioner may grant a waiver of rules adopted pursuant to this chapter. Such rules shall list the specific criteria to be used by the commissioner in determining whether a waiver will be granted.

X. The department shall have the authority to grant permits, in accordance with the rules adopted under RSA 482-A:11, VI for expedited application and permitting, for any projects funded through the Emergency Watershed Protection Program of the Natural Resources Conservation Service, United States Department of Agriculture, when such projects are necessary to safeguard lives and property from floods and the products of erosion when a natural disaster is causing or has caused a sudden impairment of the watershed.

**Source.** 1989, 339:1. 1991, 20:6; 28:1. 1993, 30:1. 1996, 296:47, eff. Aug. 9, 1996. 2002, 272:17, 18, eff. May 18, 2002. 2004, 116:5, eff. May 17, 2004. 2007, 211:1, eff. Aug. 24, 2007; 278:1, eff. Sept. 1, 2007. 2008, 363:3, eff. Sept. 9, 2008. 2009, 185:2, eff. Sept. 11, 2009.

**482-A:13 Administrative Fine.** – The commissioner, after notice and hearing in accordance with the procedures set forth in RSA 541-A, is empowered to impose an administrative fine of up to \$5,000 for each violation, irrespective of the duration of violation, upon any person who violates any provision of this chapter. This fine is appealable under RSA 541. Any administrative fine imposed under this section will not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this section shall be placed in the nonlapsing fund authorized in RSA 482-A:14, III.

**Source.** 1989, 339:1. 1996, 296:47, eff. Aug. 9, 1996. 2010, 295:4, eff. Sept. 11, 2010.

**482-A:15 Local Option; Prime Wetlands.** –

I. Any municipality, by its conservation commission, or, in the absence of a conservation commission, the planning board, or, in the absence of a planning board, the local governing body, may undertake to designate, map, and document prime wetlands lying within its boundaries, or if such areas lie only partly within its boundaries, then that portion lying within its boundaries. For the purposes of this chapter, "prime wetlands" shall mean any areas falling within the jurisdictional definitions of RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in RSA 482-A:1 and that, because of their size, unspoiled character, fragile condition, or other relevant factors, make them of substantial significance. The commissioner shall adopt rules under RSA 541-A relative to the form, criteria, and methods that shall be used to designate, map, and document prime wetlands, determine boundaries in the field, and amend maps and designations once filed and accepted by the department under paragraph II.

II. Any municipal conservation commission or that local body which has mapped and designated prime wetlands in accordance with paragraph I may, after approval by any town or city council meeting, file such maps and designations with the department, which

shall accept and maintain them and provide public access to such maps during regular business hours. The procedure for acceptance by the local legislative body of any prime wetland designations as provided in paragraph I shall be the same as set forth in RSA 675:2 or RSA 675:3, as applicable.

**Source.** 1989, 339:1. 1991, 20:8. 1996, 296:48, eff. Aug. 9, 1996. 2009, 185:3, eff. Sept. 11, 2009.

**482-A:28 Aquatic Resource Compensatory Mitigation.** – In lieu of other forms of compensatory mitigation, the department may accept payment for an unavoidable loss of aquatic resource functions and values from impacts to resources protected under this chapter.

**Source.** 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:1, eff. Sept. 29, 2009.

**482-A:29 Fund Established.** –

I. There is hereby established the aquatic resource compensatory mitigation fund into which payments made under this subdivision shall be deposited. The fund shall be a separate, nonlapsing fund continually appropriated to the department to be used only as specified in this subdivision for costs related to wetlands creation or restoration, stream and river restoration, stream and river enhancement, preservation of upland areas adjacent to wetlands and riparian areas, and the subsequent monitoring and maintenance of such areas.

II. A separate, non-lapsing account shall be established within the fund into which all administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be placed. Such account moneys shall only be used to support up to 2 full-time positions for administration of the fund and related projects. No other fund moneys shall be used for state personnel costs.

III. The state treasurer shall invest the fund as provided by law. Interest received on such investment shall be credited to the fund.

IV. The wetlands council, established by RSA 21-O:5-a, shall approve disbursements of the aquatic resource compensatory mitigation fund based on recommendations provided by the site selection committee established under RSA 482-A:32, and in accordance with rules adopted by the commissioner.

**Source.** 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:2, eff. Sept. 29, 2009; 303:5, eff. July 31, 2009; 303:6, eff. July 1, 2010. 2010, 16:1, eff. July 1, 2010 at 12:01 a.m.

**482-A:30-a Payment for Stream or Shoreline Losses.** – For stream or shoreline resource losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a stream of the same type was restored at the ratios adopted by the department, based on a price of \$200 per linear foot of channel or bank impacts or both, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1; and

[Paragraph II effective until July 1, 2012; see also paragraph II set out below.]

II. An administrative assessment equal to 20 percent of the amount in paragraph I.

[Paragraph II effective July 1, 2012; see also paragraph II set out above.]

II. An administrative assessment equal to 5 percent of the amount in paragraph I.

**Source.** 2009, 303:3, eff. Sept. 29, 2009. 2010, 16:4, eff. July 1, 2010; 16:5, eff. July 1, 2012.

### **Section 482-A:31**

**482-A:31 Rulemaking.** – The commissioner shall adopt rules under RSA 541-A relative to:

I. Identification of appropriate situations under which in lieu payments may be made. The criteria in RSA 482-A:28 shall be the minimum requirements for projects eligible for in lieu payments.

[Paragraph II effective until July 1, 2012; see also paragraph II set out below.]

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 20 percent of the total cost shall be added as part of the calculation method.

[Paragraph II effective July 1, 2012; see also paragraph II set out above.]

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 5 percent of the total cost shall be added as part of the calculation method.

III. Criteria to use in selecting projects that would compensate for the lost aquatic resource functions or values.

(a) Tidal aquatic resources shall be compensated by the selection of qualifying tidal projects.

(b) An emphasis shall be given to selecting from among the qualifying projects those that are nearer to the site of the lost aquatic resource.

(c) **Wetlands**

**482-A:3 Excavating and Dredging Permit; Certain Exemptions. –**

I. (a) No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department. The permit application together with a detailed plan and a map showing the exact location of the proposed project, along with 4 copies of the permit application, plan and map, shall be submitted to the town or city clerk, accompanied by a filing fee in the form of a check made out by the applicant to the state of New Hampshire.

(b) The permit application fee for minor and major shoreline structure projects shall be \$200 plus an impact fee, based on the area of dredge, fill, or dock surface area proposed, or a combination. The shoreline structure impact fee shall be \$2 per square foot for permanent dock surface area; \$1 per square foot for seasonal dock surface area; and \$.20 per square foot for dredge or fill surface area or both. For projects involving only the repair, reconstruction, or reconfiguration of an existing docking structure, the application fee shall be \$200.

(c) The permit application fee shall be \$200 for minimum impact dredge and fill projects under this chapter. The permit application fee shall be \$.20 per square foot of proposed impact for all minor and major impact dredge and fill projects under this chapter and there shall be a minimum fee of \$200 for all such projects that impact fewer than 1,000 square feet.

(d) At the time the permit application is submitted to the city or town clerk, the applicant shall:

(1) Provide postal receipts or copies, verifying that abutters, as defined in the rules of the department, and except as further provided in said rules, have been notified by certified mail. A postal receipt or copy that verifies submittal of the permit application to the local river management advisory committee, if required under subparagraph (2), shall also be provided. The postal receipts or copies shall be retained by the municipality. The town or city clerk shall immediately sign the application and forward, by certified mail, the application, plan, map, and filing fee to the department. The town or city clerk shall then immediately send a copy of the permit application, plan, and map to the local governing body, the municipal planning board, if any, and the municipal conservation commission, if any, and may require an administrative fee not to exceed \$10 plus the cost of postage by certified mail. One copy shall remain with the city or town clerk, and shall be made reasonably accessible to the public. The foregoing procedure notwithstanding, applications and fees for projects by agencies of the state may be filed directly with the department, with 4 copies of the application, plan, and map filed at the same time with the town or city clerk to be distributed as set forth above.

(2) Submit a copy of the permit application to the local river management advisory committee if the project is within a river corridor as defined in RSA 483:4, XVIII, or a river segment designated in RSA 483:15. The local river management advisory committee shall, under RSA 483:8-a, III(a)-(b), advise the commissioner and consider and comment on the permit application.

(e) Beginning October 1, 2007, and each quarter of the fiscal year thereafter, the department shall submit a quarterly report to the house and senate finance committees, the house resources, recreation, and economic development committee, and the senate energy, environment, and economic development committee relative to administration of the wetlands fees permit process established by the section.

I-a. In reviewing requests proposed, sponsored, or administered by the department of transportation, there shall be a rebuttable presumption that there is a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design.

II. (a) The department shall submit to the governor and council all requests for permits approved by the department which meet the definition of major projects located in great ponds or public-owned water bodies under the rules of the department which have been approved by the department.

(b) The governor and council shall consider the request for permit transmitted by the department. The governor and council may approve as transmitted or deny the submitted request. Following action by the governor and council the requests shall be returned to the department for permitting, if approved, or filing, if denied.

[Paragraph III effective until July 1, 2011; see also paragraph III set out below.]

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) and RSA 483-B:5-b are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

[Paragraph III effective July 1, 2011; see also paragraph III set out above.]

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

IV. (a) The replacement or repair of existing structures in or adjacent to any waters of the state which does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp is exempt from the provisions of this chapter.

(b) Man-made nontidal drainage ditches, culverts, catch basins, and ponds that have been legally constructed to collect or convey storm water and spring run-off, fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief, and man-made water conveyance systems that are used for the commercial or industrial purpose of collecting, conveying, storing, and recycling water, may be cleaned out when necessary to preserve their usefulness without a permit from the department. Such drainage facilities, fire ponds, intake areas of any hydrants, or man-made water conveyance systems may be cleaned out by hand or machine; provided, that the facility is neither enlarged nor

extended into any area of wetlands jurisdiction of the department of environmental services, dredged spoils are deposited in areas outside wetlands jurisdiction of the department of environmental services, and wetlands or surface waters outside the limits of the constructed drainage facility, fire pond, intake area of a dry hydrant, or man-made water conveyance system are neither disturbed nor degraded.

IV-a. Temporary seasonal docks installed on any lake or pond shall be exempt from the permitting requirements of this section, provided that a notification is sent to the department by the owner of property that includes the name and address of the property owner, the municipality, the waterbody, and tax map and lot number on which the proposed dock will be located. To qualify for an exemption under this paragraph, a temporary seasonal dock shall be:

- (a) The only docking structure on the frontage;
- (b) Constructed to be removed during the non-boating season;
- (c) Removed from the lake bed for a minimum of 5 months of each year;
- (d) Configured to be narrow, rectangular, and erected perpendicular to the shoreline;
- (e) No more than 6 feet wide and no more than 40 feet long if the water body is 1,000 acres or larger, or no more than 30 feet long if the water body is less than 1,000 acres;
- (f) Located on a parcel of land that has 75 feet or more of shoreline frontage;
- (g) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;
- (h) Installed in a manner which requires no modification, regrading, or recontouring of the shoreline, such as installation of a concrete pad for construction of a hinged dock;
- (i) Installed in a manner which complies with RSA 483-B; and
- (j) Installed in a location that is not in, or adjacent to, an area that has been designated as a prime wetland in accordance with RSA 482-A:15.

V. (a) Persons who have complied with notice of intent to cut wood requirements under RSA 79:10, and who have filed an appropriate notice of intent with the department and the department of resources and economic development, shall have satisfied the permitting requirements of this section for minimum impact activities only as defined by rules adopted by the commissioner. Minimum impact notifications issued by the department shall be valid for 2 years.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

- (1) Name and address of property owner;
  - (2) Name and address of logger or forester;
  - (3) Town, tax map, number and lot number of job site; and
  - (4) A copy of the appropriate United States Geological Survey topographic map, or a copy of the appropriate United States Natural Resources Conservation Service soils map, with the type and location of all wetland and waterbody crossings clearly indicated.
- (c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(d) The filing of an intent to cut form under RSA 79:10 shall be considered as permission to the department or the department of resources and economic development, or their agents, to enter the property for determining compliance with this chapter.

(e) The certificate issued under RSA 79:10 shall be posted upon receipt. Prior to

receipt of such certificate, a copy of the intent to cut form, signed by the appropriate municipal official, shall be available on the job site, and shall be shown to any person who asks to see it.

VI. The permittee shall record, in the registry of deeds for the county or counties in which the real estate is located, each permit granted under this chapter for the installation, construction, or repair of a dock, docking facility, or marina, or for alteration of wetlands associated with a subdivision of 4 or more lots. The permit shall not be effective until so recorded.

VII. No person shall destroy, raze, deface, reduce, alter, build upon or remove any sand or vegetation from any sand dune in this state without a permit from the department; provided, however, that any person may remove sand which blows or drifts onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or which blows or drifts in, on, or around buildings or other structures owned by the person. Upon request of the property owner, the department shall provide a preapplication assessment of any lot of record located in sand dunes.

VIII. Except as set forth in paragraph IX, no person shall operate or ride any mechanized or off highway recreational vehicle on any sand dune in the state of New Hampshire.

IX. This section shall not apply to:

- (a) Police vehicles or fire vehicles.
- (b) Vehicles used in cases of emergency.
- (c) Authorized maintenance vehicles when performing maintenance duties.
- (d) Vehicles used by commercial fishermen or commercial lobstermen when engaged in activities related to fishing or lobstering.

X. (a) The maximum cash application fee for the New Hampshire department of transportation shall be \$10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with the New Hampshire department of transportation to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of their standard application fees.

(b) For tidal dredging projects with the primary purpose to improve navigation for a municipality, the maximum application fee for a municipality shall be \$10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with a municipality to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of their standard application fees.

XI. (a) Small motor mineral dredging shall be limited to activities which are classified as minimum impact under rules adopted by the commissioner under RSA 482-A:11 and which do not exceed the following limits:

- (1) Power equipment shall be limited to 5 horsepower.
- (2) Suction dredges shall be limited to a single 4-inch diameter intake nozzle.
- (3) Sluice and rocker boxes shall be limited to 10 square feet.

(b) Any person who wishes to engage in small motor mineral dredging shall obtain a permit from the department. A permit application shall be filed directly with the

department, and the procedural requirements of RSA 482-A:3, I and RSA 482-A:11, III shall not apply. Any permit issued by the department under this paragraph shall expire at the end of the calendar year in which it is issued. Any person who engages in panning only shall not be required to obtain a permit but shall be subject to rules of the department. Panning shall include those activities associated with the manual search for minerals in a river bed without the use of motorized equipment.

(c) Any person wishing to engage in mineral dredging which in any way exceeds the limits of small motor mineral dredging shall first obtain, in addition to a wetlands permit, a mining permit from the department of resources and economic development pursuant to RSA 12-E.

(d) The commissioner shall adopt rules, under RSA 541-A, relative to:

(1) Small motor mineral dredging and panning.

(2) The issuance of statewide small motor mineral dredging permits.

(3) Any other matters relative to small motor mineral dredging and panning.

(e) The state shall retain the right to prohibit panning and mineral dredging activity at certain times or in certain locations when such activity would be detrimental to the public interest for reasons including, but not limited to, environmental and wildlife protection.

(f) Any person who has obtained a small motor mineral dredging permit from the department pursuant to this paragraph, or any person who intends to engage in any panning activity shall, prior to engaging in any small motor mineral dredging or panning activity, obtain the written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted.

(g) The department may enter into a cooperative agreement with the fish and game department relative to enforcement of the provisions of this paragraph.

(h) Application fees shall be \$25 for residents of the state of New Hampshire and \$50 for out-of-state applicants. Fees shall be collected by the department and held in accordance with paragraph III.

XII. (a) Persons who construct and maintain recreational trails in accordance with the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of resources and economic development and who have filed an appropriate notice, as described in subparagraph (b), to construct or maintain such trails with the department and the department of resources and economic development shall have satisfied the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

(1) Name and address of organization constructing or maintaining the recreational trail.

(2) Name and address of property owner.

(3) Town, tax map number, and lot number of property.

(4) A copy of the appropriate United States Geological Survey topographic map with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

XIII. (a) All boat docking facilities shall be at least 20 feet from an abutting property line in non-tidal waters, and at least 20 feet in tidal waters.

(b) Boat docking facilities may be perpendicular or parallel to the shoreline or extend at some other angle into a water body, depending on the needs of the landowners, factors related to safe navigation, and the difficulty of construction. However, any boat secured to such a dock shall not extend beyond the extension of the abutter's property line.

(c) Notwithstanding the provisions of subparagraph (a), boat docking facilities may be located closer than 20 feet from an abutter's property line in non-tidal waters and 20 feet in tidal waters, if the owner of the boat docking facility obtains the written consent of the abutting property owner. Such consent shall be signed by all parties, notarized and filed with the dock application with the department of environmental services.

(d) Abutters may apply for a common dock on or near their common property line. Any application for a common dock shall be accompanied by a notarized written agreement which shall be signed by all property owners. Such agreement shall be filed at the registry of deeds and attached to the deed of each property owner.

XIV. (a) In processing an application for permits under this chapter, except for a permit by notification, the department shall:

(1) Within 14 days of receipt by the department, issue a notice of administrative completeness or send notice to the applicant, at the address provided on the application, identifying any additional information required to make the application administratively complete and providing the applicant with the name and telephone number of the department employee to whom all correspondence shall be directed by the designated department employee regarding incompleteness of the application. Each receipt of additional information in response to any notice shall re-commence the 14-day period until the department issues a notice of administrative completeness. Any notice of incompleteness sent under this subparagraph shall specify that the applicant or authorized agent shall submit such information as soon as practicable and shall notify the applicant or authorized agent that if the requested information is not received within 60 days of the notice, the department shall deny the application.

(2) Within 75 days of the issuance of a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact and 105 days for all other projects, request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary. Such request and technical comments may be sent by electronic means if the applicant or authorized agent has indicated an agreement to accept communications by electronic means, either by so indicating on the application or by a signed statement from the applicant or authorized agent that communicating by electronic means is acceptable. Any request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application. The department may grant an extension of this 60-day time period upon request of the applicant.

(3) Where the department requests additional information pursuant to subparagraph (a)(2), within 30 days of the department's receipt of a complete response to the department's information request:

(A) Approve the application, in whole or in part, and issue a permit; or

(B) Deny the application and issue written findings in support of the denial; or

(C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant; or

(4) Where no request for additional information is made pursuant to subparagraph (a)(2), within 75 days from the issuance of the notice of administrative completeness for proposed projects under one acre of jurisdictional impact, or 105 days for all others:

(A) Approve the application, in whole or in part, and issue a permit; or

(B) Deny the application and issue written findings in support of the denial; or

(C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(5) Where the department has held a public hearing on an application filed under this chapter, within 60 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.

(b)(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (a)(3), (a)(4), and (a)(5), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.

(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:

(A) Approve the application, in whole or in part, and issue a permit; or

(B) Deny the application and issue written findings in support of the denial.

(3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, RSA 485-A relating to water quality, and federal requirements.

(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (b)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, and RSA 485-A relating to water quality, and federal requirements.

(c) If extraordinary circumstances prevent the department from conducting its normal function, time frames prescribed by this paragraph shall be suspended until such condition has ended, as determined by the commissioner.

(d) The time limits prescribed by this paragraph shall not apply to an application filed after the applicant has already undertaken some or all of the work covered by the application, or where the applicant has been adjudicated after final appeal, or otherwise does not contest, the department's designation as a chronic non-complier in accordance

with rules adopted pursuant to this chapter.

(e) Any request for a significant amendment to a pending application or an existing permit which changes the footprint of the permitted fill or dredge area shall be deemed a new application subject to the provisions of RSA 482-A:3, I and the time limits prescribed by this paragraph. "Significant amendment" means an amendment which changes the proposed or previously approved acreage of the permitted fill or dredge area by 20 percent or more, relocates the proposed footprint of the permitted fill or dredge area, includes a prime wetland or surface waters of the state, includes a wetland of a different classification as classified by the department, or includes non-wetland areas requiring permits for filling and dredging. This meaning of "significant amendment" shall not apply to an application amendment that is in response to a request from the department.

(f) The department may extend the time for rendering a decision under subparagraphs (a)(3)(D) and (a)(4)(D), without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this chapter or any rule adopted or permit or approval issued under this chapter, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this chapter, pursuant to an action initiated under RSA 482-A:13, RSA 482-A:14, or RSA 482-A:14-b. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, but shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

(g) The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

XV. (a) Utility providers who maintain and repair existing utility services within existing rights of way under the Best Management Practices Manual for Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire published by the department of resources and economic development, and who have complied with subparagraphs (b)-(e) shall satisfy the permitting requirements of this section, including any portion located in or adjacent to a prime wetland, for minimum impact activities as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department shall include the following information:

(1) The name and address of the person, employed by the utility provider responsible for overseeing the maintenance.

(2) A brief written description of the nature of the work to be conducted.

(3) A copy of the appropriate United States Geological Survey topographic map with the locations of the projects indicated.

(c) Appropriate notice to the town clerk of each municipality in which work will occur shall include the name of a utility provider contact and a brief description of the work to be conducted.

(d) A one-time annual filing fee of \$200 per town, not to exceed a maximum of \$10,000, shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(e) No additional fee shall be required for amendments to the notification as long as additional towns are not included in the amendment. Additional towns included in the amendment shall be subject to an additional fee of \$200 per town, not to exceed the annual maximum under subparagraph (d).

**Source.** 1989, 339:1. 1990, 3:84, 85; 83:2. 1991, 20:3; 273:1. 1992, 37:2, 3; 278:3, 6. 1994, 26:1. 1995, 206:2; 236:1, 2. 1996, 250:2; 296:40-42. 1997, 212:1-3. 1998, 224:1, eff. Aug. 23, 1998. 2001, 144:1, eff. July 1, 2001. 2002, 272:15, eff. May 18, 2002. 2003, 224:1, 2, eff. July 1, 2003; 224:3, eff. July 1, 2010. 2004, 2:1, eff. March 5, 2004; 116:4, eff. May 17, 2004. 2005, 29:1, eff. May 10, 2005. 2007, 211:1, eff. Aug. 24, 2007; 263:32, eff. July 1, 2007; 263:33, eff. July 1, 2010; 269:3, eff. July 1, 2007; 269:7, eff. July 1, 2011. 2008, 5:24, eff. July 1, 2008; 363:1, eff. Sept. 9, 2008. 2009, 185:1, eff. Sept. 11, 2009; 201:1, eff. July 15, 2009; 201:2, eff. July 1, 2010 at 12:01 a.m. 2010, 295:1-3, eff. Sept. 11, 2010.

#### **482-A:10 Appeals. –**

I. Any person aggrieved by a decision made by the department under RSA 482-A:3 may apply for reconsideration by the department, and then may appeal to the wetlands council and to the supreme court as provided in this section. A person aggrieved under this section shall mean the applicant and any person required to be noticed by mail in accordance with RSA 482-A:8 and RSA 482-A:9.

I-a. Any person subject to an order of the department under RSA 482-A:6 may appeal to the wetlands council and to the supreme court as provided in this section. The appellant shall not first request reconsideration, but shall file the appeal directly with the council as provided in paragraph IV, within 30 days of the date of the order.

II. A request for reconsideration of a department decision under RSA 482-A:3 shall be filed with the department within 30 days of issuance of the department's decision. The request for reconsideration shall describe in detail each ground for the request for reconsideration.

III. On reconsideration, the department shall receive and consider any new and additional evidence presented, and shall make findings of fact and rulings of law in support of its decision after reconsideration. The department may hold a public hearing in accordance with its rules. Reconsideration hearings shall not be subject to the requirements of RSA 541-A. Reconsideration hearings shall be noticed in accordance with rules adopted by the department, which notice shall be sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9, and the department shall make a record of the proceedings. The department shall grant or deny the request for

reconsideration within 30 days of the department's receipt of the request or explain in writing to the applicant why the request cannot be acted on and a statement of the time reasonably necessary to act on the request. However, if the basis for denial includes failure by the applicant to submit all requested information and the applicant submits all of the requested information with the request for reconsideration, the department shall act on the request within 75 days from the date of the department's receipt of the request for projects where the applicant proposes under one acre of jurisdictional impact, and within 105 days for all other projects.

IV. An appeal from a decision of the department under RSA 482-A:3 after reconsideration, or an appeal from an order issued by the department under RSA 482-A:6, shall be filed with the wetlands council within 30 days of the department's decision or order. An appeal shall be considered timely filed and received by the wetlands council if postmarked or hand delivered to the wetlands council on or before the thirtieth day from the date of the department's decision. Filing of the appeal shall be made by certified mail or hand delivery to the wetlands council, with a copy sent to the department. An appeal to the council shall contain a detailed description of the land involved in the department's decision and shall set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the appeal shall be considered by the council.

V. The council on appeal shall hold an adjudicative hearing as provided in RSA 541-A and the council's rules. The hearing shall be noticed in accordance with RSA 541-A:31, III. For appeals of department decisions under RSA 482-A:3, the notice shall also be sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9. The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. On appeal of requests proposed, sponsored, or administered by the department of transportation, there shall be a rebuttable presumption that there is a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design. All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.

V-a. Any person whose rights will be directly affected by the outcome of the appeal may appear and become a party to the appeal. Any person whose rights may be directly affected by the outcome of the appeal may file a request to intervene as provided in RSA 541-A:32.

VI. On appeal, the council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. The council shall specify the factual and legal basis for its determination and shall identify the evidence in the record created before the council that supports its decision.

VII. Any party aggrieved by a decision of the council may apply to the council for reconsideration as specified in RSA 541.

VIII. Any party aggrieved by a decision of the council after reconsideration may appeal to the supreme court as specified in RSA 541.

IX. In the case of a remand to the department by the council, the department may accept the council's determination and reissue a decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter, or may

appeal as provided in paragraphs VII and VIII.

X. [Repealed.]

XI. [Repealed.]

XII. [Repealed.]

XIII. [Repealed.]

XIV. [Repealed.]

XV. [Repealed.]

XVI. [Repealed.]

XVII. [Repealed.]

XVIII. If a permit is granted with respect to any activity proposed to be undertaken in or adjacent to a prime wetland as mapped, designated, and filed pursuant to RSA 482-A:15, the conservation commission or local governing body may request reconsideration by the department and, if aggrieved by the decision or reconsideration, appeal said decision to the wetlands council and the supreme court in the manner prescribed in this section. The filing of a request for reconsideration shall automatically stay the effectiveness of the department's decision relating to said prime wetland. Said stay shall remain in force until the department has issued its decision after reconsideration.

**Source.** 1989, 339:1. 1991, 20:5. 1996, 296:45, eff. Aug. 9, 1996. 2004, 2:2, 3, eff. Mar. 5, 2004; 243:3, eff. July 1, 2004. 2008, 171:6, 7, 16, eff. July 1, 2008; 363:5, eff. Sept. 9, 2008.

#### **482-A:11 Administrative Provisions. –**

I. The commissioner shall adopt reasonable rules, pursuant to the rulemaking provisions of RSA 541-A, to implement the purposes of this chapter.

II. Decisions of the department or council under this chapter shall be consistent with the purposes of this chapter as set forth in RSA 482-A:1. Before granting a permit under this chapter, the department may require reasonable proof of ownership by a private landowner-applicant. If a permit is granted, the decision of the department may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

III. (a) Upon written notification to the department by a municipal conservation commission that it intends to investigate any notice received by it pursuant to RSA 482-A:3, the department shall not make its decision on the application that is the subject of the notice until it has received and acknowledged receipt of a written report from such commission, or until 40 days from the date of filing with the municipal clerk of such notice, whichever occurs earlier, subject to an extension as permitted by the department. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of the record of the department. Where the department grants an extension, the time limits prescribed by RSA 482-A:3, XIV(b) shall be suspended until a date agreed to by the applicant and the department. If a conservation commission makes a recommendation to the department in its report, the department shall specifically consider such recommendation and shall make written findings with respect to each issue raised in such report which is contrary to the decision of the department. If notification by a local

conservation commission pursuant to this paragraph is not received by the department within 14 days following the date the notice is filed with the municipal clerk, the department shall not suspend its normal action, but shall proceed as if no notification has been made.

(b) Relative to any permit by notification under paragraph VI, the provisions of subparagraph (a) shall be modified as follows:

(1) The 40-day suspended action limit is reduced to 21 days; and

(2) The notification by a municipal conservation commission of intended investigation shall be assumed unless the application filed under RSA 482-A:3 was signed by the conservation commission, or, if one has not been established in the municipality, by the local governing body, in which case the provisions of subparagraph (a) shall not apply.

IV. (a) The department shall not grant a permit with respect to any project to be undertaken in or within 100 feet of an area mapped, designated, and filed as a prime wetland pursuant to RSA 482-A:15 unless the department first notifies the local governing body, the planning board, if any, and the conservation commission, if any, in the municipality within which the wetlands lie, either in whole or in part, of its decision. Any such permit shall not be issued unless the department is able, specifically, to find clear and convincing evidence on the basis of all information considered by the department, and after a public hearing, if a public hearing is deemed necessary under RSA 482-A:8, that the proposed project, either alone or in conjunction with other human activity, will not result in the significant net loss of any of the values set forth in RSA 482-A:1. This paragraph shall not be construed so as to relieve the department of its statutory obligations under this chapter to protect wetlands not so mapped and designated.

(b)(1) A property owner may request from the department a waiver from subparagraph (a), under rules adopted by the department, to perform forest management work and related activities in the forested portion of a prime wetland or its 100-foot buffer. The request for the waiver shall include, but not be limited to:

(A) A sketch of the property depicting the best approximate location of each prime wetland and its 100-foot buffer in which work is proposed and the location of proposed work, including access roads;

(B) A written description of the work to be performed and a copy of the notice of intent to cut, if applicable; and

(C) A list of the prime wetland values as identified by the municipality in designating each prime wetland under RSA 482-A:15.

(2) A waiver shall be issued only when the department is able to determine there will be no significant net loss of wetland values as identified in subparagraph (b)(1)(C) and RSA 482-A:1. If the department determines that the proposed work may cause a significant net loss of wetland values, the department may require the submittal of additional information. The department may place conditions on the waiver that it deems necessary to protect the prime wetland resource and shall set the term of the permit.

(3) At the time that the waiver request is submitted to the department, the applicant shall also submit a copy of the waiver request and all supporting documentation, via certified mail, to the local governing body, the planning board, if any, and the conservation commission, if any, of the municipalities in which any prime wetlands

associated with the application are located. Where a prime wetland associated with the application extends into an abutting property, the property owner requesting the waiver shall provide notice to the owner of that abutting property. A waiver shall not be issued by the department prior to 14 days from its receipt of the waiver request. A municipal conservation commission may request an extension on such waiver issuance, not to exceed 14 days.

(4) The department shall adopt rules under RSA 541-A relative to:

(A) The process and criteria for considering and granting waiver requests made pursuant to RSA 482-A:11, IV(b)(1), including:

(i) Methods for determining whether a proposed forest management project may result in a significant net loss of wetland values.

(ii) Conditions that may be placed on a waiver when deemed necessary to protect the prime wetland resource.

(iii) Criteria for granting extensions of waiver issuances pursuant to RSA 482-A:11, IV(b)(3).

(iv) Specified criteria for identifying abutters and subsequent notification.

(B) Filing fees for waiver applications.

(c) A property owner may request a waiver from the department, under rules adopted by the department under RSA 541-A, from the provisions of this chapter to perform work not addressed under subparagraph (b) within a portion of the 100-foot buffer of a prime wetland on his or her property. At the time of the waiver request, the property owner shall notify, by certified mail, the local governing body, the planning board, if any, and the conservation commission, if any, of the municipalities in which the waiver is being sought that a waiver is being sought from the department. Where a buffer associated with the application extends into an abutting property, the property owner requesting the waiver shall provide notice to the owner of that abutting property.

V. Notwithstanding any rules adopted by the commissioner defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the department; all such related projects shall be subject to a public hearing as provided in RSA 482-A:8. A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole.

VI. The commissioner shall adopt rules pursuant to RSA 541-A establishing an expedited application and permitting process or permit by notification process for certain minimum impact projects. The provisions of RSA 482-A:3, I and paragraph III of this section shall apply.

VII. The commissioner shall adopt rules, pursuant to RSA 541-A, identifying those activities within the jurisdiction of RSA 482-A that may be conducted without obtaining a permit, consistent with the provisions of this chapter.

VIII. The commissioner shall adopt rules pursuant to RSA 541-A relative to the waiver of existing standards provided for in RSA 482-A:26, III(b). Such rules shall list the specific criteria to be used by the commissioner in determining whether a waiver will be granted.

IX. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the circumstances under which the commissioner may grant a waiver of rules adopted

pursuant to this chapter. Such rules shall list the specific criteria to be used by the commissioner in determining whether a waiver will be granted.

X. The department shall have the authority to grant permits, in accordance with the rules adopted under RSA 482-A:11, VI for expedited application and permitting, for any projects funded through the Emergency Watershed Protection Program of the Natural Resources Conservation Service, United States Department of Agriculture, when such projects are necessary to safeguard lives and property from floods and the products of erosion when a natural disaster is causing or has caused a sudden impairment of the watershed.

**Source.** 1989, 339:1. 1991, 20:6; 28:1. 1993, 30:1. 1996, 296:47, eff. Aug. 9, 1996. 2002, 272:17, 18, eff. May 18, 2002. 2004, 116:5, eff. May 17, 2004. 2007, 211:1, eff. Aug. 24, 2007; 278:1, eff. Sept. 1, 2007. 2008, 363:3, eff. Sept. 9, 2008. 2009, 185:2, eff. Sept. 11, 2009.

**482-A:13 Administrative Fine.** – The commissioner, after notice and hearing in accordance with the procedures set forth in RSA 541-A, is empowered to impose an administrative fine of up to \$5,000 for each violation, irrespective of the duration of violation, upon any person who violates any provision of this chapter. This fine is appealable under RSA 541. Any administrative fine imposed under this section will not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this section shall be placed in the nonlapsing fund authorized in RSA 482-A:14, III.

**Source.** 1989, 339:1. 1996, 296:47, eff. Aug. 9, 1996. 2010, 295:4, eff. Sept. 11, 2010.

**482-A:15 Local Option; Prime Wetlands.** –

I. Any municipality, by its conservation commission, or, in the absence of a conservation commission, the planning board, or, in the absence of a planning board, the local governing body, may undertake to designate, map, and document prime wetlands lying within its boundaries, or if such areas lie only partly within its boundaries, then that portion lying within its boundaries. For the purposes of this chapter, "prime wetlands" shall mean any areas falling within the jurisdictional definitions of RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in RSA 482-A:1 and that, because of their size, unspoiled character, fragile condition, or other relevant factors, make them of substantial significance. The commissioner shall adopt rules under RSA 541-A relative to the form, criteria, and methods that shall be used to designate, map, and document prime wetlands, determine boundaries in the field, and amend maps and designations once filed and accepted by the department under paragraph II.

II. Any municipal conservation commission or that local body which has mapped and designated prime wetlands in accordance with paragraph I may, after approval by any town or city council meeting, file such maps and designations with the department, which shall accept and maintain them and provide public access to such maps during regular business hours. The procedure for acceptance by the local legislative body of any prime wetland designations as provided in paragraph I shall be the same as set forth in RSA 675:2 or RSA 675:3, as applicable.

**Source.** 1989, 339:1. 1991, 20:8. 1996, 296:48, eff. Aug. 9, 1996. 2009, 185:3, eff. Sept. 11, 2009.

**482-A:28 Aquatic Resource Compensatory Mitigation.** – In lieu of other forms of compensatory mitigation, the department may accept payment for an unavoidable loss of aquatic resource functions and values from impacts to resources protected under this chapter.

**Source.** 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:1, eff. Sept. 29, 2009.

**482-A:29 Fund Established.** –

I. There is hereby established the aquatic resource compensatory mitigation fund into which payments made under this subdivision shall be deposited. The fund shall be a separate, nonlapsing fund continually appropriated to the department to be used only as specified in this subdivision for costs related to wetlands creation or restoration, stream and river restoration, stream and river enhancement, preservation of upland areas adjacent to wetlands and riparian areas, and the subsequent monitoring and maintenance of such areas.

II. A separate, non-lapsing account shall be established within the fund into which all administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be placed. Such account moneys shall only be used to support up to 2 full-time positions for administration of the fund and related projects. No other fund moneys shall be used for state personnel costs.

III. The state treasurer shall invest the fund as provided by law. Interest received on such investment shall be credited to the fund.

IV. The wetlands council, established by RSA 21-O:5-a, shall approve disbursements of the aquatic resource compensatory mitigation fund based on recommendations provided by the site selection committee established under RSA 482-A:32, and in accordance with rules adopted by the commissioner.

**Source.** 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:2, eff. Sept. 29, 2009; 303:5, eff. July 31, 2009; 303:6, eff. July 1, 2010. 2010, 16:1, eff. July 1, 2010 at 12:01 a.m.

**482-A:30-a Payment for Stream or Shoreline Losses.** – For stream or shoreline resource losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a stream of the same type was restored at the ratios adopted by the department, based on a price of \$200 per linear foot of channel or bank impacts or both, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1; and

[Paragraph II effective until July 1, 2012; see also paragraph II set out below.]

II. An administrative assessment equal to 20 percent of the amount in paragraph I.

[Paragraph II effective July 1, 2012; see also paragraph II set out above.]

II. An administrative assessment equal to 5 percent of the amount in paragraph I.

**Source.** 2009, 303:3, eff. Sept. 29, 2009. 2010, 16:4, eff. July 1, 2010; 16:5, eff. July 1, 2012.

### **Section 482-A:31**

**482-A:31 Rulemaking.** – The commissioner shall adopt rules under RSA 541-A relative to:

I. Identification of appropriate situations under which in lieu payments may be made. The criteria in RSA 482-A:28 shall be the minimum requirements for projects eligible for in lieu payments.

[Paragraph II effective until July 1, 2012; see also paragraph II set out below.]

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been) No project shall be funded with in lieu payments from losses that occurred outside the hydrologic unit code 8 watershed, as developed by the United States Geological Survey, in which the project is located.

(d) Such criteria shall be adopted in consultation with the site selection committee established under RSA 482-A:32.

**Source.** 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:4, eff. Sept. 29, 2009. 2010, 16:6, eff. July 1, 2010; 16:7, eff. July 1, 2012.

**482-A:33 Report.** – The department shall submit an annual report by October 1 beginning with fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and development committee, and the chairperson of the senate environment and wildlife committee summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund, including a description of all projects undertaken and the status of the administrative assessment account. Each report shall be in such detail with sufficient information to be fully understood by the general court and the public. After submission to the general court, the report shall be available to the public.

**Source.** 2006, 313:1, eff. Aug. 18, 2006. 2010, 16:8, eff. July 1, 2010.

**483-A:1 Statement of Policy.** – New Hampshire's lakes are one of its most important natural resources; vital to wildlife, fisheries, recreation, tourism, and the quality of life of its citizens. It is the policy of the state to insure the continued vitality of New Hampshire

lakes as key biological, social, and economic assets, while providing that public health is ensured for the benefit of present and future generations. The state shall encourage and assist in the development of management plans for the waters as well as the shoreland to conserve and protect valued characteristics, including recreational, aesthetic, and those of community significance, so that these valued characteristics shall endure as part of lake uses to be enjoyed by the citizens of New Hampshire. If conflicts arise in the attempt to protect the valued characteristics of a lake, priority shall be given to those characteristics that are necessary to meet state water quality standards.

**Source.** 1990, 118:2, eff. June 18, 1990. 2010, 269:2, eff. July 6, 2010.

**483-A:2 Definitions.** – In this chapter:

- I. "Commissioner" means the commissioner, department of environmental services.
- II. "Advisory committee" means the lakes management advisory committee established in RSA 483-A:6.
- III. "Lake" means the bodies of fresh water as defined in RSA 271:20.
- IV. "Valued characteristics" means the uses and values that lakes provide including, but not limited to: passive and active recreational activities such as swimming, fishing, and use of appropriate watercraft; aesthetic values such as scenic beauty, wilderness experiences, and educational opportunities; public uses such as drinking water supplies and flood control; ecosystem values such as providing ecological diversity and wildlife habitat; economic values such as revenue generated for the local, regional, and state economies; and social experiences and the opportunity to use our lakes for public enjoyment.

**Source.** 1990, 118:2, eff. June 18, 1990. 2010, 269:3, eff. July 6, 2010.

**483-A:5 Management.** –

I. The lakes coordinator, in consultation with the advisory committee, with cooperation and assistance from each of the relevant divisions and bureaus within the department of environmental services, shall prepare every 10 years state level management recommendations for consideration by state agencies in their decision-making regarding lakes management and protection. The purpose of such recommendations shall be to ensure that:

- (a) Water quality shall not be degraded from existing water quality standards established in RSA 485-A.
- (b) Potential sources of pollution, whether point or non-point sources on the land or deriving from activity on the lake, shall be managed in such a way as to minimize their adverse impact on water quality. No significant adverse impact or cumulative adverse impact on water quality shall be permitted.
- (c) The environment for wildlife, particularly waterfowl and aquatic life, shall be maintained or improved.
- (d) The use of lakes and their drainage areas for flood protection and water supply shall be recognized and protected.

(e) Public access shall be provided and maintained appropriate to suitable uses of the lakes.

(f) Recreational uses of lakes shall be consistent with the carrying capacity and valued characteristics of each lake. Recreational uses shall provide opportunity for the safe enjoyment of a variety of lake experiences within the state as a whole.

II. No state-owned property adjacent to or providing access to a lake shall be disposed of by the state except upon the review and recommendations of the advisory committee.

**Source.** 1990, 118:2, eff. June 18, 1990. 2010, 269:4, eff. July 6, 2010.

**483-A:6 Lakes Management Committee; Establishment. –**

I. There is established a lakes management advisory committee.

II. The advisory committee shall include the following members to be appointed by the governor and council:

(a) A member representing a New Hampshire lake association nominated by the New Hampshire Lakes Association.

(b) A member representing the state conservation committee established in RSA 432:10.

(c) A member of the fish and game commission.

(d) A municipal officer of a lakefront community nominated by the New Hampshire Municipal Association.

(e) A member of a conservation commission from a lakefront community nominated by the New Hampshire Association of Conservation Commissions.

(f) A member representing the scientific community nominated by the university system of New Hampshire.

(g) A member representing the tourism industry nominated by the New Hampshire Travel Council.

(h) A member representing conservation interests nominated jointly by the Loon Preservation Committee, the Society for the Protection of New Hampshire Forests, the Audubon Society of New Hampshire, and the New Hampshire Wildlife Federation.

(i) A member representing the New Hampshire Marine Trades Association.

(j) A member of the New Hampshire Association of Realtors.

(k) A member of a planning board appointed by the New Hampshire Municipal Association.

(l) A member representing the Business and Industry Association of New Hampshire.

(m) A member representing fishing interests nominated jointly by the New Hampshire Wildlife Federation and the New Hampshire Bass Federation.

III. The director of the office of energy and planning, the executive director of the fish and game department, the commissioner of resources and economic development, the commissioner of the department of safety, the commissioner of the department of agriculture, markets, and food, and the commissioner of the department of transportation, or their designees, shall serve as nonvoting members of the advisory committee.

IV. The terms of state agency members shall be the same as their terms in office. Voting members shall serve 3-year terms.

IV-a. Any vacancy shall be filled in the same manner as the original appointment for

the remainder of the unexpired term. Members may hold office until their successors are appointed and confirmed.

V. The advisory committee shall elect a chairperson and vice-chairperson, who shall serve for 3-year terms. Meetings shall be at the call of the chair, or at the request of 3 or more committee members. The lakes coordinator referred to in RSA 483-A:4 shall serve as secretary and staff to the committee.

VI. The advisory committee shall advise the commissioner and lakes coordinator in carrying out the purposes of this chapter and shall report biennially to the commissioner, the state agencies represented on the advisory committee, the house resources, recreation and development committee, and the senate energy, environment and economic development committee regarding the activities carried out for the purposes of this chapter.

**Source.** 1990, 118:2. 1995, 130:4, eff. July 23, 1995. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004. 2007, 285:9, eff. Sept. 1, 2007. 2010, 269:5, eff. July 6, 2010.

#### **483-A:7 Lakes Management and Protection Plans. –**

I. The lakes coordinator, in consultation with the advisory committee and the office of energy and planning, shall monitor and oversee guidelines for coordinated lake management and shoreland protection plans together with recommendations for implementation, if necessary. Upon acceptance of the guidelines or substantive changes to the guidelines by the advisory committee, the lakes coordinator and members of the advisory committee shall hold public hearings regarding the guidelines or changes to the guidelines. At least one hearing shall be held in each executive council district.

II. The lakes coordinator in consultation with the office of energy and planning, with the help of appropriate council on resources and development agencies, shall provide technical assistance and, within the limits of legislative appropriations, award financial grants to regional planning commissions established under RSA 36:45 through RSA 36:53 in support of lake management and shoreland protection planning. The commissioner, with the advice of the lakes coordinator and the advisory committee, shall adopt rules, pursuant to RSA 541-A, relative to awarding financial grants under this paragraph.

III. The lakes coordinator in cooperation with the office of energy and planning, regional planning agencies, and appropriate council on resources and development agencies, shall provide technical assistance and information in support of lake management and local shoreland planning consistent with the guidelines established under RSA 483-A:7, I, compatible with the recommendations under RSA 483-A:5, and consistent with state and federal water quality laws.

IV. Whenever more than one municipality borders a lake, all such municipalities shall be encouraged to cooperate in the development and implementation of a coordinated lake management and shoreland protection plan.

V. Lake management and shoreland protection plans developed pursuant to paragraphs I, II, and III shall address, but not be limited to, the following:

- (a) Recreational uses and activities.
- (b) Non-recreational uses and activities.

- (c) Existing and future land uses.
- (d) Protection of wetlands, wildlife, fish habitats, and other significant natural areas.
- (e) Dams, bridges, and other water structures.
- (f) Public access by foot and vehicle.
- (g) Setbacks and other location requirements.
- (h) Dredging, filling, mining, and earth moving.
- (i) Prohibited uses.
- (j) Factors controlling water levels and flowage rights.
- (k) Facilities appropriate to support approved lake uses.
- (l) Water safety.
- (m) Other factors affecting water quality.

**Source.** 1990, 118:2, eff. June 18, 1990. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004. 2010, 269:6, eff. July 6, 2010.

**483-A:8 Acceptance and Expenditures of Funds. –**

I. The commissioner may apply for and accept, from any source, gifts; donations of money; grants; federal, local, private, and other funds and incentives; and interests in land for the purposes of this chapter. The moneys collected under this paragraph shall be deposited in the rivers management and protection fund established under RSA 483:13.

II. The commissioner may expend any funds deposited in the rivers management and protection fund for the purposes of this chapter, in addition to those purposes established under RSA 483:13.

**Source.** 1990, 118:2, eff. June 18, 1990. 2010, 269:7, eff. July 6, 2010.

**Taxation**

**72:12-a Water and Air Pollution Control Facilities. –**

I. Any person, firm, or corporation which builds, constructs, installs, or places in use in this state any treatment facility, device, appliance, or installation wholly or partly for the purpose of reducing, controlling, or eliminating any source of air or water pollution shall be entitled to have the value of said facility and any real estate necessary therefor, or a percentage thereof determined in accordance with this section, exempted from the taxes levied under this chapter for the period of years in which the facility, device, appliance, or installation is used in accordance with the provisions of this section. This paragraph shall not apply to privately-owned landfills or ancillary facilities located at such landfills or to sewage disposal systems installed pursuant to RSA 485-A:29 through RSA 485-A:44 and rules adopted pursuant thereto, except that any exemption for a sewage disposal system granted prior to January 1, 2010 shall remain in effect.

II. The party seeking the exemption shall file an application with the department of environmental services if the exemption sought is for a water pollution control facility or an air pollution control facility, with a copy to the taxing authorities in the municipality where the facility is situated. Said application shall describe the facilities and their

function or functions and shall state the applicant's total investment therein and the portion allocable to each function.

III. The department shall investigate and determine whether the purpose of the facility is solely or only partially pollution control. If the department finds that the purpose of the facility is only partially pollution control it shall determine by an allocation of the applicant's investment in the facility what percentage of the facility is used to control pollution. In making its investigation, the department may inspect the facility and request such other information from the applicant as is reasonably necessary to assist it in making its determination.

IV. Upon making its determination, the department shall notify the applicant and the taxing authorities of the municipality where the facility is situated whether the purpose of the facility is solely pollution control, or, if not, what percentage of the applicant's investment in the facility should be allocated to pollution control.

V. The taxing authorities shall each year separately appraise and describe the facility and related real estate and cause such appraisal and description to appear in their inventory. In accordance with the provisions of this section, the taxing authority shall exempt from the taxes levied under this chapter the appraised value of the facility and any real estate necessary therefor, or the exempt percentage thereof, determined by the department. The exemption period shall begin as of the April 1 next following the receipt of the department's determination.

VI. Either the municipality or the owner of the facility may request a rehearing or appeal from such determination in accordance with the provisions of RSA 541.

**Source.** 1971, 142:1. 1979, 359:3. 1996, 228:15. 1998, 66:1, eff. April 1, 1998. 2006, 282:4, eff. June 15, 2006. 2010, 94:6, eff. May 25, 2010.

### **72:29 Definitions. –**

I. The word "resident" as used in RSA 72:28 shall mean a person who has resided in this state for at least one year preceding April 1, in the year in which the tax credit is claimed.

II. The term "residential real estate" for the purposes of RSA 72:28-34, inclusive, shall mean the real estate which the person qualified for an exemption or a tax credit thereunder occupies as his principal place of abode together with any land or buildings appurtenant thereto and shall include manufactured housing if used for said purpose.

III. "Exemption" as used in RSA 72 shall mean the amount of money to be deducted from the assessed valuation, for property tax purposes, of real property.

IV. The term "tax credit" as used in RSA 72 shall mean the amount of money to be deducted from the person's tax bill.

V. The term "surviving spouse" as used in RSA 72 shall not include a surviving spouse that has remarried, but if the surviving spouse is later divorced, his or her status as the surviving spouse of a veteran is regained. If the surviving spouse remarries and the new husband or wife dies, he or she shall be deemed the widow or widower of the latest spouse and shall not revert to the status of a surviving spouse of a veteran.

VI. For purposes of RSA 72:28, 29-a, 30, 31, 32, 33, 35, 36-a, 37, 37-a, 37-b, 38-a, 39-a, 62, 66, and 70, the ownership of real estate, as expressed by such words as "owner", "owned" or "own", shall include those who have equitable title or the beneficial interest

for life in the subject property.

VII. The term "theater of operations service medal" for the purposes of RSA 72:28-34 shall mean any medal, ribbon, or badge awarded to a member of the armed forces which establishes that the member served in a theater of war or armed conflict, as determined by the director of the state office of veterans services with written notification to the department of revenue administration.

**Source.** 1947, 240:1, par. 29-g. RSA 72:29. 1955, 289:4. 1963, 118:2. 1991, 70:9, 10. 1993, 73:4. 1994, 102:1; 390:7. 1995, 265:12, eff. Jan. 1, 1996. 2004, 170:2, eff. July 23, 2004; 238:1, eff. June 15, 2004. 2010, 119:7, eff. July 31, 2010.

**72:37-b Exemption for the Disabled. –**

I. Upon its adoption by a city or town as provided in RSA 72:27-a, any person who is eligible under Title II or Title XVI of the federal Social Security Act for benefits to the disabled shall receive a yearly exemption in an amount to be chosen by the town or city.

I-a. Upon the adoption of this paragraph by a city or town as provided in RSA 72:27-a, a person who is eligible under Title II or Title XVI of the federal Social Security Act on his or her sixty-fifth birthday shall remain eligible for a yearly exemption either in the amount of the exemption applicable under paragraph I or the amount of the elderly exemption granted to the person under RSA 72:39-b, whichever is greater.

I-b. Upon the adoption of this paragraph by a city or town as provided in RSA 72:27-a, any person who at any time previously was eligible under Title II or Title XVI of the federal Social Security Act for benefits to the disabled, but who is no longer eligible for such federal benefits due to reasons other than the status of that person's disability, shall be eligible for the exemption under paragraph I or I-a, or both as may be applicable, provided that the person submits an affidavit from a physician licensed in New Hampshire that attests to the fact that the person continues to meet the criteria for disability that are used under Title II or Title XVI of the federal Social Security Act.

II. The exemptions in paragraph I and I-a may be applied only to property which is occupied as the principal place of abode by the disabled person. The exemption may be applied to any land or buildings appurtenant to the residence or to manufactured housing if that is the principal place of abode. Nothing in this section shall preclude a qualified applicant from earning an income.

III. No exemption shall be allowed under paragraph I or I-a unless the person applying for an exemption:

(a) Had, in the calendar year preceding said April 1, a net income from all sources, or if married, a combined net income from all sources, of not more than the respective amount determined by the city or town for purposes of paragraph I or I-a. Under no circumstances shall the amount determined by the city or town be less than \$13,400 for a single person or \$20,400 for married persons. The net income shall be determined by deducting from all moneys received, from any source including social security or pension payments, the amount of any of the following or the sum thereof:

- (1) Life insurance paid on the death of an insured.
- (2) Expenses and costs incurred in the course of conducting a business enterprise.
- (3) Proceeds from the sale of assets.

(b) Owns net assets not in excess of the amount determined by the city or town for

purposes of paragraph I, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single family residential lot size specified in the local zoning ordinance. The amount determined by the city or town shall not be less than \$35,000 or, if married, combined net assets in such greater amount as may be determined by the town or city. "Net assets" means the value of all assets, tangible and intangible, minus the value of any good faith encumbrances. "Residence" means the housing unit, and related structures such as an unattached garage or woodshed, which is the person's principal home, and which the person in good faith regards as home to the exclusion of any other places where the person may temporarily live. "Residence" shall exclude attached dwelling units and unattached structures used or intended for commercial or other nonresidential purposes.

(c) Has been a New Hampshire resident for at least 5 years.

IV. Additional requirements for an exemption under paragraph I or I-a shall be that the property is:

(a) Owned by the resident;

(b) Owned by a resident jointly or in common with the resident's spouse, either of whom meets the requirements for the exemption claimed;

(c) Owned by a resident jointly or in common with a person not the resident's spouse, if the resident meets the applicable requirements for the exemption claimed; or

(d) Owned by a resident, or the resident's spouse, either of whom meets the requirements for the exemption claimed, and when they have been married to each other for at least 5 consecutive years.

**Source.** 1993, 212:1, eff. April 1, 1993. 1997, 87:1, eff. Aug. 2, 1997. 2003, 299:11, eff. April 1, 2003. 2004, 238:2, eff. June 15, 2004. 2008, 307:1, eff. Apr. 1, 2008.

### **72:75 Definitions. –**

I. In this subdivision:

(a) "Commercial uses" shall include all retail, wholesale, service, and similar uses.

(b) "Eligible municipality" shall mean any city or town in Coos county.

(c) "Industrial uses" shall include all manufacturing, production, assembling, warehousing, or processing of goods or materials for sale or distribution, research and development activities, or processing of waste materials.

II. An eligible municipality adopting a property tax exemption pursuant to RSA 72:76 may, in lieu of the definitions in this section, adopt by reference the definitions of similar terms as may be contained in that town's or city's zoning ordinances.

**Source.** 2008, 224:2, eff. July 1, 2008.

### **72:76 Property Tax Exemption. –**

An eligible municipality may, by vote of the local legislative body pursuant to RSA 72:77, adopt a new construction property tax exemption for commercial or industrial uses, or both. The exemption shall apply only for municipal and local school property taxes assessed by the municipality which shall exclude state education property taxes under RSA 76:3 and county taxes assessed against the municipality under RSA 29:11, and shall be a specified percentage on an annual basis of the increase in assessed value

attributable to construction of new structures, and additions, renovations, or improvements to existing structures. The exemption may run for a maximum period of 10 years following the new construction; provided, however, that the exemption for all years shall cumulatively not exceed 500 percent of the increased assessed value. Once adopted by the local legislative body, the percentage rate and duration of the exemption shall be granted uniformly within that municipality to all projects for which a proper application is filed.

**Source.** 2008, 224:2, eff. July 1, 2008.

**72:77 Procedure for Adoption. –**

I. A municipality desiring to adopt the provisions of RSA 72:76 shall do so in accordance with the procedures set forth in RSA 72:27-a. The vote shall specify the percentage of new assessed value to be exempted, the number of years duration of the exemption following new construction, and a reference to zoning use category definitions, if applicable. The exemption shall take effect in the tax year beginning April 1 following its adoption.

II. A vote adopting RSA 72:76 shall remain in effect for a maximum of 5 tax years; provided, however, that for any application which has already been granted prior to expiration of such 5 tax year period, the exemption shall continue to apply at the rate and for the duration in effect at the time it was granted.

**Source.** 2008, 224:2, eff. July 1, 2008.

**72:78 Application for Exemption. –**

I. On or before March 1 preceding the tax year for which the exemption is claimed, a person qualified for an exemption under RSA 72:76 shall file an application with the selectmen or assessors, on an application form prepared by them, signed by the applicant under penalty of perjury, which contains adequate information to demonstrate that the applicant is qualified for the exemption.

II. The selectmen or assessors shall notify the applicant of their decision on or before July 1 following the date of notice of tax under RSA 72:1-d. The decision shall specify the amount of the exemption, that it is effective beginning the prior April 1, and the number of years for which the exemption applies to qualified construction. The decision of the selectmen or assessors may be appealed in the manner set forth in RSA 72:34-a.

III. Alternatively, an owner may apply for the exemption prior to construction, but in no case more than 12 months before the beginning of the tax year for which the exemption is sought. In such cases the selectmen or assessors may anticipatorily grant the exemption, subject to adjustment when the actual increase in assessed value becomes known. If construction is partially complete on April 1 of any year, the exemption for that year shall be based on the increased assessed value attributable to the partial construction, but the duration of the exemption shall be adjusted such that the cumulative amount of exemptions received, based on the construction as completed, is proportional to that received by other eligible properties.

IV. The selectmen or assessors may request such additional or updated information as is necessary to determine eligibility. If they are satisfied that the applicant has willfully

made any false statement, or has refused to provide information after such a request, they may refuse to grant the exemption.

V. If the municipality completes a revaluation during the period for which an exemption has been granted, the amount of the exemption shall be adjusted by the difference in equalization ratios applicable in the municipality before and after the revaluation.

**Source.** 2008, 224:2, eff. July 1, 2008. 2009, 144:285, eff. July 1, 2009.

**75:1 How Appraised.** – The selectmen shall appraise open space land pursuant to RSA 79-A:5, open space land with conservation restrictions pursuant to RSA 79-B:3, land with discretionary easements pursuant to RSA 79-C:7, residences on commercial or industrial zoned land pursuant to RSA 75:11, earth and excavations pursuant to RSA 72-B, land classified as land under qualifying farm structures pursuant to RSA 79-F, residential rental property subject to a housing covenant under the low-income housing tax credit program pursuant to RSA 75:1-a, and all other taxable property at its market value. Market value means the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor. The selectmen shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

**Source.** RS 42:1. CS 44:1. GS 52:1. 1872, 31:1. GL 56:1. PS 58:1. PL 63:1. RL 76:1. RSA 75:1. 1975, 197:1. 1977, 538:1. 2001, 158:51, eff. Sept. 3, 2001. 2008, 390:3, 4, eff. July 17, 2008.

**75:1-a Residential Property Subject to Housing Covenant Under the Low-income Housing Tax Credit Program.** – The appraisal for property tax purposes on multifamily residential rental property which is governed by section 42 of the Internal Revenue Code and which is subject to a recorded housing subsidy covenant that restricts tenant eligibility and rents shall, upon the affirmative request of the taxpayer, be determined under this section. A copy of the recorded land use restriction required by section 42 of the Internal Revenue Code or other low income rental use restriction covenant required by the New Hampshire housing finance authority, is sufficient proof that the property is eligible for assessment under this section.

I. To make an election for an appraisal of property subject to a housing covenant under the low-income housing tax credit program, the taxpayer shall, by October 1 preceding the tax year for which the election is sought, provide written notice to the municipality of the taxpayer's election to be assessed under this section, using a form prepared by the department of revenue administration. A property that as of April 1 of the tax year is under construction shall not be eligible to apply for assessment under this section.

II. When an election is made, the property shall be assessed under this section for the next 10 tax years, provided the property remains subject to the housing covenant under the low-income housing tax credit program. A property subject to assessment under this section shall not be granted property tax exemption under RSA 72:23.

III. A taxpayer who makes an election under this section shall, by April 15 of each applicable tax year, provide the assessor with the relevant information described in this

section, using a form prepared by the department of revenue administration.

IV. Financial information that is required from the taxpayer under this section shall be the audited financial statements from the prior calendar year as prepared by a third-party certified public accountant. For properties with financial data for part of the prior calendar year, the assessor shall use the partial data and the projected operating budget for the first full year of operations as provided by the New Hampshire housing finance authority to extrapolate a full year's estimated operation financials.

V. A taxpayer making an election under this section shall be liable for taxes on the property in an amount that is the greater of:

- (a) The taxes determined using the income approach under this section; or
- (b) The taxes in an amount equal to 10 percent of the actual rental income and other

income.

VI. The assessed value shall be calculated using an income approach whereby the net operating income is divided by the overall capitalization rate and, except when the municipality has updated its assessment values to equate to market values, multiplying that value by the previous year's equalization ratio.

VII. The assessed valuation of residential rental property subject to a housing covenant under the low-income housing tax credit program shall not take into consideration the value of intangible assets including, but not limited to, government subsidies or grants, below market rate mortgage financing, and tax credits where such subsidies are used to offset project development expenses in order to allow for restricted rents. The assessed valuation shall not take into consideration the actual cost of acquisition or construction of the project.

VIII. In this section:

(a) "Capitalization rate" means an overall capitalization rate comprised of:

(1) A market capitalization rate that is typical for the geographic area in which the property is located, as determined annually by March 31 by the commissioner of revenue administration, and as published by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a; and

(2) The municipality's previous year's equalized tax rate.

(b) "Collection loss" means the amount of actual uncollectible rents.

(c) "Net operating income" shall be calculated by subtracting from the potential gross income:

(1) The vacancy loss;

(2) The collection loss; and

(3) The operating expenses.

(d) "Operating expenses" means the actual ordinary and typical yearly expenses that are necessary to keep the property functional, including deposits to restricted reserve accounts required by the housing subsidy covenant or other legal restriction but excluding property taxes, mortgage debt service, and depreciation, incurred with respect to the property. Expenses for capital improvements, meaning improvements with an expected life exceeding 5 years as compared to yearly maintenance or work performed for unit turnover, shall not be considered operating expenses.

(e) "Other income" means income that is attributable to the real estate and is ordinary and recurring, such as laundry or vending income. Interest on restricted reserve funds shall be considered other income. For properties with nonresidential space that is or can

be rented as commercial space to third parties, market rent, considering any legal, market, or covenant restrictions, shall be attributed to such space and shall be considered as other income. Common area space within a property that are used primarily to benefit the property's residents or to provide services to the property's residents shall not be separately assessed and no income shall be imputed to such space.

(f) "Potential gross income" shall be calculated as follows:

(1) For units receiving assistance under a project-based rental subsidy contract, using the rents specified in the contract.

(2) For all other units subject to a legal restriction, using the maximum restricted rents allowed by the legal restrictions governing the rents of the units for the geographic area in which the property is located. Where multiple legal restrictions apply, the most restrictive shall be used. Maximum restricted rents shall be adjusted as appropriate using utility allowances for the geographic area in which the property is located, and as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

(3) For all non-restricted units in properties where only a portion of the units are subject to a legal restriction, using non-restricted rents as determined by the local market.

(4) Other income shall be included in potential gross income.

(g) "Restricted reserve funds" means funds that are required by the housing covenant under the low-income housing tax credit program and are restricted to specific uses, which shall be treated as follows:

(1) Actual payments into such funds shall be considered an operating expense; and

(2) Actual interest earned on such funds shall be considered other income.

(h) "Vacancy loss" means a deduction from the potential gross income that is calculated by multiplying the potential gross income for the rental units by the rental market vacancy rate for the geographic area in which the property is located, as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

(i) "Multifamily rental property" means the property described in the recorded land use restriction agreement.

IX. The commissioner of the department of revenue administration shall adopt rules pursuant to RSA 541-A concerning how capitalization rates shall be established, including a process for receiving public input prior to such establishment.

**Source.** 2008, 390:5, eff. July 1, 2008. 2010, 40:1-6, eff. June 30, 2010.

**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 1/2 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, eff. July 1, 2003. 2004, 195:2, eff. July 1, 2004 at 12:01 a.m; 195:3, eff. July 1, 2005 at 12:01 a.m. 2005, 257:2, eff. July 1, 2005 at 12:02 a.m. 2008, 173:15, eff. July 1, 2009.

**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 and, if there is an excess education tax payment due pursuant to RSA 198:46, directing them to assess the amount of the excess payment and pay it to the department of revenue administration for deposit in the education trust fund. Such sums shall be assessed at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

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; 1999, 338:4. 2000, 239:6. 2004, 195:1, eff. July 1, 2004 at 12:01 a.m. 2005, 96:1, eff. April 1, 2005. 2006, 6:4, eff. Feb. 10, 2006. 2008, 173:2, 15, eff. July 1, 2009.

**Section 76:9**

**76:9 Commissioner's Report. –** The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the education tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

**Source.** RS 10:3. CS 10:4. GS 12:3. GL 13:4. PS 14:4. PL 13:4. RL 20:4. 1999, 17:17, eff. April 29, 1999; 1999, 338:5, eff. Nov. 3, 1999. 2008, 173:15, eff. July 1, 2009.

**76:10 Selectmen's Lists and Warrant. –**

I. A list of all property taxes by them assessed shall be made by the selectmen under their hands, with a warrant under their hands and seal. The list shall be directed to the collector of such town, requiring the collector to collect the same, and to pay to the town treasurer such sums and at such times as may be therein prescribed. The selectmen shall assess such taxes to the owner as of April 1, or to the current owner, if known. The

selectmen of a town or the board of assessors of a city may round off to the nearest dollar the total tax due on each parcel appearing on the list.

II. If the municipal tax collector finds a discrepancy of 1/2 of one percent or more between the amount of the warrant as committed to the tax collector of the municipality and the total property tax commitment calculated by the commissioner of revenue administration, based on the pertinent information provided by the municipality under RSA 21-J:34, the collector shall return the warrant to the municipality's assessing officials for correction. If a correction cannot be made to generate a warrant with less than 1/2 of one percent discrepancy, the assessing officials shall submit a revised property summary inventory of valuation form as required under RSA 21-J:34, I, for recalculation of the tax rate by the commissioner of revenue administration. The municipality shall not issue property tax bills until such discrepancy is resolved. A copy of the signed warrant total page and an actual tax bill shall be submitted to the department of revenue administration by the tax collector.

**Source.** RS 43:8. CS 45:8. GS 53:8. GL 57:8. PS 59:7. 1903, 111:1. 1925, 61:3. PL 64:7. RS 77:7. RSA 76:10. 1983, 158:1; 440:1. 2003, 307:4, eff. July 1, 2003. 2008, 174:3, eff. Aug. 10, 2008. 2010, 262:5, eff. Sept. 4, 2010.

**76:15 Amendments of Inventories and Tax Lists.** – Inventories and tax lists already delivered to tax collectors shall be amended by selectmen or assessors to the extent of correcting errors or perfecting the description of certain property therein listed, upon application made to them by the tax collector prior to posting of the notice of a tax sale or tax lien in accordance with the provisions of RSA 80. Notice of such amendment to the inventory shall be sent by the selectmen or assessors, in writing and by registered mail, prior to the posting of the list of delinquent taxes by the tax collector but not more than 30 days prior to the posting, to the last known address of the owner or of the persons taxed.

**Source.** 1947, 111:1. RSA 76:15. 1969, 23:11. 1983, 135:2, eff. Aug. 6, 1983. 2010, 301:1, eff. Sept. 11, 2010.

**76:15-aa Quarterly Billing of Taxes in Certain Towns and Cities.** – Any city or town which has adopted an optional fiscal year may adopt a system for quarterly billing and collection of taxes as provided in RSA 76:15-b.

I. In a city or town that adopts the provisions of RSA 76:15-b, III, the first quarterly bill shall be due and payable (a) in a city or town that has adopted a charter under RSA 49-C or RSA 49-D, on April 1, or (b) in a town other than a town that has adopted a charter under RSA 49-D, on a date determined by the governing body not sooner than 30 days and not later than 45 days following the date of town meeting, during the 6-month conversion period prior to the fiscal year beginning on July 1. This bill shall be an amount based on 1/4 of the total previous year's complete city or town, school, and county levy. The entire amount collected on the first quarterly billing date, except for the county portion, shall be credited to the city or town to fund the 6-month conversion period budget as adopted by the legislative body.

(a) For the purposes of RSA 80:19, the assessment date for the tax bills due and

payable on April 1 of the year of conversion to quarterly tax billing shall be that same date of April 1.

(b) Thereafter, beginning with the newly adopted fiscal year beginning July 1, tax payments shall be due as provided in paragraph II.

II. In any city or town which has adopted both an optional fiscal year and quarterly billing, taxes shall be collected in the following manner:

(a) Tax payments shall be due July 1, October 1, January 2, and March 31 of each fiscal year to fund the optional fiscal year budget which is the basis upon which the tax rate shall be established by the department of revenue administration.

(b) A quarterly billing of the taxes to be due in any tax year shall be computed by taking the previous year's assessed valuation times the previous year's tax rate, as determined by the department of revenue administration, divided by 4; provided, however, that whenever it appears to the assessors that certain individual properties have changed in valuation, they may use the current year's appraisal times the previous year's tax rate divided by 4 to compute the quarterly payment. Quarterly payments of taxes assessed under this section shall be due and payable on July 1 and October 1. For the purpose of the quarterly payments, a list of assessed property shall be committed by the board of assessors with warrants under their hands and seal directed to the collector no later than May 15. The collector shall mail all the bills for the 2 quarterly payments no later than 30 days before their due dates. The collector shall receive such payments and credit the amount paid towards the amount of the taxes eventually assessed against the property.

(c) Payments of the remainder of the taxes, minus the 2 quarterly payments due on July 1 and October 1 of that year, shall be due and payable in 2 equal billings on January 2 and March 31. For the purpose of these final remaining quarterly payments, the assessor shall commit warrants to the collector. The collector shall mail all the bills for the 2 remaining tax payments no later than 30 days before their due dates. For purposes of RSA 76:16, RSA 76:16-a, and RSA 76:17, the "notice of tax" shall mean the date the board of tax and land appeals determines to be the last date of mailing of the January 2 quarterly tax bill, which bill is based on the current year's tax rate and assessments.

(d) For the purpose of establishing the real estate tax lien under the provisions of RSA 80:59, for the tax bills due and payable each year after the adoption of quarterly tax billing, the real estate of every person or corporation may be subject to the tax lien procedure by the collector, in case all taxes against the owner shall not be paid in full on or before April 1 next after its assessment.

III. If, subsequent to the collector issuing quarterly bills, the assessors are made aware of a change in ownership in a parcel so billed, the assessors shall amend the tax list and notify the collector, who, upon the request of the new owner, shall cause to be mailed to the new owner a statement of account showing the balance due on the current quarterly billing.

IV. Interest at the rate of 12 percent per annum shall be charged on all taxes not paid on or before their due dates or 30 days after mailing, whichever is later.

**Source.** 2004, 153:1, eff. July 23, 2004. 2010, 153:1, eff. June 14, 2010.

**78-A:3 Definitions.** – As used in this chapter:

I. "Commissioner" means the commissioner of revenue administration.

II. "Person" means any individual, combination of individuals, firm, partnership, society, association, joint stock company, corporation, or any of the foregoing acting in a fiduciary or representative capacity, whether appointed by court or otherwise.

III. "Hotel" means an establishment which holds itself out to the public by offering sleeping accommodations for rent, whether or not the major portion of its operating receipts is derived from sleeping accommodations. The term includes, but is not limited to, inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished room houses, boarding houses, private clubs, hostels, cottages, camps, chalets, barracks, dormitories, and apartments. The term does not include the following:

(a) A hospital licensed under RSA 151, or a sanitarium, convalescent home, nursing home, or home for the aged;

(b) Any establishment operated by any state or United States agency or institution, except the New Hampshire department of resources and economic development;

(c) An establishment owned by a nonprofit corporation or association operated exclusively for religious or charitable purposes, and which does not offer sleeping accommodations to the general public;

IV. "Operator" means any person operating a hotel, charging for a taxable meal, or receiving gross rental receipts, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

V. "Occupant" means any person who, for rent paid, uses, possesses, or has a right to use or possess any room in a hotel under any lease, concession, permit, right of access, license, or agreement. The term does not include a permanent resident.

VI. (a) "Occupancy" means the use or possession, or the right to the use or possession, of any room in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of a room.

(b) The term "occupancy" does not include:

(1) Occupancy by a permanent resident, or by an employee of an operator when the occupancy is granted to the employee as pay for his employment, or any occupancy furnished in a seasonal camp for children under the age of 18 years; or

(2) Occupancy at a facility or establishment owned or leased pursuant to a long-term agreement by an organization operated for educational purposes, which organization is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, but only if occupancy at such facility or establishment is provided:

(A) To students regularly attending the organization;

(B) To employees, faculty members or administrative officials of the organization, but only if occupancy at such facility or establishment is provided in connection with responsibilities performed for the organization;

(C) To volunteers providing services in connection with the organization; or

(D) To any person, but only if occupancy at such facility or establishment is provided pursuant to an activity which is related to educational purposes and the sponsor of such activity is an organization exempt from federal income taxation under section 501(c) of the Internal Revenue Code or the federal or state government or an

instrumentality thereof. The exemption provided by this subparagraph (b)(2)(D) shall not apply if occupancy at the facility or establishment is offered to the general public on a regular and continuous basis without regard to an activity which is related to educational purposes. For purposes of this subparagraph (b)(2)(D) "educational purposes" means:

(i) The instruction or training of an individual for the purpose of improving or developing the individual's capabilities;

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community; or

(iii) With respect to a specific educational organization, the conduct of alumni, student or athletic functions or events.

VII. "Permanent resident" means any occupant who has occupied any room in a hotel for at least 185 consecutive days.

VIII. "Rent" means:

(a) The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property, or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction of any kind; and

(b) Any monies received in payment for time-share rights at the time of purchase. Provided, however, that such money received shall not be considered rent and thus not taxable if a deeded interest is granted to the purchaser for his time-share rights.

(c) The term "rent" does not include:

(1) Rental charges for living quarters, sleeping, or household accommodations to any student necessitated by attendance at a school as defined in this section; or

(2) Rental charges for living quarters, sleeping or household accommodations necessitated by the partial or complete destruction of a person's permanent residence.

IX. "School" means an educational institution which has a regular faculty, curriculum, and organized body of pupils or students in attendance. No part of the earnings of the institution may inure to the benefit of any individual.

X. The following terms have the meaning as stated:

(a) "Meal" means any food or beverage, or both, prepared for human consumption and served by a restaurant, whether the food or beverage is served for consumption on or off the restaurant premises. The term "meal" includes food or beverages sold on a "take out" or "to go" basis, whether or not they are packaged or wrapped and whether or not they are taken from the premises of the restaurant. The term "meal" excludes any food or beverage wholly packaged off the premises except: (1) sandwiches of all kinds; (2) beverages in unsealed containers; and (3) catered meals or meals which are delivered to the location where the meal is consumed. Beverage includes an alcoholic beverage, served with or without food.

(b) "Restaurant" means an eating establishment where food, food products, or beverages including alcoholic beverages are served and for which a charge is made. The term includes, but is not limited to, a cafe, lunch counter, private or social clubs, cocktail lounges, hotel dining rooms, catering business, tavern, diner, snack bar, dining room, food vending machine, and any other eating place or establishment where meals are served, even if the serving of a meal is not the primary function of the establishment such as but not limited to convenience stores, gas stations, or supermarkets, but only as to the portion of such establishment that serves a "meal" as defined in this chapter. The term

includes eating establishments whether stationary or mobile, temporary or permanent.

(c) "Taxable meal" means any meal for which a charge is made that is purchased from a person in the business of operating a restaurant, and which is subject to a tax under RSA 78-A:6. The following are not taxable meals:

(1) Meals served or furnished on the premises of a nonprofit corporation or association organized and operated exclusively for religious or charitable purposes, in furtherance of any of the purposes for which it was organized; with the net proceeds of the meals to be used exclusively for the purposes of the corporation or association;

(2) Meals served or furnished by an organization operated for educational purposes, which organization is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, either directly through facilities owned and operated by such organization or indirectly through a catering or food service enterprise under contract with such organization, but only if such meals are served or furnished:

(A) To students regularly attending the organization;

(B) To employees, faculty members or administrative officers of the organization;

(C) To volunteers providing services in connection with the organization; or

(D) To persons other than individuals described in subparagraphs (c)(2)(A), (c)(2)(B), or (c)(2)(C), but only if the meals are served or furnished pursuant to an activity which is related to educational purposes and the sponsor of such activity is an organization exempt from federal income taxation under section 501(c) of the Internal Revenue Code or the federal or state government of an instrumentality thereof. For purposes of subparagraph (c)(2)(D), "educational purposes" means:

(i) The instruction or training of an individual for the purpose of improving or developing the individual's capabilities;

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community; or

(iii) With respect to a specific educational organization, the conduct of alumni, student or athletic functions or events.

(E) The exemptions provided by subparagraphs (c)(2)(B) and (c)(2)(D) shall not apply if the meals are served or furnished at a location where meals are offered to the general public on a regular and continuous basis without regard to an activity which is related to educational purposes.

(3) Meals served or furnished on the premises of any institution of the state, political subdivision of the state, or of the United States, to inmates and employees of the institutions;

(4) Meals served or furnished on the premises of a hospital and served in any hospital licensed under RSA 151, except for meals sold in any restaurant which offers its accommodations to the public, or of a sanitarium, convalescent home, nursing home, or home for the aged;

(5) Meals furnished by any person while transporting passengers for hire by train, bus, or airplane if furnished on any train, bus, or airplane;

(6) Meals furnished by any person while operating a seasonal camp for children under the age of 18 years, to the campers under the age of 18, and to employees, but to no others;

(7) Meals prepared and sold by nonprofit organizations other than educational

institutions. However, if the nonprofit organization is required to have a license issued by the liquor commission other than licenses issued pursuant to RSA 178:22, V(1) for 3 or fewer days per year, the meals are taxable meals;

(8) Meals furnished to any employee of an operator as pay for his employment.

(9) Dispensing of a beverage by a single serving beverage machine where not used in conjunction with other food vending machines such as, but not limited to, commissaries. A single serving beverage machine used to dispense a beverage consumed in conjunction with a meal under the definition of restaurant shall, as to the beverage being dispensed, constitute a taxable meal;

(10) In accordance with the Food Security Act of 1985, meals purchased with food stamp coupons issued under the Food Stamp Act of 1977, as amended; provided, however, that when a meal is purchased in part with food stamp coupons, then only that part of the meal purchased with food stamp coupons is not a taxable meal.

XI. [Repealed.]

XII. "Gratuity" means a gift of money in return for a service.

XIII. "Electronic data submission" means the use of either the telephone or computer to transmit information.

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway that is required by law to be registered for operation on public highways.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

(a) Separately stated charges for insurance;

(b) Charges for damages to the motor vehicle occurring during the rental agreement period;

(c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

**Source.** 1967, 213:1; 409:1-4. 1969, 287:3-8. 1971, 397:1. 1973, 544:11, XVIII. 1979, 272:1, 2. 1981, 324:1, 2. 1986, 1:2, 3. 1987, 189:1. 1990, 255:5. 1993, 174:1, eff. July 1, 1993; 224:2-5. 1995, 80:1, eff. July 1, 1995. 1996, 53:1, eff. July 1, 1996. 1997, 132:1, eff. July 1, 1997. 1999, 17:24, 25, eff. July 1, 1999; 303:2, eff. July 16, 1999. 2002, 232:16, eff. May 1, 2002. 2003, 61:1, eff. July 1, 2003; 231:1, eff. July 1, 2003 at 12:01 a.m. 2009, 144:5, eff. July 1, 2009. 2010, 6:1, eff. May 3, 2010.

**78-B:1-a Definitions.** – In this chapter:

I. "Commissioner" means the commissioner of the department of revenue administration.

II. "Contractual transfer" means a bargained-for exchange of all transfers of real estate or an interest therein, including but not limited to:

- (a) From a shareholder to a corporation in which he holds an interest; or
- (b) From a partner to the partnership in which he holds an interest; or
- (c) From any other interest holder to an organization in which he owns an interest; or
- (d) From an individual to a business entity; or
- (e) From a corporation to its shareholder(s); or
- (f) From a partnership to its partners; or
- (g) From any entity to the interest holders in that entity.

III. "Noncontractual transfer" means a transfer which satisfies the 3 elements of a gift transfer:

- (a) Donative intent;
- (b) Actual delivery; and
- (c) Immediate relinquishment of control.

IV. "Price or consideration" means the amount of money, or other property and services, or property or services valued in money which is given in exchange for real estate, and measured at a time immediately after the transfer of the real estate. The value of such consideration in contractual transfers where the property exchanged includes the surrender of rights or choses-in-action by the transferee, including the surrender of shareholder or beneficial interest holder rights in liquidation of a corporation or other entity, the forgiveness of an obligation owed to the transferee, or the assumption of an obligation by the transferee, shall be no less than the fair market value of the real estate or interest in such real estate as determined by the department pursuant to RSA 78-B:9, III; except that in the case of a deed given in lieu of a foreclosure, the value of such consideration shall be the amount by which the debt of the obligor secured by the real estate or interest in the real estate is reduced plus the amount of such debt which is assumed by the transferee in exchange for the real estate, if any.

V. "Sale, granting and transfer" means every contractual transfer of real estate, or any interest in real estate from a person or entity to another person or entity, whether or not either person or entity is controlled directly or indirectly by the other person or entity in the transfer. Transfers of interests in real estate holding companies holding real estate or holding interests in real estate, transfer of which would be taxable under this chapter if transferred directly, shall be taxable as transfers under this chapter to the extent of the fair market value of the real estate. Transfers of interests in an entity that holds, either directly or indirectly, an interest in a real estate holding company shall be considered to be a transfer of an interest in the real estate holding company to the extent of the ownership interest of the entity in the real estate holding company.

VI. "Real estate holding company" means an organization which is engaged principally in owning, holding, selling, or leasing real estate and which owns real estate or an interest in real estate within the state.

**Source.** 1989, 197:2. 1992, 203:1. 1993, 111:1. 1997, 351:33, 34, eff. July 1, 1997. 2006, 149:1, eff. July 1, 2006. 2009, 144:268, eff. July 1, 2009.

#### **78-B:8 Administration. –**

I. This chapter shall be administered by the commissioner of revenue administration.

The commissioner may adopt rules, pursuant to RSA 541-A, relative to the administration of this chapter. The commissioner shall recommend the amount of bond for each register of deeds. The cost of such bond shall be paid by the state as an expense of administering this chapter. Each register of deeds, or county if the register of deeds is on a salary basis, shall be paid for his services 4 percent of the face value of the stamps or other approved indicia of payment of the tax sold in his registry. Such payment for services shall be made prior to remitting all taxes collected, and shall be deducted from the remittance made in paragraph II. A sum sufficient to pay each register of deeds for his services pursuant to this section is hereby continually appropriated. The governor is authorized to draw his warrant for the payment thereof out of any funds in the treasury not otherwise appropriated.

II. Following payment for his services in paragraph I, each register of deeds shall remit the taxes so collected, minus payment for his services, to the department monthly or more often. All funds received from the sale of stamps and other approved indicia shall be credited to the department for administering this chapter and shall not lapse, but whenever the amount available exceeds \$12,000, the excess shall be paid over to the state treasurer.

[Paragraph III repealed by 2007, 263:48, effective July 1, 2018.]

III. The commissioner shall administer the provisions of RSA 478:17-g, I-a with the same authority as this chapter.

**Source.** 1967, 320:1. 1973, 544:11, XX. 1975, 439:11. 1981, 128:26. 1985, 158:1. 1988, 38:2. 1994, 158:7, eff. May 23, 1994. 2007, 263:46, eff. July 1, 2008; 263:48, eff. July 1, 2018.

**79-A:2 Definitions.** – In this chapter:

I. "Assessing official" means the assessing authority of any town, city or place.

II. "Board" means the current use board established by RSA 79-A:3.

III. "Board of tax and land appeals" means the board of tax and land appeals established pursuant to the provisions of RSA 71-B:1.

IV. "Commissioner" means the commissioner of the department of revenue administration.

V. "Current use value" means the assessed valuation per acre of open space land based upon the income-producing capability of the land in its current use solely for growing forest or agricultural crops, and not its real estate market value. This valuation shall be determined by the assessor in accordance with the range of current use values established by the board and in accordance with the class, type, grade and location of land.

VI. "Farm land" means any cleared land devoted to or capable of agricultural or horticultural use as determined and classified by criteria developed by the commissioner of agriculture, markets, and food and adopted by the board.

VII. "Forest land" means any land growing trees as determined and classified by criteria developed by the state forester and adopted by the board. For the purposes of this paragraph, the board shall recognize the cost of responsible land stewardship in the

determination of assessment ranges.

VIII. "Land use change tax" means a tax that shall be levied when the land use changes from open space use to a non-qualifying use.

IX. "Open space land" means any or all farm land, forest land, or unproductive land as defined by this section. However, "open space land" shall not include any property held by a city, town or district in another city or town for the purpose of a water supply or flood control, for which a payment in place of taxes is made in accordance with RSA 72:11.

X. "Owner" means the person who is the owner of record of any land.

XI. "Person" means any individual, firm, corporation, partnership or other form of organization or group of individuals.

XII. "Soil potential index" means the production capability of land as determined by the United States Natural Resources Conservation Service.

XIII. "Unproductive land" means land, including wetlands, which by its nature is incapable of producing agricultural or forest products due to poor soil or site characteristics, or the location of which renders it inaccessible or impractical to harvest agricultural or forest products, as determined and classified by criteria developed by the board. The board shall develop only one category for all unproductive land, setting its current use value not to exceed that of the lowest current use value established by the board for any other category.

XIV. "Wetlands" means those areas of farm, forest and unproductive land that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**Source.** 1973, 372:1. 1974, 7:1. 1976, 47:14. 1981, 561:5. 1988, 5:1. 1991, 281:3. 1995, 130:5; 206:2. 1996, 176:3, eff. Aug. 2, 1996. 2006, 103:1, eff. July 8, 2006. 2010, 237:1, eff. April 1, 2010.

#### **79-A:7 Land Use Change Tax. –**

I. Land which has been classified as open space land and assessed at current use values on or after April 1, 1974, pursuant to this chapter shall be subject to a land use change tax when it is changed to a use which does not qualify for current use assessment.

Notwithstanding the provisions of RSA 75:1, the tax shall be at the rate of 10 percent of the full and true value determined without regard to the current use value of the land which is subject to a non-qualifying use or any equalized value factor used by the municipality or the county in the case of unincorporated towns or unorganized places in which the land is located. Notwithstanding the provisions of RSA 76:2, such assessed value shall be determined as of the actual date of the change in land use if such date is not April 1. This tax shall be in addition to the annual real estate tax imposed upon the property, and shall be due and payable upon the change in land use. Nothing in this paragraph shall be construed to require payment of an additional land use change tax when the use is changed from one non-qualifying use to another non-qualifying use. The tax imposed by this section is a tax on the change of use of the land and not a tax on the land itself. The property tax exemptions under RSA 72:23 shall not apply to the land use change tax and no person or entity shall be exempt from payment of the land use change

tax.

I-a. Land which is classified as open space land and assessed at current use values shall be assessed at current use values until a change in land use occurs pursuant to RSA 79-A:7, IV, V, or VI.

II. The land use change tax shall be due and payable by the owner, or by the responsible party pursuant to RSA 79-A:7, VI(e), at the time of the change in use to the town or city in which the property is located. If the property is located in an unincorporated town or unorganized place, the tax shall be due and payable by the owner or responsible party at the time of the change in use to the county in which the property is located. Moneys paid to a county from the land use change tax shall be used, in addition to any other funds, to pay for the cost of the services provided in RSA 28:7-a and 7-b.

The land use change tax shall be due and payable according to the following procedure:

(a) The commissioner shall prescribe and issue forms to the local assessing officials for the land use change tax bill which shall provide a description of the property which is subject to a non-qualifying use, the RSA 75:1 full value assessment, and the tax payable.

(b) The prescribed form shall be prepared in quadruplicate; the original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the land use change tax along with a special tax warrant authorizing the collector to collect the land use change tax assessed under the warrant; the quadruplicate copy of the form shall be retained by the local assessing officials for their records.

(c) Upon receipt of the land use change tax warrant and the prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice thereof. Such bill shall be mailed, at the latest, within 18 months of the date upon which the local assessing officials receive written notice of the change of use from the landowner or his or her agent, or within 18 months of the date the local assessing officials actually discover that the land use change tax is due and payable. Upon receipt of payment, but except for proceedings under RSA 79-A:7, VI(e), the collector shall forward the original tax bill to the register of deeds of the county in which the land is located for the purpose of releasing recorded contingent liens required under RSA 79-A:5, VI. The tax bill shall state clearly whether all, or only a portion, of the land affected by the notice of contingent lien is subject to release. The recording fee charged by the register of deeds shall be paid by the owner of the land in accordance with the fees to which the register of deeds is entitled under RSA 478:17-g, I.

(d) Payment of the land use change tax, together with the recording fees due the register of deeds, shall be due not later than 30 days after mailing of the tax bills for such tax, and interest at the rate of 18 percent per annum shall be due thereafter on any taxes not paid within the 30-day period.

(e) All land use change tax assessments levied under this section shall, on the date of the change in use, create a lien upon the lands on account of which they are made and against the owner of record of such land or against the responsible party pursuant to RSA 79-A:7, VI(e). Furthermore, such liens shall continue for a period of 18 months following the date upon which the local assessing officials receive written notice of the change of use from the landowner or his agent, or the date the local assessing officials actually discover that the land use change tax is due and payable, and such assessment shall be subject to statutory collection proceedings against real estate as prescribed by RSA 80.

(f) Thereafter, the land which has changed to a use which does not qualify for current

use assessment shall be taxed at its full RSA 75:1 value. The land shall again become eligible for current use assessment if it meets the open space criteria established by the board under RSA 79-A:4, I.

III. Whenever land of nonuniform value shall be subject to the land use change tax under this section, or whenever the full value assessment for the land subject to the tax shall not be readily available then the local assessing officials shall assess the RSA 75:1 full value of such land and the land use change tax shall be paid upon such assessed value.

IV. For purposes of this section land use shall be considered changed and the land use change tax shall become payable when:

(a) Actual construction begins on the site causing physical changes in the earth, such as building a road to serve existing or planned residential, commercial, industrial, or institutional buildings; or installation of sewer, water, electrical or other utilities or services to serve existing or planned residential, commercial, industrial, institutional or commercial buildings; or excavating or grading the site for present or future construction of buildings; or any other act consistent with the construction of buildings on the site; except that roads for agricultural, recreational, watershed or forestry purposes are exempt.

(b) Topsoil, gravel or minerals are excavated or dug from the site; except:

(1) Removal of topsoil in the process of harvesting a sod farm crop in amounts which will not deplete the topsoil; and

(2) Removal of gravel and other materials for construction and maintenance of roads and lands for agricultural and forestry purposes within the qualifying property of the owner or, with the approval of local authorities, to other qualifying property of the owner.

Sale of excavated materials shall constitute a land use change of the property from which the material was excavated. The site shall be reclaimed when the construction or maintenance project is completed to mitigate environmental and aesthetic effects of the excavation. Both project completion time and acceptability of reclamation shall be determined by local authorities. The owner shall keep local officials informed in writing of plans to remove and use of soil material from qualifying lands for purposes of this subparagraph and to assure conformance with any local ordinances, as well as plans for reclamation of the site. Fully reclaimed land shall be eligible for current use assessment if it meets open space criteria established by the board under RSA 79-A:4, I, whether or not such land was under current use assessment prior to the excavation.

(c) By reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

V. The amount of land which has changed to a use which does not qualify for current use assessment and on which the land use change tax shall be assessed in the circumstances delineated in RSA 79-A:7, IV shall be according to rules adopted pursuant to RSA 541-A by the chairman of the board, based upon the recommendation of the board. Except in the case of land which has changed to a use which does not qualify for current use assessment due to size, only the number of acres on which an actual physical change has taken place shall become subject to the land use change tax, and land not physically changed shall remain under current use assessment, except as follows:

(a) When a road is constructed or other utilities installed pursuant to a development plan which has received all necessary local, state or federal approvals, all lots or building

sites, including roads and utilities, shown on the plan and served by such road or utilities shall be considered changed in use, with the exception of any lot or site, or combination of adjacent lots or sites shown thereon which are under the same ownership, and large enough to remain qualified for current use assessment; provided, however, that if any physical changes are made to the land prior to the issuance of any required local, state or federal permit or approval, or if such changes otherwise violate any local, state or federal law, ordinance or rule, the local assessing officials may delay the assessment of the land use change tax until any and all required permits or approvals have been secured, or illegal actions remedied, and may base the land use change tax assessed under RSA 79-A:7 upon the land's full and true value at that later time.

(b) When land is required to remain undeveloped to satisfy density, setback, or other local, state, or federal requirements as part of the approval of a plan of a contiguous development area, such land shall be considered changed to a use which does not qualify for current use assessment at the time any portion of such development area is physically changed to a non-qualifying use. However, application of the land use change tax to such development area shall continue to be in accordance with subparagraph (a).

(c) When a road is constructed or utilities installed pursuant to a condominium development plan, only the development area shall be removed from current use along with the percentage interest in the open space land assigned to the unit or units within that development area.

VI. For purposes of this section, land use shall not be considered changed and the land use change tax shall not be assessed when:

(a) Land under current use is taken by eminent domain or any other type of governmental taking which would cause the use change penalty to be invoked because, by reason of an actual physical change or by reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

(b) Land abutting a site taken by eminent domain or any other governmental taking upon which construction is in progress is used to stockpile earth taken from the construction site. Stockpiled earth may be removed at a later date after written notification to the appropriate local official.

(c) Land accorded current use assessment in one category is changed in use to any other qualifying category.

(d) Land under current use assessment is eligible for conservation restriction assessment pursuant to RSA 79-B. Such land shall then be allowed to change from current use assessment to conservation restriction assessment with no land use change tax being applied.

(e) A road is constructed on an existing right-of-way on current use land solely for the purpose of access to an adjoining lot where the owner of the land in current use does no other activity changing the use of the land under this section and does not share any ownership interest in the adjoining lot. Provided, however, and notwithstanding any other provision of law to the contrary, that if such road construction on an existing right-of-way would constitute a change in use if done by the owner of the land in current use, then the owner of such adjoining property utilizing the road for access shall be responsible for and shall be assessed the land use change tax penalty as provided for in this section.

Enforcement and collection proceedings shall be applied to the party responsible for the payment of the penalty under this subparagraph.

VII. When land which is accorded current use assessment in one category is changed in use to any other qualifying category as provided in subparagraph VI(c), the owner of the land shall notify the local assessing officials in writing of the change in use at the time that the change in use is made. If a land owner fails to provide the notice required under this paragraph, he may be fined not more than \$50 at the discretion of the town or city.

**Source.** 1973, 372:1. 1974, 7:9. 1975, 197:3. 1977, 326:1, 2. 1979, 485:1, 3. 1981, 465:19. 1982, 33:1, 3. 1985, 88:1; 125:1; 227:1, 2. 1989, 50:7; 266:5, 6. 1991, 281:11-17. 1993, 205:2, eff. Aug. 8, 1993. 2006, 209:1, 2, eff. July 1, 2006. 2009, 84:1, 2, eff. July 1, 2009. 2010, 237:2-4, eff. April 1, 2010.

**80:19-a Environmental Investigation.** – Prior to or in connection with the tax lien procedures and the tax sale procedures of RSA 80, a municipality, county or state may, at its option, on its own behalf or through its agents, enter upon the property subject to tax lien or tax sale for the purpose of conducting an environmental site assessment or environmental audit, if it gives notice of same, in the manner provided by RSA 80:38-a, to the current owner of record at least 30 days prior to entering the property or such shorter period of time as consented to by the owner after receiving such notice.

**Source.** 1994, 199:1, eff. July 23, 1994. 2008, 64:1, eff. July 20, 2008.

**80:52-c Electronic Payment.** – The governing body may authorize the municipality's treasurer or other appropriate municipal official to accept payment of local taxes, charges generated by the sale of utility services, or other fees or charges by use of a credit card, debit card, or such other means of electronic transaction as approved by the governing body. Any municipality may add to the amount due, in addition to any penalties and interest payable, a service charge for the acceptance of the credit card, debit card, or such other means of electronic transaction as approved by the governing body. The municipality, at the time of billing, shall disclose the amount of the service charge.

**Source.** 1994, 2:2. 1995, 137:4, eff. May 24, 1995. 2001, 78:2, eff. Aug. 18, 2001. 2009, 37:1, eff. July 14, 2009.

**80:64 Report of Tax Lien.** – Each tax collector, within 30 days after executing the tax lien to the municipality, county, or state, shall deliver or forward to the register of deeds for the county in which the real estate is situated a statement of the following facts relating to each parcel of real estate subject to lien, certified by the tax collector under oath to be true; the name of the current owner, if known, or the person against whom the tax was assessed and a description of the property as it appeared on the tax list committed to the tax collector; the total amount of each tax lien, including taxes, interest, fees and costs incident to the tax lien process and making reports thereof to the register of deeds; the date and place of the execution of the tax lien, all of which shall be recorded and indexed by the register of deeds in an acceptable recording method.

**Source.** 1987, 322:1, eff. Jan. 1, 1988. 2005, 140:1, eff. Aug. 16, 2005. 2008, 322:2, eff. Aug. 31, 2008. **80:74 Record to be Kept by Register of Deeds.** – The register of deeds

shall record all the facts reported to the register of deeds under RSA 80:64, 70, 75 and 76, and any other facts required to be reported by the tax collectors of his or her county in an acceptable recording method. He or she shall keep an index thereof showing the location of the property and the names of the owners to whom taxed, the names of delinquents, the holder of the real estate tax lien, and the names of those who pay delinquent taxes or redeem from the real estate tax lien. The index may be the same as that for other records in the office or a separate one, as each register shall determine. All documents received by the register from the tax collector shall be returned to the tax collector within 30 days.

**Source.** 1987, 322:1, eff. Jan. 1, 1988. 2008, 322:3, eff. Aug. 31, 2008.

**80:79 Return of Reports.** – Whenever a tax collector, under the provisions of RSA 80:62, 64, 70, 74, 75, or 76 shall make a return or a report to the register of deeds of an execution of the real estate tax lien, subsequent tax payment, redemption payment, collector's deed, or discharge of a tax lien for any reason, the register of deeds shall cause the time of his or her receipt thereof to be stamped or written upon said report or certificate and shall, after entering the same in the registry records, return it to the tax collector as provided in RSA 80:74.

**Source.** 1987, 322:1, eff. Jan. 1, 1988. 2008, 322:4, eff. Aug. 31, 2008.

## **Manufactured Housing**

**205-A:2 Prohibition.** – No person who owns or operates a manufactured housing park shall:

I. Require any person as a precondition to renting, leasing or otherwise occupying a space for manufactured housing in a manufactured housing park to pay an entrance or other fee in an amount greater than the equivalent of 3 months' rent for said space provided that in no event shall any fee of any kind be charged unless for services actually rendered.

II. Deny any resident of a manufactured housing park the right to sell at a price of such resident's own choosing said resident's manufactured housing within the park or require the resident or purchaser to remove the manufactured housing from the park on the basis of the sale thereof. A resident of a manufactured housing park may place no more than 2 "for sale" signs on or in the manufactured housing for the purpose of selling the home. The park owner or operator may reserve the right to approve the purchaser of the manufactured housing as a tenant, but such approval may not be unreasonably withheld. The park owner or operator may require as a condition of said permission that the purchaser and the purchaser's household meet the current rules of the park. In connection with the sale of a tenant's manufactured housing, the park owner or operator shall not:

(a) Make any rule or enter into a contract, which shall abrogate or limit the tenant's right to place "for sale" signs on or in the tenant's manufactured housing; provided, however, the park owner or operator may by rule or contract provision impose reasonable limitations as to size, quality, registration of such signs, requirements that the posting of

such signs be pursuant to bona fide efforts to sell, and removal when the home is no longer being offered for sale. No such limitation as to size or quality shall restrict the use of a painted or printed sign which is 216 square inches or less in size and which contains no more than the words "for sale", along with the name, address and telephone number of the seller, or the name, address, and telephone number of the seller's agent or representative;

(b) Charge a commission or fee with respect to the price realized by the seller unless the park owner or operator has acted as an agent for the manufactured housing owner pursuant to a written contract;

(c) Require the purchaser to provide the names of more than 3 references from whom the park owner or operator can seek information concerning the behavior and financial reliability of the purchaser; nor shall the purchaser be required to obtain a written report from any such reference;

(d) For a period of 3 years after the implementation of a rule restricting occupancy, refuse to approve the on-site sale of manufactured housing to any person on the basis of age or family status unless such a restriction on occupancy was included in the rules or lease or rental agreement at the time the seller commenced tenancy in the park.

(e) Impose a non-refundable fee for processing an application for tenancy that exceeds \$125, unless the park owner provides the applicant with an itemized breakdown of the application fee. An application fee may exceed \$125, provided that it is reasonable.

(f) If the park rules require a pre-sale inspection of the home, fail to provide written notice to the park tenant, within 14 calendar days of receiving written notification from the tenant that he or she is going to attempt to sell his or her home in place, of all repairs and improvements that the park owner requires in order to approve the sale. If the park rules do not require a pre-sale inspection of the home and the tenant makes a written request for a specification of the repairs and improvements that the park owner requires for approval of an on-site sale, the park owner shall have 14 days to provide a written list of the required repairs and improvements. The park owner's response to the tenant is valid for 90 days after which time if a sale has not been completed, the park owner may require additional improvements or repairs of any defective conditions which have arisen since the park owner's initial response. The park owner may not require:

(1) The repair or removal of anything inside the home that does not adversely affect the infrastructure of the park.

(2) Compliance with an aesthetic standard if the standard relates to physical characteristics, such as size, original construction materials or color; provided however that nothing in this subparagraph shall prevent a park owner from requiring compliance with aesthetic standards related to maintenance or repairs of deteriorating or defective features of the home, or the removal of a structure or fixture which was added to the home by the seller without the permission of the park owner.

(g) Fail to provide written notice to the prospective buyer, within 14 calendar days of receipt of the prospective buyer's completed application for tenancy, setting forth the reason for the park owner's refusal to approve or indicating the park owner's approval of the prospective buyer as a park tenant. If the prospective buyer is denied the park owner shall, upon request of the seller, send a notice of the denial to the seller that does not disclose the reason therefor.

III. Require manufactured housing at the time of sale or otherwise, which is safe,

sanitary and in conformance with aesthetic standards, if any, of general applicability contained in the rules, to be removed from the park. For the purposes hereof, manufactured housing shall be presumed to be safe if it is established that the manufactured housing was constructed to any nationally recognized building or construction code or standard. Failure to meet any such standard or code, in and of itself, shall raise no presumption that the manufactured housing is unsafe; nor may such failure be used as a reason for withholding approval of an on-site sale. The park owner or operator shall have the burden of showing that manufactured housing is unsafe, unsanitary, or fails to meet the aesthetic standards of the park. No aesthetic standard shall be applied against manufactured housing if such standard relates to physical characteristics, such as size, original construction materials or color.

IV. Require any tenant to purchase any goods or services, including but not limited to fuel oil, paving, snow plowing, dairy products, laundry services, bakery products, or food products, from any particular person or company. The park owner or operator may require skirting on the manufactured housing and may make rules governing the size and number of out-buildings and additions; but in such case, must provide the tenant with reasonable options as to the type of materials and construction. The park owner or operator may also impose reasonable conditions relating to central fuel and gas metering systems in the park; provided that if such conditions are imposed, the charges for such goods or services shall not exceed the average prevailing price in the locality for similar goods and services.

V. Prevent any person or company from selling to or delivering to or otherwise supplying and servicing any tenant with goods or services, or make any charge or request any fee from any such person or company for such activities; provided, that a park owner or operator may prohibit or regulate the soliciting or peddling of sales, goods or services within the park premises.

VI. Require any tenant, or person seeking space in the manufactured housing park, to purchase manufactured housing from any particular person unless the person designated is the park owner or operator and the requirement is imposed only in connection with the initial leasing or renting of a newly-constructed lot or space not previously leased or rented to any other person.

VII. Fail to disclose to each prospective tenant, in writing and a reasonable time prior to the entering into of any rental agreement, all terms and conditions of the tenancy, including rental, utility, entrance and service charges.

VIII. Make or attempt to enforce any rule which:

(a) Establishes an additional charge or increased rental payments, directly or indirectly, for persons under the age of 18 residing in manufactured housing. The park owner or operator may make reasonable rules governing the number of adults or total number of persons permitted to reside in manufactured housing and may charge an amount not to exceed \$10 per adult per month where the number of adults residing in manufactured housing exceeds the limit established by such rules.

(b) Requires a tenant to get prior permission of the park owner or operator before an overnight guest can stay in the park; provided, however, a park owner or operator may require prior permission for any guest who stays longer than 30 days, which permission shall not be unreasonably withheld.

(c) Imposes a charge for pets, unless the park owner or operator establishes that

services are rendered and expenses are actually incurred because of the existence of such pets; provided that the park owner or operator may make rules, which at the time of implementation, affect only new tenants and the addition of pets by current park residents, governing the number or type of pets per site and providing for a penalty, after 30 days notice, of not more than \$10 per month for each violation of such rules. Nothing herein shall be construed as requiring a park owner or operator to permit pets, other than those which remain entirely within the manufactured housing and normally require no outside facilities.

(d) Requires a tenant to sell or otherwise dispose of any personal property, fixture, or pet which the tenant had prior permission from the park owner or former park owner to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park.

IX. Charge or attempt to charge a tenant for repair or maintenance to any underground system, such as oil tanks, or water, electrical or septic systems, for causes not due to the negligence of the tenant or transfer or attempt to transfer to a current tenant responsibility for such repair or maintenance to the tenant by gift or otherwise of all or part of any such underground system.

X. Fail to provide each tenant with the name, address and telephone number of a manager or agent who resides within 10 miles of the park, if the park owner or operator does not reside within 25 miles of the park, which manager or agent shall:

(a) Be reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily to receive reports of the need for emergency repairs within the park;

(b) Be authorized to make or contract emergency repairs without specific authorization from the park owner or operator; and

(c) Be authorized to make or contract to make necessary non-emergency repairs if the park owner or operator cannot be reached within a reasonable amount of time.

XI. Fail to provide each person who applies to be a tenant of the park with a written copy of the rules of said manufactured housing park. Said rules shall set forth the terms and conditions of the tenancy and shall contain the following notice at the top of the first page printed in capital typewritten letters or in 10 point bold face print:

### **IMPORTANT NOTICE REQUIRED BY LAW**

**THE RULES SET FORTH BELOW GOVERN THE TERMS OF YOUR RENTAL AGREEMENT WITH THIS MANUFACTURED HOUSING PARK. THE LAW REQUIRES ALL RULES OF THIS PARK TO BE REASONABLE. NO RULE MAY BE CHANGED WITHOUT YOUR CONSENT UNLESS THIS PARK GIVES YOU 90 DAYS ADVANCE NOTICE OF THE CHANGE.**

**SUBJECT TO THE TERMS OF ANY WRITTEN LEASE AGREEMENT, YOU MAY CONTINUE TO STAY IN THIS PARK AS LONG AS YOU PAY YOUR RENT AND ANY OTHER LAWFUL CHARGES, FOLLOW THE RULES OF THE PARK AND APPLICABLE LOCAL, STATE AND FEDERAL LAW, DO NOT DAMAGE PARK PROPERTY AND DO NOT REPEATEDLY BOTHER OTHER TENANTS IN THE PARK. YOU MAY BE EVICTED FOR**

**NONPAYMENT OF RENT, BUT ONLY IF YOU FAIL TO PAY ALL RENT DUE WITHIN 30 DAYS AFTER YOU RECEIVE WRITTEN NOTICE THAT YOU ARE BEHIND IN YOUR RENT.**

**YOU MAY ALSO BE EVICTED FOR NOT FOLLOWING THE RULES OF THIS PARK, BUT ONLY IF THE RULES ARE REASONABLE, YOU HAVE BEEN GIVEN WRITTEN NOTICE OF YOUR FAILURE TO FOLLOW THE RULES, AND YOU THEN CONTINUE TO BREAK THE RULES. YOU MAY NOT BE EVICTED FOR JOINING A TENANT ORGANIZATION.**

**IF THIS PARK WISHES TO EVICT YOU, IT MUST GIVE YOU 60 DAYS ADVANCE NOTICE, EXCEPT IF YOU ARE BEHIND IN YOUR RENT, IN WHICH CASE ONLY 30 DAYS NOTICE IS REQUIRED. THE EVICTION NOTICE MUST GIVE YOU THE REASON FOR THE PROPOSED EVICTION.**

**YOU HAVE THE RIGHT TO SELL YOUR HOME IN PLACE TO ANYONE AS LONG AS THE BUYER AND HIS HOUSEHOLD MEET THE RULES OF THIS PARK. YOU MUST NOTIFY THE PARK IF YOU INTEND TO SELL YOUR HOME. FAILURE TO DO SO MAY MEAN THAT THE BUYER WILL BE REQUIRED TO MOVE THE HOME FROM THE PARK.**

**COPIES OF THE LAW UNDER WHICH THIS NOTICE IS REQUIRED, RSA 205-A, MAY BE OBTAINED FROM THE CONSUMER PROTECTION AND ANTITRUST BUREAU OF THE ATTORNEY GENERAL'S OFFICE, 33 CAPITOL STREET, CONCORD, NEW HAMPSHIRE 03301 OR MAY BE ACCESSED FROM THE GENERAL COURT WEBSITE FOR THE STATE OF NEW HAMPSHIRE.**

XII. Fail to respond to a written request of the consumer protection and antitrust bureau of the department of justice by not mailing or delivering a copy of the current park rules to the bureau within 7 days of receipt of the request. The bureau shall send the request by certified or registered mail. Failure to comply with this paragraph shall not constitute a defense to a possessory action.

**Source.** 1973, 291:1. 1974, 19:1-4. 1977, 144:1. 1979, 171:1. 1981, 481:1. 1983, 230:18. 1988, 231:1-3, eff. June 29, 1988. 1996, 127:2-4, eff. July 20, 1996. 2004, 150:1, 2 eff. Jan. 1, 2005. 2009, 195:1, eff. Jan. 1, 2010.

## **Property Management**

### **540:1-b Landlord's Agent Required. –**

I. An owner of restricted property, as defined in RSA 540:1-a, II, who resides within the state of New Hampshire shall, within 30 days of becoming the owner or within 30 days of the effective date of this section, whichever occurs later, file a statement with the town or city clerk of the municipality in which the property is located that provides the name, address, and telephone number of a person within the state who is authorized to accept service of process for any legal proceeding brought against the owner relating to the restricted property. Such person authorized to accept service may be the owner of the premises.

II. An owner of restricted property who resides outside the state of New Hampshire shall, within 30 days of becoming the owner or within 30 days of the effective date of this section, whichever occurs later, file a statement with the town or city clerk of the municipality in which the property is located that provides the name, address, and telephone number of a person within the state who is authorized to accept service of process for any legal proceeding brought against the owner relating to the restricted property.

III. In any legal proceeding in which the property owner resides out of state and said owner fails to: (a) comply with paragraph II, and (b) appear in said proceeding, service of process pursuant to RSA 510:4 shall create a rebuttable presumption that such service was lawful and adequate. As used in this section the term "legal proceeding" includes, but is not limited to, any action at law or in equity or for the enforcement of any provision of RSA 48-A:14, or any housing code adopted by a municipality pursuant to RSA 48-A, or for the enforcement of any municipal health code, building code, or fire or life safety code. A municipality may establish a reasonable filing fee to cover the cost to the town or city clerk of maintaining a record of the filings required by this section.

IV. Any owner of restricted property who violates paragraph I or II of this section shall be subject to a \$1,000 civil penalty.

**Source.** 2010, 203:2, eff. Jan. 1, 2011

#### **540:2 Termination of Tenancy. –**

I. The lessor or owner of nonrestricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5.

II. The lessor or owner of restricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5, but only for one of the following reasons:

(a) Neglect or refusal to pay rent due and in arrears, upon demand.

(b) Substantial damage to the premises by the tenant, members of his household, or guests.

(c) Failure of the tenant to comply with a material term of the lease.

(d) Behavior of the tenant or members of his family which adversely affects the health or safety of the other tenants or the landlord or his representatives, or failure of the tenant to accept suitable temporary relocation due to lead-based paint hazard abatement, as set forth in RSA 130-A:8-a, I.

(e) Other good cause.

(f) The dwelling unit contains a lead exposure-hazard which the owner will abate by:  
(1) Methods other than interim controls or encapsulation;  
(2) Any other method which can reasonably be expected to take more than 30 days to perform; or

(3) Removing the dwelling unit from the residential rental market.

III. If the grounds for eviction is other good cause as set forth in paragraph II(e) of this section, and such cause is based on the actions or inactions of the tenant, members of his family, or guests, the landlord shall, prior to the issuance of the eviction notice, provide the tenant with written notice stating that in the future such actions or inactions would

constitute grounds for eviction. Such notice shall be served in accordance with RSA 540:5 or by certified mail.

IV. A tenant's refusal to agree to a change in the existing rental agreement calling for an increase in the amount of rent shall constitute good cause for eviction under paragraph II(e) of this section, provided that the landlord provided the tenant with written notice of the amount and effective date of the rent increase at least 30 days prior to the effective date of the increase.

V. "Other good cause" as set forth in paragraph II(e) of this section includes, but is not limited to, any legitimate business or economic reason and need not be based on the action or inaction of the tenant, members of his family, or guests.

VI. No tenancy shall be terminated for nonpayment of rent if:

(a) The tenant was forced to take over the landlord's utility payments in order to prevent utility services, which the landlord agreed to provide, from being terminated;

(b) The amount of rent which the tenant is in arrears does not exceed the amount paid by the tenant to maintain utility service to the tenant's premises; and

(c) The tenant has receipts from the utility company or other proof of payment of the amount paid to maintain utility service.

VII. (a) No lessor or owner of restricted property shall terminate a tenancy solely based on a tenant or a household member of a tenant having been a victim of domestic violence as defined in RSA 173-B, sexual assault as defined in RSA 632-A, or stalking as defined in RSA 633:3-a, provided that the tenant or household member of a tenant who is the victim provides the lessor or owner with written verification that the tenant or household member of a tenant who is the victim has obtained a valid protective order against the perpetrator of the domestic violence, sexual assault, or stalking.

(b) A tenant who has obtained a protective order from a court of competent jurisdiction granting him or her possession of a dwelling to the exclusion of one or more other tenants or household members may request that a lock be replaced or configured for a new key at the tenant's expense. The lessor or owner shall, if provided a copy of the protective order, comply with the request and shall not give copies of the new keys to the tenant or household member restrained or excluded by the protective order.

(c) A lessor or owner who replaces a lock or configures a lock for a new key in accordance with subparagraph (b) shall not be liable for any damages that result directly from the lock replacement or reconfiguration.

(d) If, after a hearing in the possessory action, the court finds that there are grounds under this section to evict the tenant or household member accused of the domestic violence, sexual assault, or stalking, it may issue a judgment in favor of the lessor or owner of the property against the person accused, and allow the tenancy of the remainder of the residents to continue undisturbed. The lessor or owner of the rental unit at issue in the possessory action shall have the right to bar the person accused of the domestic violence, sexual assault, or stalking from the unit and from the lessor's or owner's property once judgment in the possessory action becomes final against such person. Thereafter, and notwithstanding RSA 635:2, the person's entry upon the lessor's or owner's property after being notified in writing that he or she has been barred from the property shall constitute a trespass.

(e) Nothing in this section shall preclude eviction for nonpayment of rent. A landlord may evict on any grounds set forth in RSA 540:2, II which are unrelated to domestic

violence, sexual assault, or stalking.

(f) The defense set forth in subparagraph VII(a) shall be an affirmative defense to possessory actions brought pursuant to subparagraph II(b), (c), (d), or (e) of this section.

**Source.** RS 209:1. CS 222:1. GS 231:1. GL 250:1. PS 246:2. PL 357:2. RL 413:2. RSA 540:2. 1985, 249:2. 1993, 325:5, 6. 1996, 139:2. 2006, 192:1, eff. Jan. 1, 2007. 2010, 285:1, eff. Oct. 6, 2010.

**540:14 Judgment. –**

I. If the defendant makes default, or if on trial it is considered by the court that the plaintiff has sustained its complaint, judgment shall be rendered that the plaintiff recover possession of the demanded premises and costs, and a writ of possession shall issue. In cases based on nonpayment of rent, the court shall state the actual amount of the tenant's current weekly rent or, if rent is not paid on a weekly basis, the equivalent weekly rent amount, which must be paid into the court if an appeal is taken pursuant to RSA 540:20 and 540:25. The judgment may be enforced, at the sole discretion of the plaintiff, either by directing the sheriff to serve the writ of possession or by seeking judicial relief against the defendant for civil contempt. A writ of possession shall authorize the sheriff to remove the defendant from the premises.

II. Whenever the tenant successfully raises the defense of retaliation pursuant to RSA 540:13-a, damages of not more than 3 months' rent may be awarded to the tenant.

III. If the plaintiff makes a successful claim for unpaid rent as well as possession, or the defendant makes a successful counterclaim, the court shall issue a money judgment at the same time that it makes its ruling regarding possession of the premises.

IV. If the court renders judgment against any one tenant or member of a multiperson household pursuant to RSA 540:2, VII(d), the court shall specify in its order that the writ of possession shall only be used to remove the tenant or household member against whom the judgment issued, and that the other tenants or household members may remain in residence.

**Source.** RS 209:10, 11. CS 222:10, 11. GS 231:9. GL 250:9. PS 246:9. PL 375:14. RL 413:14. RSA 540:14. 1957, 244:24. 1979, 305:6. 1991, 373:1. 1998, 25:3, 4, eff. Jan. 1, 1999. 2010, 285:2, eff. Oct. 6, 2010.

**CHAPTER 478 REGISTERS OF DEEDS**

**Recordation**

**478:4-b Records; Social Security Numbers and Financial Information. –**

I. The preparer of a document shall not include an individual's social security number, armed forces service number, credit card number, or deposit account numbers in a document that is prepared and presented for recording in the office of the register of deeds. This paragraph shall not apply to state or federal tax liens, certified copies of death certificates, and other documents required by law to contain such information that are filed or recorded in the office of the register of deeds. For the purpose of this section, "preparer" shall mean the person who drafts the documents that are recorded with the

register of deeds. Preparer shall not include any person who hires, requires, refers, pays, or requests that the documents be drafted or recorded.

II. If a deed or instrument that includes an individual's social security number, armed forces service number, credit card number, or deposit account numbers, was filed with the register of deeds and is available on the Internet, the individual may request that the register of deeds redact such information from the Internet record. The register of deeds shall establish a procedure by which individuals may request that such information be redacted from its files which are available on the Internet. Upon request, the information shall be redacted.

III. The register of deeds shall comply with an individual's request to redact his or her social security number, armed forces service number, credit card number, or deposit account numbers within 5 business days of the receipt of the request, or sooner, if ordered to do so by a court, for good cause shown.

**Source.** 2006, 221:7, eff. Mar. 1, 2007. 2009, 69:1, eff. Aug. 8, 2009.

**478:5 Record; Index.** – Upon acceptance of any deed or instrument for recording, the register of deeds shall enter into the index of the grantors the names of the grantors-to-grantees and into the index of the grantees the names of the grantees-to-grantors.

**Source.** RS 22:7. CS 23:7. GS 26:5. GL 27:5. PS 29:3. PL 40:3. RL 49:3. RSA 478:5. 1969, 492:2. 1990, 183:1, eff. June 26, 1990. 2004, 60:1, eff. July 2, 2004. 2008, 322:6, eff. Aug. 31, 2008.

**78:6 Index Reproduction.** – The register of deeds may cause the indexes to be reproduced into indexes of grantors and grantees using an acceptable recording method.

**Source.** RS 22:6. CS 23:6. GS 26:6. GL 27:6. PS 29:4. PL 40:4. RL 49:4. 2008, 322:6, eff. Aug. 31, 2008.

**478:7 Levy; Extent.** – The names of the debtors or defendants upon whose land any levy or extent shall be made, if the same is recorded, shall be entered as such in the index of grantors, and the names of the creditors or plaintiffs, as such, in the index of the grantees.

**Source.** GS 26:7. GL 27:7. PS 29:5. PL 40:5. RL 49:5. 2008, 322:7, eff. Aug. 31, 2008.

**478:8 Conveyance by Authority.** – When the property of any person living or the estate of any person deceased is conveyed by any officer or other person by authority of law or otherwise, the names of the persons whose estate is so conveyed, if they appear in the instrument, and of the persons by whom the conveyance is made shall be entered in the index of grantors.

**Source.** GS 26:8. GL 27:8. PS 29:6. PL 40:6. RL 49:6. 2008, 322:7, eff. Aug. 31, 2008.

**478:9 Estates Affected.** – The names of all persons whose estates appear to be affected by any deed or decree of partition entered on such record shall be entered in the indexes of grantors and grantees.

**Source.** GS 26:9. GL 27:9. PS 29:7. PL 40:7. RL 49:7. 2008, 322:7, eff. Aug. 31, 2008.

**478:10 Creditors; Mortgagees.** – The names of the creditors in any proceeding for foreclosure and the names of the original mortgagees, if they appear by the proceedings, shall be entered, as such, in the index of grantees; and the names of the debtor, defendant and original mortgagors, if they appear, shall be entered in the index of grantors.

**Source.** GS 26:10. GL 27:10. PS 29:8. PL 40:8. RL 49:8. 2008, 322:7, eff. Aug. 31, 2008.

**478:11 Parties Unknown.** – If the name of the person whose property or estate is conveyed in either of the cases aforesaid does not appear, or if the name of the original mortgagor or mortgagee of property foreclosed does not appear, the grantors or mortgagors shall be referred to as unknown in the index of grantors under the letter U, and the original mortgagee in the same manner in the index of grantees.

**Source.** GS 26:11. GL 27:11. PS 29:9. PL 40:9. RL 49:9. 2008, 322:7, eff. Aug. 31, 2008.

**478:13 Office Hours.** – Every register shall keep his or her office open daily except Sundays and state holidays. It may be closed on Saturday if not incompatible with public business; provided, however, that the register may keep his or her office open on Saturday mornings in the custody of a single custodian whenever he or she deems it necessary.

**Source.** GL 23:15. PS 29:11. 1903, 92:1. PL 40:11. RL 49:11. 1947, 234:1. 1951, 91:1. RSA 478:13. 1981, 244:3, eff. Aug. 10, 1981. 2008, 322:8, eff. Aug. 31, 2008.

**478:14 Copies of Conveyances for Tax Purposes.** – Every register shall, upon request, in an acceptable media, send copies of all deeds, mortgages, and other conveyances of real estate which have been recorded in the registry during the preceding 3 months to the selectmen of each town and to the assessors of each city in his county quarterly, each year, between January 1 and January 5, April 1 and April 5, July 1 and July 5, and October 1 and October 5. The register shall send, between April 1 and April 5, in an acceptable media, copies of all deeds, mortgages, and other conveyances of real estate which have been recorded in the registry during the preceding tax year to every town and city in the county which did not request the quarterly copies.

**Source.** 1935, 57:1. RL 49:12. 1949, 255:1. RSA 478:14. 1955, 80:1. 1979, 222:1. 1981, 244:4, eff. Aug. 10, 1981. 2008, 322:9, eff. Aug. 31, 2008.

**478:17-g Recording Fees and Surcharge.** – Unless otherwise specified, the register of deeds in each county shall be entitled to the following fees and shall collect the land and community heritage investment program surcharge as follows:

I. The charge for recording each document shall be \$10 for the first recorded page plus \$4 for each additional recorded page. The charge for assignments of mortgages shall be \$10 for the first recorded page, including the first mortgage assigned, plus \$5 for each additional mortgage assigned plus \$4 for each additional recorded page. The charge for recording a discharge of a mortgage, a release of a lien, or filings pursuant to RSA 21-J, RSA 260, RSA 282-A, RSA 382-A, RSA 439, RSA 450, RSA 454-B, RSA 498, RSA 511, or RSA 511-A shall be \$15 for the first recorded page plus \$4 for each additional recorded page. The charge for recording each plan shall be \$9 for the first 200 square inches or portion thereof and \$2.50 for each additional 100 square inches or portion thereof. The charges provided for herein shall include the register's responsibility to provide information in compliance with RSA 478:14.

II. (a) An additional charge of \$25 shall also be assessed for recording each deed, mortgage, mortgage discharge or plan, but shall not be assessed for the recording of any other document. The charge provided for herein shall be paid by the grantee in a deed, the grantor in a mortgage, the person or entity discharging a mortgage in the case of a discharge, and the primary owner of property shown on a plan. The charge provided for in this section shall not be assessed for the recording of any documents in which the United States or any instrumentality thereof, the state, a state agency, a county, a municipality, a village district, or a school district is a party.

(b) The collection of the assessment provided for by this section shall be administered by the commissioner of the department of revenue administration, and all powers and duties available to the commissioner to enforce and administer laws under RSA 21-J and RSA 78-B shall apply to the administration and enforcement of this paragraph. The commissioner may adopt rules, pursuant to RSA 541-A, relative to the administration of this paragraph. Each register of deeds shall retain 4 percent of the total additional charges collected as payment for the service of collecting the additional charges, which shall be deducted prior to remitting the revenue collected.

(c) Each register of deeds shall remit the additional charges collected under subparagraph (a) to the department of revenue administration monthly or more often. All funds received shall be paid over to the state treasurer for deposit in the trust fund for the land and community heritage investment program established under RSA 227-M:7.

(d) The payment of the additional charge imposed by subparagraph (a) shall be evidenced by stamps, or other indicia as approved by the commissioner of the department of revenue administration, attached to the recorded instrument.

III. For copying any document or providing any other service, the charge shall be established and posted by the register of deeds.

**Source.** 1973, 217:1. 1977, 89:1. 1981, 244:5. 1983, 185:1. 1986, 36:1. 1987, 115:1. 1989, 154:2. 1990, 3:29. 1998, 382:11. 2000, 262:12, eff. Aug. 11, 2000. 2001, 102:45, eff. July 1, 2001. 2007, 263:45, eff. July 1, 2008; 263:48, eff. July 1, 2018. 2008, 294:7, eff. July 1, 2008 at 12:01 a.m.

## **Hazardous substances – water pollution and waste disposal/ safe drinking water**

### CHAPTER 485-A WATER POLLUTION AND WASTE DISPOSAL

### CHAPTER 485 NEW HAMPSHIRE SAFE DRINKING WATER ACT

### CHAPTER 485-C GROUNDWATER PROTECTION ACT

### CHAPTER 485-E SOUTHEAST WATERSHED ALLIANCE

#### **485-A:2 Definitions. –**

I. "Developed waterfront" property means any parcel of land upon which stands a structure suitable for either seasonal or year-round human occupancy, where such parcel of land is contiguous to or within 200 feet of the reference line, as defined in RSA 483-B:4, XVII, of:

- (a) A fresh water body, as defined in RSA 483-B:4, XVI(a);
- (b) Coastal waters, as defined in RSA 483-B:4, XVI(b); or
- (c) A river, as defined in RSA 483-B:4, XVI(c).

I-a. "Certificate" means a certificate of competency issued by the department stating that the operator has met the particular requirements established by the department for certification at each level of operation.

I-b. "Certification committee" means those persons designated by the commissioner, and those persons elected by the New Hampshire Water Pollution Control Association to serve as the review committee for certification of wastewater treatment plant operators.

I-c. "Commissioner" means the commissioner of the department of environmental services.

II. "Development plan" means the final map, drawing, plat or chart on which the subdivider presents his plan of subdivision to the department of environmental services for approval of planned or proposed sewage or waste disposal systems.

III. "Department" means the department of environmental services.

III-a. "Encroachment waiver" means any waiver of the rules adopted in accordance with this chapter which, if granted, would affect the ability of an owner of abutting property to fully utilize his property.

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain or treat sewage or causes the discharge of sewage on the ground surface or directly into surface waters, or the effluent disposal area is located in the seasonal high groundwater table.

V. "Groundwaters" shall mean all areas below the top of the water table, including aquifers, wells and other sources of groundwater.

VI. "Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.

VII. "Lot" means a part of a subdivision or a parcel of land which can be used as a

building site or intended to be used for building purposes, whether immediate or future.

VII-a. "Operator" means:

(a) The individual who has full responsibility for the daily operation of a wastewater treatment plant or a pollution control facility;

(b) The individual normally responsible for the operations shift; or

(c) Individuals who perform important operating functions.

VIII. "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.

IX. "Person" means any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity.

IX-a. "Septage" means material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.

X. "Sewage" means the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.

XI. "Sewage disposal system" means any private sewage disposal or treatment system, other than a municipally owned and operated system.

XI-a. "Sludge" means the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department shall be considered solid waste and regulated under RSA 149-M.

XII. "Subdivider" means the legal owner or his authorized agent of a tract or parcel of land being subdivided.

XIII. "Subdivision" means the division of a tract or parcel of land into 2 or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale, rent, lease, building development, or any other reason; provided, however, that sale or other conveyance which involves merely an exchange of land among 2 or more owners and which does not increase the number of owners, and on which no sewage disposal system is to be constructed shall not be deemed a subdivision for the purposes of this chapter. Without limiting the generality of the foregoing, subdivision shall include re-subdivision, and, in the case of a lot, tract or parcel previously rented or leased, the sale, condominium conveyance, or other conveyance thereof; provided however that a re-subdivision of lots in previously approved subdivisions, where lot lines are relocated to conform to necessary changes in the plans because of errors in a survey or new street, access or siting requirements, or errors in building locations, and where the lot sizes are not substantially altered shall not be deemed a subdivision for the purposes of this chapter; and provided further that a re-subdivision in which previously approved lots are grouped together to form larger lots shall not be deemed a subdivision for the purposes of this chapter. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under this chapter.

XIV. "Surface waters of the state" means perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial.

XV. "Tract or parcel of land" means an area of land, whether surveyed or not surveyed.

XVI. "Waste" means industrial waste and other wastes.

XVI-a. "Wastewater treatment plant" means the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewateres and handles sludge removed from the wastewater.

XVII. "Bypass" means the intentional diversion of waste streams from any portion of the wastewater facilities.

XVIII. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee.

XIX. "Wastewater facilities" means the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.

XX. "Bedroom" means a room furnished with a bed and intended primarily for sleeping, unless otherwise specified by local regulations.

XXI. "Innovative/alternative waste treatment" means treatment which differs from standardized and conventional practice, offers an advantage over such practice in a proposed application and satisfies the pollution abatement and treatment requirements for sewerage and sewage or waste treatment systems in such application.

XXII. "Biosolids" means any sludge derived from a sewage wastewater treatment facility that meets the standards for beneficial reuse specified by the department.

XXIII. "Short paper fiber" means any sludge derived from a pulp or papermill wastewater treatment facility that meets the standards for beneficial reuse specified by the department.

**Source.** 1989, 339:1. 1990, 197:1-3; 248:1; 252:9, 10. 1993, 57:1; 172:1. 1996, 219:1; 228:74-76, 105, 106, 108. 1998, 102:2, 3. 2000, 76:3, eff. June 20, 2000; 121:1, eff. July 7, 2000. 2008, 349:2, 3, eff. Jan. 1, 2009.

**485-A:6 Rulemaking.** – The commissioner shall adopt rules, under RSA 541-A, after public hearing, relative to:

I. The classification system required by RSA 485-A:9.

II. Requirements under RSA 485-A:4, VI.

III. Requirements under RSA 485-A:4, IX and establishing the methodology and review process for approval of innovative/alternative wastewater treatment systems.

IV. The fees and contract documents required under RSA 485-A:4, XII.

V. The prequalification and contract award procedures required under RSA 485-A:4, XIII.

VI. The standards required under RSA 485-A:4, XV.

VI-a. Procedures and criteria for requesting, reviewing, and granting certifications under RSA 485-A:12, III and IV.

VII. The required information and prescribed conditions needed to implement the program described in RSA 485-A:13, I(a).

VIII. The requirements for a permit under RSA 485-A:17.

IX. The conditions for a camp license as required by RSA 485-A:24, and the safety standards in camps described in RSA 485-A:25.

X. The safety standards for swimming pools and bathing places required by RSA 485-A:26.

X-a. The requirements for permits under RSA 485-A:4, XVI-a and XVI-b.

XI. The minimum qualifications for and certification of operators of pollution control facilities.

XI-a. The contents of the written notification required in RSA 485-A:13, I(c).

XI-b. Certification of operators of wastewater treatment plants and revocation and suspension of such certificates as provided in RSA 485-A:7-d.

XI-c. The location, extent, and duration of the standards specified in RSA 485-A:8, III for the temporary partial use areas provided for in RSA 485-A:8, II.

XII. [Repealed.]

XIII. The disposal of dental office waste under RSA 485-A:4, XVIII.

**Source.** 1989, 339:1. 1990, 197:5; 248:4; 252:13. 1991, 371:2. 1993, 172:4. 1996, 228:110. 1998, 102:5, eff. Aug. 1, 1998. 2002, 96:4, eff. Jan. 1, 2003. 2008, 337:3, eff. Sept. 5, 2008.

**485-A:7 State Guarantee.** – In view of the general public benefits resulting from the elimination of pollution from the public waters of 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 \$50,000,000, 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 construction of sewerage systems, sewage treatment and disposal plants, or other facilities necessary, required or desirable for pollution control, and the full faith and credit of the state are pledged for any such guarantee. The outstanding amount of principal and interest on such bonds and notes, the payment of which has been guaranteed by the state under the provisions of this section, shall at no time exceed the amount of \$50,000,000. 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 at public sealed bidding 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 municipality, town, city, county or district as provided in RSA 530. Provided, further, that in accordance with RSA 35-A:29, the foregoing requirement for public sealed bidding shall not be applicable to any bonds or notes or both so guaranteed which are sold to the New Hampshire municipal bond bank, and any bonds or notes or both so guaranteed may be sold to the New Hampshire municipal bond bank at private sale in accordance with the provisions of RSA 35-A.

**Source.** 1989, 339:1. 1991, 179:2. 1999, 234:1, eff. Sept. 7, 1999. 2008, 49:1, eff. July 1, 2008.

**485-A:12 Enforcement of Classification. –**

I. After adoption of a given classification for a stream, lake, pond, tidal water, or section of such water, the department shall enforce such classification by appropriate action in the courts of the state, and it shall be unlawful for any person or persons to dispose of any sewage, industrial, or other wastes, either alone or in conjunction with any other person or persons, in such a manner as will lower the quality of the waters of the stream, lake, pond, tidal water, or section of such water below the minimum requirements of the adopted classification. If the department shall set a time limit for abatement of pollution under paragraph II, and it becomes apparent at any time during the compliance period that full compliance with the adopted classification will not be attained by the end of such period due to the failure of any person to take action reasonably calculated to secure abatement of the pollution within the time specified, the department shall notify such person or persons in writing. If such person or persons shall fail or neglect to take appropriate steps to comply with the classification requirements within a period of 30 days after such notice, the department shall seek appropriate action in the courts of the state.

II. If, after adoption of a classification of any stream, lake, pond, or tidal water, or section of such water, including those classified by RSA 485-A:11, it is found that there is a source or sources of pollution which lower the quality of the waters in question below the minimum requirements of the classification so established, the person or persons responsible for the discharging of such pollution shall be required to abate such pollution within a time to be fixed by the department. If such pollution is of municipal or industrial origin, the time limit set by the department for such abatement shall be not less than 2 years nor more than 5 years. For good cause shown, the department may from time to time extend any time limit established under this paragraph. Any determination by the department under this paragraph shall be subject to appeal as provided for in RSA 485-A:19.

III. No activity, including construction and operation of facilities, that requires certification under section 401 of the Clean Water Act and that may result in a discharge, as that term is applied under section 401 of the Clean Water Act, to surface waters of the state may commence unless the department certifies that any such discharge complies with the state surface water quality standards applicable to the classification for the receiving surface water body. The department shall provide its response to a request for certification to the federal agency or authority responsible for issuing the license, permit, or registration that requires the certification under section 401 of the Clean Water Act. Certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide assurance that the proposed discharge complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

IV. No activity that involves surface water withdrawal or diversion of surface water that requires registration under RSA 488:3, that does not otherwise require the certification required under paragraph III, and which was not in active operation as of the effective date of this paragraph, may commence unless the department certifies that the surface water withdrawal or diversion of surface water complies with state surface water quality standards applicable to the classification for the surface water body. The

certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide reasonable assurance that the proposed activity complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2008, 337:2, eff. Sept. 5, 2008. 2009, 26:1, eff. July 7, 2009.

**485-A:14 Prohibited Acts. –**

I. The lawful owner of any petroleum-powered vehicle or petroleum container that becomes partially or completely submerged in the surface waters of the state shall remove the vehicle or container from the water within 48 hours or as soon thereafter as safety and weather conditions permit. Petroleum-powered vehicles include, but are not limited to, cars, trucks, motorcycles, snowmobiles, motorized boats, off highway recreational vehicles, all terrain vehicles, construction equipment, trains, and airplanes. Petroleum containers include, but are not limited to, drums, barrels, tanks, pails, cans, jugs, or equipment which contains oil.

II. The lawful owner of the submerged vehicle or container shall notify the department of environmental services in accordance with RSA 146-A, and the department shall investigate any possible contamination and ensure the safe removal of the vehicle or container from the body of water involved. Any partially or completely submerged vehicle or petroleum container shall be presumed to be discharging oil into the surface waters of the state and shall be subject to the reporting, removal, and strict liability requirements of RSA 146-A.

III. The lawful owner of a vehicle shall notify the department of safety, division of safety services, if any person is injured or killed in an incident involving a submerged vehicle.

IV. If the owner refuses or fails to remove a submerged vehicle or container as required by paragraph I, the department of environmental services may contract for the removal of the vehicle or container in question. The owner of the submerged vehicle or container shall be strictly liable for the costs of removing the vehicle or container and the costs of the investigation, containment, cleanup, removal, and corrective measures associated with the discharge. The cost shall be recoverable by the state in an action of debt brought by the attorney general in the name of the state. The state shall impound any submerged vehicle or container recovered, at the expense of the owner, until all costs incurred by the state have been paid by the owner of the vehicle or container.

V. Any person who fails to remove a submerged or partially submerged vehicle or container, as required by paragraph I, shall be guilty of a violation. Agents of the department of safety, division of safety services, or any police officer having jurisdiction over the water body, may issue citations for a violation of this section and issue fines of \$500 for each day the vehicle remains in the water.

VI. Unless otherwise provided in this chapter, any person who knowingly fails to remove a submerged or partially submerged vehicle or container, as required by paragraph I, shall be guilty of a class B felony if the surface water is the source, or a

tributary to a source, from which the domestic water supply of a city, town, or village is taken, in whole or in part.

**Source.** 1989, 339:1. 1996, 228:108, eff. July 1, 1996. 2006, 254:4, eff. Aug. 4, 2006. 2009, 190:1, eff. Jan. 1, 2010.

**485-A:15 Penalties. –**

I. It shall be unlawful for any person to put or place, or cause to be put or placed into a surface water of the state or on the ice over such waters, or on the banks of such waters, any solid waste as defined in RSA 149-M or hazardous waste as defined in RSA 147-A, including but not limited to bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, tires, old automobiles or parts thereof, trees or parts thereof, or similar litter.

II. For any violation of this section any authorized member or agent of the department of environmental services shall order the immediate removal of material involved in the violation, by the person responsible for the material in question.

III. If the person or persons responsible for a violation of paragraph I refuse or fail to obey the order of any authorized member or agent of the department of environmental services, the department of environmental services or authorized member or agency may contract for the removal of the material in question and the cost of the removal shall be recoverable by the state in an action of debt brought by the attorney general in the name of the state.

IV. Any person who recklessly violates paragraph I shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

V. Any person who purposely or knowingly violates paragraph I shall be guilty of a class B felony.

**Source.** 1989, 339:1. 1996, 228:108, eff. July 1, 1996. 2009, 190:2, 3, eff. Jan. 1, 2010.

**485-A:17 Terrain Alteration. –**

I. Any person proposing to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of the surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff, shall be directly responsible to submit to the department detailed plans concerning such proposal and any additional relevant information requested by the department, at least 30 days prior to undertaking any such activity. The operations shall not be undertaken unless and until the applicant receives a permit from the department. The department shall have full authority to establish the terms and conditions under which any permit issued may be exercised, giving due consideration to the circumstances involved and the purposes of this chapter, and to adopt such rules as are reasonably related to the efficient administration of this section, and the purposes of this chapter. Nothing contained in this paragraph shall be construed to modify or limit the duties and authority conferred upon the department under RSA 482 and RSA 482-A.

II. The department shall charge a fee for each review of plans, including project inspections, required under this section. The fee shall be based on the extent of contiguous area to be disturbed. Except for RSA 483-B:9, the fee for plans encompassing

an area of at least 100,000 square feet but less than 200,000 square feet shall be \$1,250. For the purposes of RSA 483-B:9, the fee for plans encompassing an area of at least 50,000 square feet but less than 200,000 square feet shall be \$1,250. An additional fee of \$500 shall be assessed for each additional area of up to 100,000 square feet to be disturbed. No permit shall be issued by the department until the fee required by this paragraph is paid. All fees required under this paragraph shall be paid when plans are submitted for review and shall be deposited in the terrain alteration fund established in paragraph II-a.

II-a. There is hereby established the terrain alteration fund into which the fees collected under paragraph II shall be deposited. The fund shall be a separate, nonlapsing fund, continually appropriated to the department for the purpose of paying all costs and salaries associated with the terrain alteration program.

II-b. In processing an application for permits under RSA 485-A:17:

(a) Within 50 days of receipt of the application, the department shall request any additional information required to complete its evaluation of the application, together with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if all of the requested information is not received within 120 days of the request, the department shall deny the application.

(b) If the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:

- (1) Approve the application in whole or in part and issue a permit; or
- (2) Deny the application and issue written findings in support of the denial; or
- (3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(c) If no request for additional information is made pursuant to subparagraph (b), the department shall, within 50 days of receipt of the application:

- (1) Approve the application, in whole or in part and issue a permit; or
- (2) Deny the application, and issue written findings in support of the denial; or
- (3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(d)(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (b) and (c), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.

(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:

- (A) Approve the application, in whole or in part, and issue a permit; or
  - (B) Deny the application and issue written findings in support of the denial.
- (3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under

this section and RSA 485-A relating to water quality.

(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (d)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this section and RSA 485-A relating to water quality.

(e) The time limits under this paragraph shall not apply to an application from an applicant that has previously been found in violation of this chapter pursuant to RSA 485-A:22-a or an application that does not otherwise comply with the department's rules relative to the permit application process.

(f) The department may extend the time for rendering a decision under subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this section or any rule adopted or permit or approval issued under this section, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this section, pursuant to an action initiated under RSA 485-A:22. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

(g) The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this section, RSA 482-A, RSA 483-B, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this section, RSA 482-A, RSA 483-B, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

II-c. Beginning October 1, 2007 and each fiscal quarter thereafter, the department shall submit a quarterly report to the house and senate finance committees, the house resources, recreation, and economic development committee, and the senate energy, environment, and economic development committee relative to administration of the terrain alteration review program.

III. Normal agricultural operations shall be exempt from the provisions of this section. The department may exempt other state agencies from the permit and fee provisions of this section provided that each such agency has incorporated appropriate protective practices in its projects which are substantially equivalent to the requirements established by the department under this chapter.

IV. Timber harvesting operations shall be exempt from the fee provisions of this

section. Timber harvesting operations shall be considered in compliance with this section and shall be issued a permit by rule provided such operations are in accordance with procedures prescribed in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, published by the department of resources and economic development, and provided that the department of revenue administration's intent to cut form is signed.

V. Trail construction operations for the purposes of modifying existing biking and walking trails shall be exempt from the provisions of this section. Such operations shall be considered in compliance with this section and shall be issued a general permit by rule provided such operations are implemented by a non-profit organization, municipality, or government entity, are limited to a disturbed area no more than 12 feet in width, and are in accordance with procedures prescribed in the Best Management Practices For Erosion Control During Trail Maintenance and Construction, published by the department of resources and economic development, bureau of trails in 2004.

**Source.** 1989, 339:1. 1992, 157:3. 1996, 228:106, 109, eff. July 1, 1996. 2003, 2010

**485-A:30 Fees. –**

I. Any person submitting plans and specifications for a subdivision of land shall pay to the department a fee of \$300 per lot. Said fee shall be for reviewing such plans and specifications and making site inspections. Any person submitting plans and specifications for sewage or waste disposal systems shall pay to the department a fee of \$290 for each system. Said fee shall be for reviewing such plans and specifications, making site inspections, the administration of sludge and septage management programs, and for establishing a system for electronic permitting for waste disposal systems, subdivision plans, and for permits and approvals under the department's land regulation authority. The fees required by this paragraph shall be paid at the time said plans and specifications are submitted and shall be deposited in the subsurface systems fund established in paragraph I-b. For the purposes of this paragraph, the term "lot" shall not include tent sites or travel trailer sites in recreational parks which are operated on a seasonal basis for not more than 9 months per year.

I-a. In addition to fees required under paragraph I, any person submitting plans and specifications for sewage or waste disposal systems shall pay to the department a fee of \$10 for each system for use in the septage handling and treatment facilities grant program to municipalities under RSA 486:3, III. Until July 1, 2010, the fees required by this paragraph shall be paid at the time said plans and specifications are submitted and shall be deposited in the subsurface systems fund established in paragraph I-b. After July 1, 2010, the fees required by this paragraph shall be paid at the time said plans and specifications are submitted and shall be deposited in the septage management fund established in paragraph I-c.

I-b. There is hereby established the subsurface systems fund into which the fees collected under paragraph I shall be deposited. The fund shall be a separate, nonlapsing fund, continually appropriated to the department for the purpose of paying all costs and salaries associated with the subsurface systems program.

I-c. There is hereby established the septage management fund into which the fees collected under paragraph I-a shall be deposited. The fund shall be a separate, nonlapsing

fund, continually appropriated to the department for the purpose of paying costs associated with the septage handling and treatment facilities grant program or for research, engineering analysis, or septage sampling and analysis by the department to advance septage management in the state of New Hampshire.

II. [Repealed].

III. Any person submitting plans and specifications as a resubmission for reapproval of such shall not be required to pay any additional fee under RSA 485-A:30, I or I-a if changes to such plans and specifications would not constitute a new subdivision under the provisions of RSA 485-A:2, XIII.

**Source.** 1989, 339:1. 1990, 252:15. 1991, 379:3. 1994, 198:2. 1996, 228:106, eff. July 1, 1996; 233:5, 7, II, eff. July 1, 2000; 233:8, eff. July 1, 1996, at 12:01 A.M. 2001, 128:2, 3, eff. July 1, 2001. 2003, 246:2, eff. July 1, 2003. 2005, 141:1, eff. Aug. 16, 2005. 2009, 144:43, eff. July 1, 2009

#### **485-A:31 Action on Applications. –**

I. Subject to paragraphs II and III, the department shall give notice in writing to the person submitting the plans and specifications for subdivision of land of its approval or disapproval of such plans and specifications within 30 days of the date such plans and specifications and the required fees are received by the department and shall give notice in writing to the person submitting plans and specifications for sewage or waste disposal systems of its approval or disapproval of such plans and specifications within 15 working days of the date such plans and specifications and the required fees are received by the department. Unless such written disapproval shall be mailed to the person submitting plans and specifications within 30 days in the case of plans and specifications for subdivision of land and 15 working days in the case of plans and specifications for sewage or waste disposal systems from the date of receipt with the required fees by the department, the plans and specifications shall be deemed to have been approved. The department shall send a copy of the approval or disapproval of such plans and specifications to the planning board or board of selectmen of the affected municipality.

II. The department may extend the time for rendering a decision under paragraph I, without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with RSA 485-A:29-44, or any rule adopted or permit or approval issued pursuant to RSA 485-A:29-44, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by RSA 485-A:29-44, pursuant to an action initiated under RSA 485-A:42 or RSA 485-A:43. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application and shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

III. The department may suspend a review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of RSA 485-A:29-44; RSA 482-A; RSA 483-B; or RSA 485-A:17, or of any rule adopted or permit or approval issued pursuant to RSA 485-A:29-44; RSA 482-A; RSA 483-B; or RSA 485-A:17. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the

department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13; RSA 482-A:14; RSA 482-A:14-b; RSA 483-B:18; RSA 485-A:22; RSA 485-A:42; or RSA 485-A:43.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2010, 295:11, eff. Sept. 11, 2010.

**485-A:35 Permit Eligibility; Exemption. –**

I. (a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the individual who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any individual who applies to the department, pays a fee of \$80, and demonstrates a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of every other year, subject to the grace periods specified in subparagraphs (c) and (d). Permits shall be renewable upon proper application, payment of a biennial permit fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b). A permit issued to any individual may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend, or not renew a permit may be taken pursuant to RSA 541. All fees shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

(b) Permitted designers shall complete a minimum of 6 hours biennially of continuing education approved by the department. Any permitted designer who is also a permitted septic system installer under RSA 485-A:36 may fulfill the continuing education requirements for both permits with the same approved 6 hours of continuing education.

(c) A permitted designer who fails to file a complete application for renewal, the biennial permit fee, and documentation that the required continuing education has been completed with the department prior to the expiration of the permit shall pay an additional late renewal fee of \$80 with the renewal application, biennial permit fee, and documentation, provided such fees, application, and documentation are filed with the department within 30 days of the permit expiration date.

(d) If the renewal application, biennial permit fee, late renewal fee, and documentation are not filed within 30 days of the permit expiration date, the permit shall be deemed suspended. The permit holder may request reinstatement of the permit within 60 days of the suspension by submitting a complete application for renewal, the biennial permit fee specified in subparagraph (a), the late renewal fee specified in subparagraph (c), documentation that the required continuing education has been completed, and a

reinstatement fee of \$80. If the individual does not request reinstatement within 60 days of the suspension, the permit shall be deemed void. Any individual whose permit has become void who wishes to obtain a designer's permit shall apply as for a new permit pursuant to subparagraph (a).

(e) No individual whose permit has been suspended or voided pursuant to subparagraph (d) shall submit any design to the department for a subsurface sewage or waste disposal system. Submittal of such a design after the designer's permit has been suspended or voided pursuant to subparagraph (d) shall constitute a violation of the provisions of this subdivision that is subject to the penalties specified in RSA 485-A:43.

II. Any person who desires to submit plans and specifications for a sewage or waste disposal system for the person's own domicile shall not be required to obtain a permit under this paragraph provided that the person attests to eligibility for this exemption in the application for construction approval. The commissioner shall adopt rules, prepared under the supervision of a professional engineer licensed to practice engineering in the state of New Hampshire, pursuant to RSA 541-A, relative to requiring a permit holder to be a licensed professional engineer with a civil or sanitary designation in order to submit applications for construction approval in certain complex situations. All fees collected pursuant to this section shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

**Source.** 1989, 339:1. 1994, 312:1. 1996, 228:80, 106, eff. July 1, 1996. 2008, 349:4, eff. Jan. 1, 2009. 2009, 144:44, eff. July 1, 2009. 2010, 342:1, 2, eff. Sept. 18, 2010.

**485-A:36 System Installer Permit. –**

I. (a) No individual shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in strict accordance with the approved plan. The department shall issue an installer's permit to any individual who submits an application provided by the department, pays a fee of \$80 and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, payment of a biennial permit fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

(b) Permitted installers shall complete a minimum of 6 hours biennially of continuing education approved by the department. Any permitted installer who is also a permitted designer under RSA 485-A:35 may fulfill the continuing education requirements for both

permits with the same approved 6 hours of continuing education.

(c) A permitted installer who fails to file a complete application for renewal, the biennial permit fee, and documentation that the required continuing education has been completed with the department prior to the expiration of the permit shall pay an additional late renewal fee of \$80 with the renewal application, biennial permit fee, and documentation, provided the fees, renewal application, and documentation are filed with the department within 30 days of the permit expiration date.

(d) If the renewal application, biennial permit fee, late renewal fee, and documentation are not filed within 30 days of the permit expiration date, the permit shall be deemed suspended. The permit holder may request reinstatement of the permit within 60 days of the suspension by submitting a complete application for renewal, the biennial permit fee specified in subparagraph (a), the late renewal fee specified in subparagraph (c), documentation that the required continuing education has been completed, and a reinstatement fee of \$80. If the individual does not request reinstatement within 60 days of the suspension, the permit shall be deemed void. Any individual whose permit has become void who wishes to obtain an installer's permit shall apply as for a new permit pursuant to subparagraph (a).

(e) No individual whose permit has been suspended or voided pursuant to subparagraph (d) shall install any subsurface sewage or waste disposal system. Installation of such a system after the installer's permit has been suspended or voided pursuant to subparagraph (d) shall constitute a violation of the provisions of this subdivision that is subject to the penalties specified in RSA 485-A:43.

II. Any person who desires to install or repair a waste disposal system for his own domicile shall not be required to obtain an installer's permit as provided in paragraph I, provided he complies with rules adopted by the department relative to such systems.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2008, 349:5, eff. Jan. 1, 2009. 2009, 144:45, eff. July 1, 2009. 2010, 342:3, 4, eff. Sept. 18, 2010.

**485-A:38 Approval to Increase Load on a Sewage Disposal System. –**

I. Prior to expanding any structure or occupying any existing structure on a full-time basis, which would increase the load on a sewage disposal system, the owner of such structure shall submit an application for approval of the sewage disposal system to the department. Application for approval shall include one of the following:

(a) Evidence that the existing sewage disposal system meets the requirements of the department for the intended usage or the town's minimum standards for use or occupancy prescribed under RSA 48-A:11, whichever is more stringent.

(b) The design for a new system which meets the requirements of the department for the intended use or the town's minimum standards for use or occupancy, whichever is more stringent.

II. The fee for application under this section shall not exceed fees charged for new design applications.

II-a. No construction or operational approval shall be required from the department prior to expanding, relocating, or replacing any structure that does not increase the load on a sewage disposal system, as long as all of the following conditions are met:

(a) The lot is served by a sewage disposal system that received construction and

operational approval from the department within 20 years of the date of the issuance of a building permit for the proposed expansion, relocation, or replacement.

(b) If the property is nonresidential, no waivers were granted in the construction or operational approval of any requirements for total wastewater lot loading, depth to groundwater, or horizontal distances to surface water, water supply systems, or very poorly drained soils.

(c) When applicable, the proposed expansion, relocation, or replacement complies with the requirements of the comprehensive shoreland protection act, RSA 483-B.

III. The commissioner shall adopt rules under RSA 541-A requiring a person to comply with the provisions of paragraph I before taking any action which would increase the load on a sewage disposal system.

**Source.** 1989, 339:1. 1996, 228:106, 110, eff. July 1, 1996. 2010, 342:5, eff. Sept. 18, 2010.

**485-A:39 Waterfront Property Sale; Site Assessment Study. –**

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at the owner's expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an on-site inspection. If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be subject to the buyer's acceptance of the completed site assessment.

II. The site assessment study form shall become a part of the purchase and sale agreement.

III. The site assessment study form, with stated findings, shall be given to the buyer and the seller and receipt of the form shall be acknowledged in writing by the buyer and the seller.

IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver the completed site assessment study form pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed \$500.

V. The site assessment study shall consist of 3 sections:

(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.

(b) Section B shall include the lot size, slope, loading (based on the number of bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.

(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.

VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the procedures for the availability and distribution of the form to interested parties.

VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.

VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that there is sewage discharge on the ground surface or directly into surface waters, the designer shall notify, in writing, the department and the local health officer, and shall include that information in the site assessment report.

**Source.** 1989, 339:1. 1992, 278:2. 1995, 206:2. 1996, 228:81, 106, eff. July 1, 1996. 2007, 177:1, eff. Aug. 17, 2007. 2008, 349:1, eff. Jan. 1, 2009.

#### **485-A:43 Penalties. –**

I. Any person who shall violate any of the provisions of this subdivision or who shall knowingly fail, neglect or refuse to obey any order of the department or member or authorized agent of the department issued under the authority of this subdivision, or who shall knowingly make any misstatement of material fact for which said person is personally responsible in connection with an application for an approval pursuant to this subdivision shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Any person who knowingly produces any erroneous or fallacious data with regard to any application or plan submitted pursuant to this subdivision shall bear the full responsibility for same, and shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

III. Notwithstanding any other penalty or fine for which liability is provided under this subdivision, any person may be liable to the state, in an action commenced in the name of the state, for a civil forfeiture of not more than \$10,000 per day per violation for such violation, failure, neglect, refusal or any misstatement for which said person is personally responsible. Such forfeiture may be levied by the superior court in connection with actions for injunctive relief commenced pursuant to RSA 485-A:44. The proceeds of any civil forfeiture levied under this section shall be utilized in the enforcement of this subdivision. In determining a civil forfeiture, the court may take into consideration all relevant circumstances, including the degree of noncompliance, the extent of harm caused by the violation, the nature and persistence of the violation, the time and cost associated with the investigation by the state and the economic impact of the penalty on the liable person. The cost of corrective action shall not be considered in determining the civil forfeiture.

IV. Any person neglecting or refusing to comply with the provisions of RSA 485-A:37 shall be subject to a civil forfeiture not to exceed \$1,000 for each day of neglect or refusal after notice as provided for in RSA 485-A:37.

V. The commissioner of environmental services, after notice and hearing pursuant to 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 subdivision including any rule

adopted under the provisions of this chapter. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this subdivision. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violations of this subdivision as provided above.

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

**Source.** 1989, 339:1. 1995, 217:8. 1996, 228:106, eff. July 1, 1996. 2008, 169:1, eff. Jan. 1, 2009

**485-A:56 Products Prohibited.** – No household cleansing products except those used for lead exposure hazard control purposes shall be distributed, sold or offered for sale in this state, which contain a phosphorus compound in concentrations in excess of a trace quantity.

**Source.** 1994, 303:1. 1995, 306:7, eff. Aug. 20, 1995. 2009, 282:1, eff. July 1, 2010.

**485:1 Statement of Purpose.** –

I. The purpose of this chapter is to provide a comprehensive drinking water protection program for the citizens of New Hampshire. It shall be consistent with and at least as stringent as the Federal Safe Drinking Water Act standards.

II. In order to implement a comprehensive drinking water protection program, the department of environmental services shall:

(a) Monitor the water quality of public water supplies and privately owned redistribution systems.

(b) Provide technical assistance to water operators and the general public.

(c) Review the design of proposed public water systems, privately owned redistribution systems, and alterations for existing systems. Review of the alteration of existing privately owned redistribution systems shall be limited to alterations that involve more than 500 feet of new installation of distribution piping or the addition of new exterior pumping or storage facilities.

(d) Periodically conduct sanitary surveys of public water systems and privately owned redistribution systems to make certain of proper safety and operation.

(e) Require that public water supplies comply with all pertinent federal and state statutes and rules.

(f) Educate citizens for the need and methods of providing safe and adequate drinking water.

(g) Approve sources of water used in the manufacture of bottled water.

(h) Monitor the operation and maintenance of privately owned redistribution systems.

**Source.** 1989, 339:1. 1990, 163:1. 1996, 228:108. 1997, 155:4, eff. Aug. 8, 1997. 2008, 279:1, 2, eff. July 1, 2009

**485:1-a Definitions.** – As used in this chapter, unless the context clearly indicates otherwise, the following words shall have the following meanings:

I. "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

I-a. "Brackish" means a concentration in water of dissolved solids that is between 1,000 and 10,000 milligrams per liter.

I-b. "Closed loop geothermal system" means any heating or cooling system that operates by circulating fluid through a closed loop pipe or loops of pipes installed in the subsurface or surface water for the purpose of utilizing the geothermal properties of the subsurface or surface water as a heat source or sink.

II. "Contaminant" means any physical, chemical, biological or radiological substance or matter in the water.

III. "Department" means the department of environmental services.

IV. "Commissioner" means the commissioner of the department of environmental services.

V. "Feasible" means capable of being done with the use of the best technology, treatment techniques, and other means which the department finds, after examination for efficacy under field as well as laboratory conditions, is available at reasonable cost.

V-a. "Freshwater" means water with a concentration of total dissolved solids that is less than 1,000 milligrams per liter.

VI. "Household equivalent" means water usage equal to 300 gallons per day.

VII. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from the definition.

VIII. "Maximum contaminant level goal" means that level of a contaminant in water at which no known or anticipated adverse effects on the health of consumers occur and which allows an adequate margin of safety, as determined by federal and state agencies.

IX. "National Drinking Water Regulations" means the drinking water regulations promulgated by the administrator of the U.S. Environmental Protection Agency under the authority of the Safe Drinking Water Act, P.L. 93-523, as amended.

X. "Non-community water system" means a public water system that is not a community water system.

XI. "Non-transient non-community water system" means a system which is not a community water system and which serves the same 25 people, or more, over 6 months per year.

XI-a. "Open loop geothermal system" means any heating or cooling system that operates by withdrawing water from a well and returning the water to the source well or another well for the purpose of utilizing the geothermal properties of the subsurface as a heat source or sink.

XII. "Operator" means the individual who has direct management responsibility for the routine supervision and operation of a public water system or of a water treatment plant or collection, treatment, storage, or distribution facility or structure that is a part of a system.

XIII. "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.

XIV. "Political subdivision" means any municipality, county, district, or any portion or combination of 2 or more thereof.

XIV-a. "Privately owned redistribution system" means a system for the provision of piped water for human consumption which does not meet the definition of public water system under paragraph XV, and meets all the following criteria: (1) obtains all of its water from, but is not owned or operated by, a public water system; (2) serves a population of at least 25 people, 10 household units, or 15 service connections, whichever is fewest, for at least 60 days per year; and (3) has exterior pumping facilities, not including facilities used to reduce pressure, or exterior storage facilities which are not part of building plumbing.

XV. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Any water system which meets all of the following conditions is not a public water system:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system; and

(c) Does not sell water to any person.

XV-a. "Source of water" means a spring, artesian well, spa, geyser, drilled well, public water supply, or other source, of any water used in the manufacture of bottled water, which has been inspected and approved by the department.

XV-b. "Salt water" means water with a concentration of total dissolved solids that exceeds 10,000 milligrams per liter.

XVI. "Supplier of water" means any person who controls, owns or generally manages a public water system.

XVII. "Water treatment plant" means that portion of the public water system which is designed to alter the physical, chemical, biological or radiological quality of the water or to remove any contaminants.

XVIII. "Wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

XIX. "Water conservation" means any beneficial reduction in water losses, waste, or use.

**Source.** 1990, 163:2. 1996, 228:68, 106. 1997, 155:5, eff. Aug. 8, 1997. 2002, 142:1, eff. July 12, 2002. 2008, 279:3, eff. July 1, 2009. 2009, 27:2-5, eff. July 7, 2009.

**485:3 Drinking Water Rules. –**

I. The commissioner shall adopt under RSA 541-A, following public hearing, drinking water rules and primary drinking water standards which are necessary to protect the public health and which shall apply to all public water systems. Such rules shall include:

(a) identification of contaminants which may have an adverse effect on the health of persons;

(b) specification for each contaminant of either:

(1) a maximum contaminant level that is acceptable in water for human consumption, if it is feasible to ascertain the level of such contaminant in water in public water systems; or

(2) one or more treatment techniques or methods which lead to a reduction of the level of such contaminant sufficient to protect the public health, if it is not feasible to ascertain the level of such contaminant in water in the public water system; and

(c) criteria and procedures to assure compliance with the levels or methods determined under subparagraph (b), including quality control monitoring and testing procedures and standards to ensure compliance with such levels or methods; criteria and standards to ensure proper operation and maintenance of the system; requirements as to the minimum quality of water which may be delivered to the consumer; and requirements with respect to siting new facilities. Such rules shall be no less stringent than the most recent national Primary Drinking Water Regulations in effect, as issued or promulgated by the United States Environmental Protection Agency.

II. The commissioner may adopt secondary drinking water rules, which are necessary to protect the public welfare. Such rules may apply to any contaminant in drinking water which may adversely affect the color, odor, taste or appearance of the water and consequently may cause a substantial number of persons to discontinue using a public water system, or which may otherwise adversely affect the public welfare. Such rules may vary according to geographic, economic, technical or other relevant circumstances. Such rules shall reasonably assure the protection of the public welfare and the supply of aesthetically adequate drinking water.

III. The commissioner shall adopt under RSA 541-A all rules necessary to implement the requirements of the following sections of this chapter:

(a) RSA 485:42.

(b) RSA 485:43.

IV. The commissioner may adopt rules specifying criteria and procedures for requiring public water systems to conduct monitoring programs for contaminants which are not identified in the national primary drinking water regulations, but which have been identified by the administrator of the United States Environmental Protection Agency as "unregulated contaminants." Such rules shall require monitoring of drinking water supplied by the system and shall vary the frequency and schedule of monitoring requirements for systems. An unregulated contaminant is one for which no maximum contaminant level or treatment technique has been established under paragraph I or II. In developing such rules, the commissioner shall consider materials submitted by the department of health and human services, pursuant to RSA 125-H:3. Rules adopted under

this paragraph shall list unregulated contaminants for which public water systems may be required to monitor. Any list established pursuant to this paragraph shall be consistent with, but not limited by, the list of unregulated contaminants identified in regulations promulgated by the administrator of the United States Environmental Protection Agency.

V. The commissioner may adopt rules specifying the criteria under which filtration, including coagulation and sedimentation, as appropriate, is required as a treatment technique for public water systems supplied by surface water sources. In developing such rules the commissioner shall consider the quality of source waters, protection afforded by watershed management, treatment practices such as disinfection and length of water storage and other factors relevant to protection of health. The commissioner may require any public water supply system to assist in determining the necessity of filtration in that system. The commissioner shall provide an opportunity for notice and public hearing prior to implementation of any filtration requirement. Following such hearing, the commissioner shall prescribe, by rule adopted pursuant to RSA 541-A, a compliance schedule for such filtration requirement.

VI. The commissioner may adopt rules requiring disinfection as a treatment technique for all public water systems.

VII. The commissioner may adopt rules specifying the criteria and procedures to be used to identify and notify persons who may be affected by lead contamination of their drinking water when such contamination results from either the lead content in the construction materials of the public water system or the corrosivity of the water supply, or both. The commissioner may also adopt rules prohibiting the use of lead pipes, solder and flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption. Such rules shall not prohibit the use of leaded joints necessary for the repair of cast iron pipes.

VIII. The commissioner may adopt rules relative to defining the best available technology, treatment techniques, or other means which are feasible for the purpose of meeting the federal maximum contaminant level. In defining the best available technology, treatment technique or other means, the commissioner may consider the number of persons served by the system, other physical conditions related to engineering feasibility and cost of compliance, and information contained in health risk assessments provided by the department of health and human services pursuant to RSA 125-H:3, II and IV. Such rules shall specify all applicable criteria relative to the commissioner's determination.

IX. The commissioner may adopt rules to implement a wellhead protection program pursuant to RSA 485:48.

X. The commissioner may adopt rules to implement the Underground Injection Control Program of the federal Safe Drinking Water Act, 42 U.S.C. section 300f et seq., as well as rules pertaining to permits for the regulation and remediation of contamination from previous discharges or disposal of waste to the groundwater. The commissioner's rules shall include criteria and procedures to ensure that past and present underground injection will not endanger drinking water sources, and shall provide for consideration of varying geologic, hydrologic, or other conditions in different areas within the state.

XI. The commissioner shall adopt rules, pursuant to RSA 541-A, specifying the water quality standards and other criteria and procedures for obtaining a permit to use a source of water for the manufacture of bottled water.

XII. The commissioner may adopt rules to ensure long-term viability of public drinking water systems as required by section 119 of the federal Safe Drinking Water Act Amendments of 1996, 42 U.S.C. section 300g-9 to qualify for full eligibility for federal and state revolving fund capital grants.

XIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to new groundwater withdrawals of 57,600 gallons or more in any 24-hour period by public water systems. Such rules shall include:

(a) Criteria and procedures for requiring public water systems to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the anticipated zone of contribution to the withdrawal.

(b) Requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the public water system seeking approval for a withdrawal.

(c) Procedures by which the department may deny permission for withdrawals or order the applicant to provide a response policy, as provided by department rules, for provision of alternative water supply at no initial capital cost to persons whose wells are adversely affected by the proposed withdrawal or order reduced withdrawals if hydrogeologic data indicate that water-related resources are being adversely affected by the withdrawals.

XIV. The commissioner may adopt rules to:

(a) Regulate the heat exchange fluids utilized in closed loop geothermal systems. The commissioner's rules shall include criteria and procedures to ensure that these substances when released to the environment will not endanger drinking water sources.

(b) Prohibit the construction of open loop geothermal systems where such process will contaminate freshwater aquifers with brackish or saline groundwater.

**Source.** 1989, 339:1. 1991, 344:3. 1992, 289:53. 1995, 310:181. 1996, 228:110. 1997, 155:6; 271:1. 1998, 124:1, eff. Aug. 1, 1998. 2009, 27:6, eff. July 7, 2009.

#### **485:8 Approval of Construction Plans. –**

I. No person, proposing to supply water for domestic uses through a public water system or privately owned redistribution system, shall construct any new system, or enlarge any existing system, for supplying water to the public without first submitting detailed plans of the proposed construction to the department and securing its approval of such plans. The department shall examine the topography and the watershed, complete an engineering review of the plans and specifications for said proposed construction, and make chemical and bacteriological analysis of the waters of the proposed supply, before approval is granted. The requirements of this paragraph shall only apply to privately owned redistribution systems if the construction or enlargement of an existing system involves more than 500 feet of new installation of distribution piping or the addition of any new exterior pumping or water storage facility. Any review of plans for a privately owned redistribution system shall be completed within 30 days of the submission of such plans.

II. No new construction, addition, or alteration involving the source, treatment, distribution, or storage of water in any public water system or privately owned

redistribution system shall be commenced until the plans and specifications have been submitted to and approved in accordance with rules adopted by the department; except, if such construction, addition, or alteration is exempted by the department because it will have no effect on public health or welfare, then such submission and approval is not required. In granting approval of plans and specifications, the department may require modifications, conditions, or procedures to ensure, as far as feasible, the protection of the public health. The department may require the submission of water samples for analysis to determine the extent of treatment required. Records of construction, including, where possible, plans and descriptions of existing public water systems and privately owned redistribution systems, shall be maintained by such systems and shall be made available to the department upon request. The requirements of this paragraph shall only apply to privately owned redistribution systems if the construction, addition, or alteration of an existing system involves more than 500 feet of new installation of distribution piping or the addition of any new exterior pumping or water storage facility. Any review of plans for a privately owned redistribution system shall be completed within 30 days of the submission of such plans.

III. Any person submitting detailed plans to the department, as provided in this section, for a new public water system, or an existing public water system where conversion from transient use to residential-type use is proposed, shall pay to the department a fee of \$45 per residential unit. When usage cannot be apportioned by residential units at new public water systems, the fee shall be based on the flow proportioned equivalent to that of a single family residential unit. The commissioner shall adopt rules pursuant to RSA 541-A defining flow proportioned equivalency.

IV. The fees required under paragraph III shall be for reviewing such detailed plans and making site inspections as may be necessary. The fee shall be paid at the time said detailed plans are submitted and shall be deposited with the state treasurer as unrestricted revenue. The department shall establish by rule, adopted pursuant to RSA 541-A, a minimum threshold below which no fee is required and a maximum level above which the fee will not increase.

V. Any person proposing to install new public sewerage or sewage treatment facilities, or to extend, renovate, replace or substantially repair any such existing facilities, shall submit, at least 30 days in advance of construction, detailed plans and specifications for such facilities to the department and secure its approval of such plans and specifications. The foregoing provisions shall also be applicable to any institution accommodating 30 or more people, which provides its own sewage disposal facilities.

**Source.** 1989, 339:1. 1996, 228:70, 106, eff. July 1, 1996. 2008, 279:5, eff. July 1, 2009.

**485:14-a Referendum Procedure for Public Water Systems Serving More Than One Political Subdivision. –**

I. Upon the written application of the aggregate of 10 percent of the registered voters in all of the towns served by a water system, presented to the clerk of the town owning the water system at least 90 days before the day prescribed for an annual town meeting or city election, the clerk shall forward a copy of the petition to each town served by the water system. Upon receipt of the petition, the selectmen of the town shall insert on the warrant or the official 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 multiple towns does not approve the use of fluoride in the public water system, no fluoride shall be introduced into the public water system for said towns. 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 the aggregate of 10 percent of the registered voters of all of the towns.

II. In this section:

(a) "Town" means town as defined in RSA 21:5.

(b) "Selectmen" means selectmen as defined in RSA 21:28.

**Source.** 2004, 225:2, eff. July 1, 2004. 2008, 230:5, eff. Aug. 19, 2008

**485:17 Penalty. –**

I. If a person shall recklessly place, leave, or cause to be placed or left, in or near a lake, pond, reservoir or stream tributary thereto, from which the domestic water supply of a city, town, or village is taken, in whole or in part, any material, substance, or fluid that may cause such water to become impure or unfit for such purposes, such person shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

II. If a person shall purposely or knowingly place, leave, or cause to be placed or left, in or near a lake, pond, reservoir, or stream tributary thereto, from which the domestic water supply of a city, town, or village is taken, in whole or in part, any material, substance, or fluid that may cause such water to become impure or unfit for such purposes, such person shall be guilty of a class B felony.

**Source.** 1989, 339:1, eff. Jan. 1, 1990. 2009, 210:5, eff. Jan. 1, 2010.

**485:20 Injunctions. –**

I. The superior court shall have power to issue injunctions restraining any person from violating the provisions of RSA 485:17.

II. Municipalities may apply to a justice of the superior court for injunctive relief against existing or impending violations of RSA 485:17. The municipality shall give notice of any such action to the attorney general and the commissioner of environmental services, who may take such steps as they deem necessary to ensure uniform statewide enforcement, including but not limited to joining the action, assuming sole prosecution of the action, or, as of right, dismissing the action without prejudice. Such notice shall be given at least 30 days prior to the commencement of any such action, unless more immediate action is necessary to prevent irreparable environmental damage or other serious public harm, in which case such notice shall be given as soon as practicable, but in no event later than the date of commencement of the action. This paragraph shall not be construed to affect, in any manner, existing authority of municipalities to act based upon the provisions of other statutes or local ordinances.

**Source.** 1989, 339:1. 1991, 340:3, eff. Jan. 1, 1992. 2009, 210:7, eff. Jan. 1, 2010.

**485:35 Prohibiting Use; Penalty.** – Whenever the department, upon investigation, becomes satisfied that a well, spring or other supply of water, used for domestic purposes, has become polluted so as to endanger the public health, it is authorized to prohibit the person or corporation owning or controlling said supply from furnishing such water for domestic purposes, until it becomes satisfied that said water supply has been purified and made fit for domestic use. Any person who knowingly violates the order of the department is guilty of a class B felony for each day he or she continues to furnish water after the order of the department has been served on such person.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2008, 161:1, eff. Jan. 1, 2009.

**485:40 Emergency Planning.** – The department shall develop plans, with the advice and assistance of the division of homeland security and emergency management, and of the public water systems of the state, for emergency conditions and situations that may endanger the public health or welfare by contamination of drinking water. Such plans may include potential sources of contaminants and situations or conditions that could place them in the sources of public drinking water, techniques and methods to be used by public water systems to reduce or eliminate the dangers to public health caused thereby, methods and times for analysis or testing during such emergency conditions or situations, alternate sources of water available to public water systems, and methods of supplying drinking water to consumers if a public water system cannot supply such water.

**Source.** 1989, 339:1. 1996, 228:71, eff. July 1, 1996. 2002, 257:10, eff. July 1, 2002. 2003, 319:128, eff. Sept. 4, 2003. 2004, 171:20, eff. July 24, 2004. 2008, 361:15, eff. July 11, 2008.

**485:41 Duties of Department.** – The department shall:

I. Monitor the operation and maintenance of new and existing public water systems and privately owned redistribution systems.

II. Adopt rules governing the maintenance and operation of public water systems to ensure compliance with drinking water standards and to protect the public health.

III. Adopt rules governing the installation of pipes, fixtures and other apparatus which are used to connect the water system or privately owned redistribution system to a building. Such rules shall be considered minimum standards. The department shall adopt the International Plumbing Code as published by the International Code Council by reference, provided the department specifies which sections of the code are in force in New Hampshire and makes specific any discretionary provisions in the code subject to approval by the state building code review board. The department shall periodically review the rules adopted under this paragraph to assure that they are no less stringent than the requirements of the current code.

IV. Adopt rules establishing recordkeeping, reporting and testing requirements for public water systems.

V. Enter, and authorize its employees and agents to enter, the premises of all public water systems and privately owned redistribution systems for the purpose of carrying out inspection and for the purpose of taking water samples, to determine compliance with the provisions of this chapter or rules adopted under it, and to inspect any and all records and

facilities of such public water supply or privately owned redistribution system in order to determine compliance with this chapter and rules adopted under it.

VI. Undertake long-range planning and studies, within available state and federal funding, relating to the purity of drinking water in the state.

VII. Make available to the public the analytical results of all monitoring and testing undertaken pursuant to this chapter.

VIII. Adopt a fee system in recognition of services provided by the water supply engineering bureau including the issuance of an operational permit for public water systems subject to this chapter. The commissioner shall adopt rules establishing the application process for the issuance of operational permits pursuant to RSA 541-A. The fee category for community systems per year shall be \$300, but in no case shall the fee exceed \$10 per household or household equivalent. The fee category for non-transient and non-community systems shall be \$150 per year. All fees shall be paid to the department for deposit in the operational permits account. Moneys in the operational permits account shall be used to pay the salaries, benefits and expenses of the staff in the department's drinking water supply program. Any revenues generated in excess of the costs of funding the drinking water supply program's expenses, shall lapse to the general fund at the close of each fiscal year to be used to offset the future general fund appropriation for the water supply program.

IX. Adopt rules applying to privately owned redistribution systems requiring:

(a) Periodic monitoring of coliform bacteria and public notification, and remedial action in case of violation of bacterial water quality standards, consistent with the rules which apply to public water systems for such bacterial water quality standards.

(b) Retention of a primary water operator who maintains an operating certificate at a minimum grade 1-A level.

(c) Inspection and maintenance of exterior pumping stations, distribution networks, and exterior storage tanks.

(d) Design standards for new and replacement facilities consistent with the rules which apply to public water systems as limited by the provisions of RSA 485 concerning privately owned redistribution systems, and provided that such rules require that any plans review required by RSA 485 shall be completed within 30 days of the submission of such plans.

**Source.** 1989, 339:1. 1990, 163:4. 1991, 380:3. 1996, 228:72, 106, eff. July 1, 1996. 2002, 8:9, eff. Sept. 14, 2002. 2008, 279:6-9, eff. July 1, 2009

#### **485:58 Enforcement and Penalties. –**

I. If the department determines that a primary standard has violated, or that, in its judgment, a condition exists in a public water system which will cause a violation of a primary standard and may result in a serious risk to public health, it may issue an order requiring:

(a) The prohibition of transportation, sale, distribution or supplying of water;

(b) The repair, installation or operation of purification equipment or methods;

(c) The notification of all potential users of the system, including travelers, of the nature, extent and possible health effects of the imminent hazard, and precautions to be taken by users; or

(d) The testing, sampling or other analytical operations required to determine the nature, extent, duration or termination of the imminent hazard.

The superior court shall place any action filed by the department to enforce an order under this section at the top of its calendar of cases and shall provide an expeditious hearing on such order.

II. Any reckless violation of any provision of this chapter, any rule adopted under this chapter, any term or condition of an approval, exemption, variance or order issued under this chapter, or any misstatement of a material fact required to be disclosed under this chapter shall constitute a misdemeanor for a natural person and a felony for any other person.

III. Unless otherwise provided, any purposeful or knowing violation of any provision of this chapter, any rule adopted under this chapter, any term or condition of an approval, exemption, variance, or order issued under this chapter, or any misstatement of a material fact required to be disclosed under this chapter shall constitute a class B felony.

IV. Any person who violates any provision of this chapter or any rule adopted or any term or condition of an approval, exemption, variance or order issued under this chapter shall be liable to the state, upon suit brought by the attorney general, for a civil forfeiture in an amount not to exceed \$25,000 for each day of such violation.

V. The commissioner of environmental services, after notice and hearing pursuant to 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 including any rule adopted under the provisions of this chapter. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violations of this chapter as provided above.

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

VI. Any act or failure to act in violation of RSA 485:8, II; 31; 42; 43; 46; or 48; or any rule adopted under RSA 485:2; 3; 4; 40; 41; 44; or 47 may be enjoined.

VII. Notwithstanding RSA 651:2, any person may, in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$25,000 if found guilty of any violation of paragraph II or III of this section. The court may also order the person to pay the costs of remediation. Each day of violation shall constitute a separate offense.

**Source.** 1989, 339:1. 1990, 33:2. 1995, 88:2; 217:6. 1996, 228:106, eff. July 1, 1996. 2009, 210:8, eff. Jan. 1, 2010.

**485-C:1 Statement of Purpose. –**

I. The purpose of this chapter is to protect the natural quality of the groundwater resource of the state by assisting local groundwater protection efforts and by establishing procedures and standards for the classification and remediation of groundwater and state

permitting of large groundwater withdrawals. The legislature recognizes the fundamental importance of the groundwater resource and the role of local planning and management in groundwater protection, and intends through this legislation to provide a framework for local groundwater protection. The legislature also intends to provide for consistent, protective management and remediation of groundwater affected by regulated contaminants. The natural quality of the groundwater resource shall be preserved and protected in order that groundwater may be used for drinking water supply. Ambient groundwater quality standards shall meet drinking water standards, and the classification of groundwater shall provide opportunity for protecting groundwater of high value as a drinking water supply. The legislature recognizes that groundwater constitutes an integral part of the hydrologic cycle and that the protection of groundwater quality is necessary to preserve the integrity of surface water.

II. The legislature finds that the most effective means of preserving the existing high quality of groundwater is by identification and careful management of operations or activities which may cause contamination of groundwater if not properly conducted. Because groundwater is primarily a local resource, cities and towns should have the first opportunity to institute programs for groundwater protection within the scope of this chapter. Suppliers of water should also have this opportunity because of their vital interest in preserving the quality of their groundwater supply. The state, which has general responsibility for groundwater management in the public trust and interest, should develop groundwater protection programs within the scope of this chapter when such programs are not developed by a local entity.

**Source.** 1991, 344:1. 1996, 266:1, eff. Aug. 9, 1996. 2010, 348:1, eff. Sept. 18, 2010.

**485-C:2 Definitions.** – In this chapter:

I. "Ambient groundwater quality standards" means maximum concentration levels for regulated contaminants in groundwater which result from human operations or activities, as delineated in RSA 485-C:6.

II. "Best management practice" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the risk of contamination of groundwater.

III. "Commissioner" means the commissioner of the department of environmental services.

IV. "Contributing area" means the land above a class of groundwater, which is the vertical projection of the defined class on the land surface.

V. "Department" means the department of environmental services.

VI. "Director" means the director of the division of water supply and pollution control, department of environmental services.

VII. "Division" means the division of water supply and pollution control, department of environmental services.

VIII. "Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations.

IX. "Groundwater discharge permit" means a permit issued under RSA 485-A:13 for disposal of sewage or waste to the groundwater.

IX-a. "Large groundwater withdrawal" means any withdrawal from groundwater of

57,600 gallons or more of water in any 24-hour period at a single property or place of business except withdrawals associated with short-term use.

X. "Local entity" means a town or city, acting through a planning board, conservation commission, water department, health officer, or other duly constituted municipal unit; a village district established under RSA 52 or its predecessor statutes; an entity established by intergovernmental agreement under RSA 53-A; or a supplier of water for wellhead protection areas tributary to wells owned by the public water system.

XI. "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.

XII. "Public water system" means a public water system as defined in RSA 485:1-a, XV.

XIII. "Regulated contaminant" means any physical, chemical, biological, radiological substance or other matter, other than naturally occurring substances at naturally occurring levels, in water which adversely affects human health or the environment.

XIII-a. "Replacement well" means a new well installed to replace or back-up an existing well that operates and impacts water users and water resources in substantially the same manner as the well that is being replaced.

XIII-b. "Short-term use" means the temporary, non-routine withdrawal of groundwater at a specific geographical location over a period of one year or less, and withdrawal of groundwater for contaminated site remediation where the duration of the withdrawal may exceed one year and corresponds with the objectives of the remediation.

XIV. "Stratified drift aquifer" means a geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

XV. "Supplier of water" means a supplier of water as defined in RSA 485:1-a, XVI.

XVI. "Transmissivity" means the rate at which water is transmitted through a unit width of a water-bearing formation under a unit hydraulic gradient. It is equal to the hydraulic conductivity times the thickness of the formation, and is given in units of distance squared per unit time.

XVII. "Well" means a hole or shaft sunk into the earth to observe, sample, or withdraw groundwater.

XVIII. "Wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

XIX. "Zone of contribution" means the subsurface volume from which groundwater flow is drawn to a pumping well.

**Source.** 1991, 344:1, eff. June 28, 1991. 2006, 322:1, eff. Aug. 21, 2006. 2007, 55:1, eff. July 21, 2007. 2010, 348:3, 4, eff. Sept. 18, 2010.

#### **485-C:20 Effect on Local Ordinances. –**

I. Nothing in this chapter shall be deemed to preempt the authority of municipalities, under other statutes, to enact local ordinances or regulations affecting groundwater, other than groundwater withdrawals; provided, however, that requirements imposed under this

chapter shall be considered as minimum.

II. No regulatory decision made by the department shall abrogate or affect any applicant's obligation to comply with or obtain all applicable and lawful local ordinances, codes, regulations, and approvals not otherwise prohibited by this chapter.

**Source.** 1991, 344:1. 1998, 124:6, eff. Aug. 1, 1998. 2010, 348:2, eff. Sept. 18, 2010.

**485-C:21 Approval for Large Groundwater Withdrawals. –**

I. No person may withdraw more than a total of 57,600 gallons of water in any 24-hour period from a well or wells sited at a single property or place of business after the effective date of this section, regardless of the number of wells sited on the property or business, without the prior approval of the department.

II. Applications for approval of water withdrawals of 57,600 gallons or more per day shall be filed with the department on a form approved by the department. A preliminary report submitted by a public water system pursuant to department rules shall be an application for purposes of this section. Copies of the application and any subsequent materials submitted to the department shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e. The department shall provide the governing body of each municipality with copies of any mailed correspondence sent to the applicant. The department shall provide the applicant with copies of any mailed correspondence sent to or received from the governing body of a municipality.

III. Following the submission of the application, the department shall hold a public hearing on the application in the municipality in which the proposed withdrawal is to be made upon the request of the governing body of any municipality or supplier of water within the potential impact area, provided that such a hearing is requested within 15 days of receipt of the application.

IV. The department shall hold the public hearing within 30 days after the request of the governing body of the municipality or the supplier of water made pursuant to paragraph III. Notice of the hearing shall be made by the applicant and shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality.

V. The applicant and the governing body of each municipality and each supplier of water within the potential impact area of the well may submit comments to the department relative to the proposed withdrawal within 45 days after the public hearing in the municipality or, if no hearing is requested, within 45 days after the receipt of the application. If the comments relative to the application make recommendations to the department, the department shall specifically consider such recommendations and shall issue written findings with respect to each issue raised that is contrary to the decision of the department.

V-a. Upon the request of the governing body of a municipality within the potential impact area, the department shall hold a public hearing, after receipt of the final report, and prior to a final decision. The department shall notify the municipalities within 10 days of receiving the final report. The municipalities shall have 15 days within which to

request a public hearing. Notice and response to hearing requests shall be the same as that required under paragraph IV.

V-b. The department's decision on the application shall be based on a demonstrated need for the withdrawal after review of:

- (a) A description of the need.
- (b) A conservation management plan.
- (c) A conceptual hydrologic model of the withdrawal.
- (d) A water resource and use inventory.
- (e) The effects of the withdrawal on water resources and uses.
- (f) Completion of a withdrawal testing program.
- (g) Development of an impact monitoring and reporting program.
- (h) Identification of potential mitigation measures.

V-c. In order to preserve the public trust, no large groundwater withdrawal shall cause an unmitigated impact as determined by the following:

(a) Reducing the withdrawal capacity of a private water supply well of a single residence as a result of the reduction of available water that is directly associated with the withdrawal as determined by the following:

(1) Any reduction in capacity for wells with a capacity less than water well board recommended optimum minimum flow capacity of 4 gallons per minute for 4 hours before the withdrawal;

(2) Any reduction in capacity below 4 gallons per minute for 4 hours, for wells that had a capacity greater than 4 gallons per minute for 4 hours, before the withdrawal; or

(3) A reduction in capacity where the well still has a capacity between 4 gallons and 10 gallons per minute for 4 hours and the user provides information indicating that the reduction in flow has resulted in the inability to meet his or her water needs;

(b) Reducing the capacity of a public drinking water supply below the minimum withdrawal rates required per consumer determined by the following:

(1) Minimum daily amounts of drinking water shall be determined per use based on the design flow criteria established for public water supply systems established in rules adopted by the department; or

(2) Where it is verified that such wells were unable to produce the design flow before the withdrawal began, the adverse impact shall be any reduction in the ability to produce water;

(c) Reducing the capacity of a water supply that is used for a multiple unit dwelling residence, but that is not a public water supply, that results in the inability to continue established activities or maintain existing water capacity requirements;

(d) Reducing the capacity of a private, non-residential, non-drinking water supply that results in the inability of a commercial, industrial, agricultural, or retail facility to continue established services or production volumes;

(e) Reducing the ability of a registered water user to produce volumes equivalent to the average daily withdrawal for a specific calendar month as determined by discharge measurements and reports made to the department in accordance with the water user requirements under RSA 488 or other previous water use reporting requirements of the department;

(f) Reducing surface water levels or flows that will, or do, cause a violation of surface water quality rules adopted by the department;

(g) Causing a net loss of values for submerged lands under tidal and fresh waters and its wetlands as set forth in RSA 482-A;

(h) Causing the inability of permitted surface water or groundwater discharges to meet permit conditions;

(i) Reducing river flows below acceptable levels established pursuant to RSA 483;

(j) Causing the contamination of groundwater obtained from wells or surface waters from contaminated groundwater whose flow has been altered by the withdrawal, or causing the contamination of an aquifer or contributing to the spread of any existing contamination;

(k) Causing the long-term predictable rate of replenishment of the aquifer that is the source of the withdrawal to be exceeded.

V-d. Terms and conditions of approval for a large groundwater withdrawal may be altered by the department to accommodate for drought conditions or new withdrawals.

V-e. Applications for large groundwater withdrawals shall be accompanied by an impact assessment of the potential impact area of the proposed withdrawal to demonstrate the preservation of the public trust as set forth in paragraph V-c. The impact assessment shall include at a minimum the following:

(a) The maximum extent of the cone of depression created by the withdrawal with the assumption of a conceptual hydrological model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt;

(b) The maximum extent of the recharge area for the withdrawal with the assumption of a conceptual hydrologic model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt; and

(c) The downgradient area of the withdrawal which shall include:

(1) An existing or new delineation of a potential impact area large enough so that the size of the entire study area for the withdrawal is at least 10 times the size of the recharge area for the withdrawal;

(2) An existing or new delineation of a watershed where the amount of water crossing the downgradient boundary, that is, leaving the study under current conditions, is at least 10 times the amount to be withdrawn; or

(3) An alternative method of estimating a potential impact area provided it relies on conservative assumptions, is demonstrated as appropriate for the site by test results, and is clearly explained and justified.

VI. (a) Decisions of the department may be appealed in accordance with RSA 21-O:7, IV.

(b) Any party shall have the right to appeal from the decision of the water council to the superior court of the county in which the large groundwater withdrawal is to be made to determine the validity and the reasonableness of the department's action on the permit. The appeal shall be filed within 60 days after the decision of the water council. The appeal shall suspend the decision of the department pending the outcome of a preliminary hearing. The appeal, so far as practicable, shall have precedence over other actions in the same court.

VII. Records of public hearings shall be available pursuant to RSA 91-A.

VIII. Before the department issues a large groundwater withdrawal permit, any municipality in which a well is sited or proposed to be sited, or any municipality within the potential impact area of the proposed withdrawal pursuant to paragraph V-e, may

require the department to determine that the withdrawal will not infringe on the public's use of groundwater, including any contribution to wetlands and surface waters, by ensuring that the requirements of paragraph V-c are met. The department's determination shall be based on substantial evidence and shall include the methods, evidence, and data it used to support its judgment. After the department issues a large groundwater withdrawal permit, such municipality may require the department to provide a written finding describing the status of a decision issued by the department on an application submitted under this section when a local building permit directly related to a large groundwater withdrawal activity expires or becomes null and void, or both. The department shall determine if the change in status of such local permit affects the decision the department made on the application.

IX. The department shall allow any municipality showing that it may be substantially and specifically affected by a proceeding under this chapter to intervene as a party in the whole or any portion of the proceeding and shall allow the municipality to participate by presentation of argument orally or in writing or for any other purpose, as the department may order. A municipality that intervenes before the department shall retain its status through any appeal of the department's decision.

**Source.** 1998, 124:4, eff. Aug. 1, 1998. 2005, 200:1-4, eff. Aug. 30, 2005. 2006, 322:5, eff. Aug. 21, 2006. 2007, 169:1, eff. Aug. 17, 2007. 2010, 158:1, eff. July 17, 2010.

**485-C:23 Temporary Exemptions for Large Groundwater Withdrawals Required for Emergency Purposes. –**

I. The department may approve a new large groundwater withdrawal without compliance with RSA 485-C:14, RSA 485-C:21, or RSA 485-C:22 to protect human health and the environment in the event that circumstances beyond the control of the person requesting the withdrawal occurs, such as fire, flood, drought, other acts of God, or infrastructure failure.

II. A large groundwater withdrawal approved for emergency purposes under paragraph I shall only be allowed to operate for 2 years unless it is approved by the department in accordance with RSA 485-C:21.

III. No withdrawal that the department approves in accordance with paragraph I shall result in an unmitigated impact as described in RSA 485-C:21, V-c. The department shall require that monitoring and mitigation plans be implemented when necessary to identify and mitigate the occurrence of such impacts.

IV. Any party may appeal from the decision of the department to approve a withdrawal in accordance with paragraph I to the superior court of the county in which the large groundwater withdrawal is to be made to determine the validity and the reasonableness of the department's action. The appeal shall be filed within 60 days after the approval of the department.

**Source.** 2010, 348:5, eff. Sept. 18, 2010

**485-C:24 Short-Term Use Groundwater Withdrawals. –** The department shall require a short-term use, large groundwater withdrawal to cease and desist if such withdrawal causes unmitigated impacts as described in RSA 485-A:21, V-c.

**Source.** 2010, 348:5, eff. Sept. 18, 2010.

**485-C:25 Exemption for Certain Large Groundwater Withdrawals Associated with Geothermal Processes.** – A geothermal system as defined by RSA 485:1-a, I-b and RSA 485:1-a, XI-a shall not be considered a large groundwater withdrawal if the volume of groundwater extracted minus the volume of water returned to the same aquifer does not exceed 57,600 gallons over any 24-hour period.

**Source.** 2010, 348:5, eff. Sept. 18, 2010.

**485-E:1 Findings and Purpose.** –

I. New Hampshire's coastal water resources have significant ecological, commercial, cultural, and recreational values for the state and its citizens. The state's coastal water resources are highly sensitive and are subject to intense and increasing pressures associated with population growth and development, including increased pollution loads from many sources, including wastewater treatment facilities, stormwater runoff, septic systems, and land use practices. Excess levels of nutrients are of particular concern, have become a significant problem in the Great Bay estuary, and are likely to result in more stringent water quality requirements that could affect activities occurring in municipalities throughout the coastal watershed. In order to improve and protect water quality and meet state and federal regulations, it is necessary for municipalities to reduce nutrient pollution loads from wastewater treatment facilities, stormwater runoff, septic systems and septage, and land use practices. It is essential that the state, and municipalities located within the state's coastal watershed, work in a coordinated way to address these problems and protect the health and sustainability of New Hampshire's coastal resources.

II. The purposes of this chapter are to:

(a) Create better municipal, intermunicipal, and regional planning and coordination relative to wastewater and stormwater management, water quality and water supply planning, and land use;

(b) Establish a regional framework for coastal watershed communities, regional planning commissions, the state, and other stakeholders to collaborate on planning and implementation measures to improve and protect water quality and more effectively address the challenges of meeting clean water standards, particularly with respect to nutrients pollution;

(c) Encourage coastal watershed municipalities, the state, and other stakeholders, individually and in collaboration with one another, to plan, implement, and invest in wastewater, stormwater, and land use planning and management approaches that protect the water quality, natural hydrology, and habitats of the state's coastal resources and associated waters and that advance the state's economic growth, resource protection, and planning policy, established in RSA 9-B; and

(d) Seek innovative solutions to reducing pollution and enhancing water quality.

**Source.** 2004, 258:1, eff. Aug. 15, 2004. 2009, 220:1, eff. July 15, 2009.

**485-E:2 Definitions.** – In this chapter:

I. "Alliance" means the Southeast Watershed Alliance.

II. "Associated waters" means freshwater surface waters and groundwater located in the coastal watershed, which contribute flows downstream to the state's coastal water resources.

III. "Coastal watershed" means the land area in New Hampshire contributing groundwater, surface water, and stormwater to the state's coastal water resources and associated waters. The coastal watershed consists all or portions of the following municipalities: Barrington; Brentwood; Brookfield; Candia; Chester; Danville; Deerfield; Dover; Durham; East Kingston; Epping; Exeter; Farmington; Fremont; Greenland; Hampton; Hampton Falls; Kensington; Kingston; Lee; Madbury; Middleton; Milton; New Castle; New Durham; Newfields; Newington; Newmarket; Nottingham; North Hampton; Northwood; Portsmouth; Raymond; Rochester; Rollinsford; Rye; Sandown; Seabrook; Somersworth; Strafford; Stratham; and Wakefield.

IV. "Coastal water resources" means the Gulf of Maine and associated coastal embayments on the Atlantic coast of New Hampshire, and the Great Bay estuary.

V. "Department" means the department of environmental services.

VI. "Great Bay estuary" means the Piscataqua River, Great Bay and Little Bay, all tidal portions of the Bellamy, Cochecho, Lamprey, Oyster, Salmon Falls, Squamscott, and Winnicut Rivers, and the tidal portion of all minor tributaries to the Piscataqua River Great Bay, or Little Bay.

VII. "Low impact development" means development that incorporates best management practices to reduce impervious surfaces, preserve natural hydrology, and reduce stormwater volumes and pollution. Low impact development practices include, but are not limited to, project designs that reduce the amount of impervious cover, porous pavements, gravel wetlands, and green rooftops.

VIII. "Municipalities" means cities, towns, and village districts.

IX. "State's economic growth, resource protection, and planning policy" means the policy established pursuant to RSA 9-B.

X. "Stormwater utility" means a special assessment district established to generate funding specifically for stormwater management, under RSA 149-I:6-a.

**Source.** 2004, 258:1, eff. Aug. 15, 2004. 2009, 220:1, eff. July 15, 2009.

**485-E:3 Southeast Watershed Alliance.** – There is hereby established a public body corporate and politic having a distinct legal existence separate from the state and not constituting a department or agency of the state government to be known as the Southeast Watershed Alliance, also known as the Alliance. The Alliance shall include those municipalities in New Hampshire whose boundaries include a portion of the coastal watershed and who have agreed to participate the Alliance. The public purpose of the Alliance is:

I. To engage in improved municipal, intermunicipal, and regional planning, studies, public education, and implementation measures, including potential investments, relative to water quality, water supply, wastewater and stormwater management, septic systems and septage, and land use, for the purpose of improving and protecting the water quality and natural hydrology of the state's coastal water resources and associated waters, and to

more effectively address on a watershed basis the challenges of meeting state and federal regulations, including waste load limits and allocations. Such planning and investments may include, but are not limited to:

- (a) Establishing intermunicipal stormwater utilities and any associated facilities.
- (b) Establishing intermunicipal or regional wastewater districts and facilities.
- (c) Establishing and coordinating common municipal regulations for nutrient reduction and water quality protection, such as stormwater, wetlands, and buffer regulations.
- (d) Developing and implementing, in coordination with the department, innovative means to achieve compliance with nutrient and other pollutant reductions, such as a nutrients offset or trading program.

(e) Addressing water supply and water conservation measures.

II. To foster improved municipal and intermunicipal land use planning and regulation, in coordination with the applicable regional planning commissions, such as to encourage low impact development and innovative zoning and land use management approaches, and to advance the state's economic growth, resource protection, and planning policy.

**Source.** 2004, 258:1, eff. Aug. 15, 2004. 2009, 220:1, eff. July 15, 2009

**485-E:4 Advisory Committee.** – The Alliance shall include an advisory committee consisting of the commissioner of the department, or designee, the commissioner of the department of transportation, or designee, the Strafford, Rockingham, and southern New Hampshire regional planning commission executive directors, or designees, and the Piscataqua Region Estuaries Partnership director, or designee. The committee shall provide technical assistance, education, scientific advice, and consultation on whether plans advance the state's economic growth, resource protection, and planning policy, and otherwise share expertise and provide resources to assist the Alliance, in accordance with available resources. Members of the advisory committee shall be nonvoting members of the Alliance. The Alliance may add members to the advisory committee as it determines its needs for expertise.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E:5 Duties of the Department.** –

I. The department shall, no later than October 1, 2009:

(a) Notify the governing bodies, planning boards, conservation commissions, and public works departments of each municipality in the coastal watershed, and the applicable regional planning commissions, of the establishment of the Southeast Watershed Alliance and of the need and purpose of the Alliance, and solicit their participation;

(b) Convene an organizing meeting or meetings, at which the department shall describe the purpose of this chapter, the challenges facing the Great Bay estuary and coastal resources, the potential scope of the Alliance's activities, and the method prescribed by this chapter for coastal watershed municipalities to join the Alliance; and

(c) Provide technical and logistical assistance, as resources allow, to the Alliance until such time as it is self-supporting.

II. The department shall, no later than January 1, 2010, hold a meeting of all coastal watershed municipalities that have joined the Alliance to elect a chairperson of the Alliance and to begin the process of developing the Alliance's operating procedures and organizational structure.

**Source.** 2004, 258:1, eff. Aug. 15, 2004. 2009, 220:1, eff. July 15, 2009.

**485-E:6 Method of Joining Southeast Watershed Alliance.** – Any Alliance municipality may elect to participate or subsequently to withdraw from participation in the Alliance by vote of its governing body.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E:7 General Powers and Duties.** –

I. The Southeast Watershed Alliance may engage in:

(a) Intermunicipal and regional planning, coordination, and public education.

(b) Intermunicipal implementation measures, including but not limited to, intermunicipal investments and the establishment of intermunicipal agreements in furtherance of the purposes of this chapter.

II. The Alliance shall establish governing operating procedures and organizational structure, as follows:

(a) At the meeting required by RSA 485-E:5, II, members of the Alliance shall establish a planning committee which shall propose a board of directors and draft operating procedures and organizational structure in furtherance of the public purpose of the Alliance and this chapter, in accordance with all state laws. The planning committee shall include representatives from 8 coastal watershed municipalities and a representative of the advisory committee.

(b) The Alliance shall hold a meeting no later than 180 days following the meeting required by RSA 485-E:5, II at which the planning committee shall present the proposed operating procedures, organizational structure, and proposed board of directors for the Alliance's review, modification, and approval. The Alliance chairperson shall send the approved operating procedures and organizational structure to the attorney general and department of environmental services for their review and approval. The attorney general shall approve any proposed agreement unless it is in improper form or is incompatible with the requirements of this chapter and the laws of this state. The attorney general shall notify in writing to the governing bodies and the planning committee the details of any specific respects in which the proposed agreement fails to meet the requirements of law. Approval by the attorney general shall be required for the operating procedures and organizational structure to be legally valid. Failure by the attorney general to disapprove an agreement within 30 days of its submission shall constitute approval. The department shall provide comment, including recommendations for improvement, to the committee and governing bodies within 30 days of the proposed agreement's submission relative to its compatibility with the state water statutes and rules.

(c) The Alliance may amend its operating procedures and organizational structure, if necessary, to engage in implementation measures, including the establishment of intermunicipal agreements pursuant to RSA chapter 53-A. Any such amendments shall be

presented and approved at a properly noticed public meeting, and submitted to and reviewed by the attorney general and the department consistent with subparagraph (b).

III. The Alliance shall have the power to engage in intermunicipal and regional planning, coordination, and public education in furtherance of the purpose of this chapter during and after the establishment of the Alliance's bylaws, and before the department's final adoption of water quality standards establishing applicable numeric nutrient criteria.

IV. The Alliance shall have the power to engage in implementation measures consisting of intermunicipal agreements property and investments, staff, services and facilities, and the establishment of intermunicipal or regional districts, in furtherance of the purposes of this chapter. Intermunicipal or regional districts, and implementation measures needed to fund and construct intermunicipal or regional infrastructure, including the incurring of obligations or the raising and appropriating of revenue, shall be established pursuant to cooperative agreements, which shall be valid only if established in accordance with RSA 53-A. After the department's final adoption of water quality standards establishing applicable numeric nutrient criteria, the Alliance may develop a water quality management plan and, at its discretion, establish a water quality planning committee to determine the advisability of establishing one or more intermunicipal water quality management districts to implement such water quality management plan. The Alliance may engage in implementation measures prior to the department's final adoption of water quality standards.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E:8 Southeast Watershed Alliance Fund.** – The Alliance shall establish a southeast watershed alliance fund to assist the activities of the Alliance and Alliance municipalities in furthering the purpose of the Alliance and this chapter. The fund shall be nonlapsing, and shall be used only for planning, public education and outreach, organizational assistance, and implementation and infrastructure uses consistent with the purposes of this chapter, and may consist of moneys provided by Alliance municipalities, the state and federal governments, and private sources. The fund shall be administered by the department on behalf of the Alliance until such time as the Alliance has adopted its operating procedures and organizational structure and has the fiduciary capacity to administer the funds, as determined by the department.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E:9 Regional Outfall Construction; Prohibition.** – The Alliance shall not construct a regional outfall that transfers water out of the Great Bay estuary watershed directly into the Gulf of Maine absent legislation specifically authorizing it to do so.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E:10 Exemption From Taxes.** – Any property of the Alliance acquired and used to further the public purpose of planning, developing, and implementing wastewater and stormwater management and other water quality management solutions that protect the water quality and natural hydrology of the state's coastal resources and associated waters,

is hereby declared to be public property and shall be exempt from all taxes and special assessments of the state or any of its subdivisions. No taxes or assessments shall be imposed upon the activities of the Alliance or upon any of its revenues.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E:11 Exemption From Regulation.** – The New Hampshire public utilities commission shall regulate the Alliance only with regard to insurance and safety requirements.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E:12 Report.** – The Alliance shall, no later than November 1 each year, provide to the senate president, the speaker of the house of representatives, the senate energy, environment and economic development committee, and the house resources, recreation and development committee, a report on the Alliance's work and progress in carrying out the purposes of this chapter, and on recommendations for further legislation.

**Source.** 2009, 220:1, eff. July 15, 2009.

**485-E: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 application, and to this end the provisions of this chapter are severable.

**Source.** 2004, 258:1, eff. Aug. 15, 2004. 2009, 220:1, eff. July 15, 2009.

## CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

### **Planning and Zoning**

#### **674:2 Master Plan; Purpose and Description.** –

I. The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board, to aid the board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire, and to guide the board in the performance of its other duties in a manner that achieves the principles of smart growth, sound planning, and wise resource protection.

II. The master plan shall be a set of statements and land use and development principles for the municipality with such accompanying maps, diagrams, charts and descriptions as to give legal standing to the implementation ordinances and other measures of the planning board. Each section of the master plan shall be consistent with the others in its implementation of the vision section. The master plan shall be a public record subject to the provisions of RSA 91-A. The master plan shall include, at a minimum, the following required sections:

(a) A vision section that serves to direct the other sections of the plan. This section shall contain a set of statements which articulate the desires of the citizens affected by the master plan, not only for their locality but for the region and the whole state. It shall contain a set of guiding principles and priorities to implement that vision.

(b) A land use section upon which all the following sections shall be based. This section shall translate the vision statements into physical terms. Based on a study of population, economic activity, and natural, historic, and cultural resources, it shall show existing conditions and the proposed location, extent, and intensity of future land use.

III. The master plan may also include the following sections:

(a) A transportation section which considers all pertinent modes of transportation and provides a framework for both adequate local needs and for coordination with regional and state transportation plans. Suggested items to be considered may include but are not limited to public transportation, park and ride facilities, and bicycle routes, or paths, or both.

(b) A community facilities section which identifies facilities to support the future land use pattern of subparagraph II(b), meets the projected needs of the community, and coordinates with other local governments' special districts and school districts, as well as with state and federal agencies that have multi-jurisdictional impacts.

(c) An economic development section which proposes actions to suit the community's economic goals, given its economic strengths and weaknesses in the region.

(d) A natural resources section which identifies and inventories any critical or sensitive areas or resources, not only those in the local community, but also those shared with abutting communities. This section provides a factual basis for any land development regulations that may be enacted to protect natural areas. A key component in preparing this section is to identify any conflicts between other elements of the master plan and natural resources, as well as conflicts with plans of abutting communities. The natural resources section of the master plan should include a local water resources management and protection plan as specified in RSA 4-C:22.

(e) A natural hazards section which documents the physical characteristics, severity, frequency, and extent of any potential natural hazards to the community. It should identify those elements of the built environment at risk from natural hazards as well as extent of current and future vulnerability that may result from current zoning and development policies.

(f) A recreation section which shows existing recreation areas and addresses future recreation needs.

(g) A utility and public service section analyzing the need for and showing the present and future general location of existing and anticipated public and private utilities, both local and regional, including telecommunications utilities, their supplies, and facilities for distribution and storage.

(h) A section which identifies cultural and historic resources and protects them for rehabilitation or preservation from the impact of other land use tools such as land use regulations, housing, or transportation. Such section may encourage the preservation or restoration of stone walls, provided agricultural practices, as defined in RSA 21:34-a, are not impeded.

(i) A regional concern section, which describes the specific areas in the municipality of significant regional interest. These areas may include resources wholly contained

within the municipality or bordering, or shared, or both, with neighboring municipalities. Items to be considered may include but are not limited to public facilities, natural resources, economic and housing potential, transportation, agriculture, and open space. The intent of this section is to promote regional awareness in managing growth while fulfilling the vision statements.

(j) A neighborhood plan section which focuses on a specific geographical area of local government that includes substantial residential development. This section is a part of the local master plan and shall be consistent with it. No neighborhood plan shall be adopted until a local master plan is adopted.

(k) A community design section to identify positive physical attributes in a municipality and provide for design goals and policies for planning in specific areas to guide private and public development.

(l) A housing section which assesses local housing conditions and projects future housing needs of residents of all levels of income and ages in the municipality and the region as identified in the regional housing needs assessment performed by the regional planning commission pursuant to RSA 36:47, II, and which integrates the availability of human services with other planning undertaken by the community.

(m) An implementation section, which is a long range action program of specific actions, time frames, allocation of responsibility for actions, description of land development regulations to be adopted, and procedures which the municipality may use to monitor and measure the effectiveness of each section of the plan.

(n) An energy section, which includes an analysis of energy and fuel resources, needs, scarcities, costs, and problems affecting the municipality and a statement of policy on the conservation of energy.

**Source.** 1983, 447:1. 1986, 167:2. 1988, 270:1. 1989, 339:28; 363:15. 2002, 178:2. 2007, 40:1, eff. July 20, 2007. 2008, 269:1, eff. Aug. 25, 2008.

#### **674:21 Innovative Land Use Controls. –**

I. Innovative land use controls may include, but are not limited to:

- (a) Timing incentives.
- (b) Phased development.
- (c) Intensity and use incentive.
- (d) Transfer of density and development rights.
- (e) Planned unit development.
- (f) Cluster development.
- (g) Impact zoning.
- (h) Performance standards.
- (i) Flexible and discretionary zoning.
- (j) Environmental characteristics zoning.
- (k) Inclusionary zoning.
- (l) Accessory dwelling unit standards.
- (m) Impact fees.
- (n) Village plan alternative subdivision.

II. An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide

the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

III. Innovative land use controls must be adopted in accordance with RSA 675:1, II.

IV. As used in this section:

(a) "Inclusionary zoning" means land use control regulations which provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process.

(b) "Accessory dwelling unit" means a second dwelling unit, attached or detached, which is permitted by a land use control regulation to be located on the same lot, plat, site, or other division of land as the permitted principal dwelling unit.

V. As used in this section "impact fee" means a fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space. No later than July 1, 1993, all impact fee ordinances shall be subject to the following:

(a) The amount of any such fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

(b) In order for a municipality to adopt an impact fee ordinance, it must have enacted a capital improvements program pursuant to RSA 674:5-7.

(c) Any impact fee shall be accounted for separately, shall be segregated from the municipality's general fund, may be spent upon order of the municipal governing body, shall be exempt from all provisions of RSA 32 relative to limitation and expenditure of town moneys, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.

(d) All impact fees imposed pursuant to this section shall be assessed at the time of planning board approval of a subdivision plat or site plan. When no planning board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development. Impact fees shall be intended to reflect the effect of development upon municipal facilities at the time of the issuance of the building permit. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. Nothing in this subparagraph shall prevent the municipality and the assessed party from establishing an alternate, mutually acceptable schedule of payment of impact fees in effect at the time of subdivision plat or site plan approval by the planning board. If an alternate schedule of payment is established, municipalities may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of the assessed impact fees.

(e) The ordinance shall establish reasonable times after which any portion of an impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded, with any accrued interest. Whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the municipality, a refund shall be made upon the failure of the legislative body to appropriate the municipality's share of the capital improvement costs within a reasonable time. The maximum time which shall be considered reasonable hereunder shall be 6 years.

(f) Unless otherwise specified in the ordinance, any decision under an impact fee ordinance may be appealed in the same manner provided by statute for appeals from the officer or board making that decision, as set forth in RSA 676:5, RSA 677:2-14, or RSA 677:15, respectively.

(g) The ordinance may also provide for a waiver process, including the criteria for the granting of such a waiver.

(h) The adoption of a growth management limitation or moratorium by a municipality shall not affect any development with respect to which an impact fee has been paid or assessed as part of the approval for that development.

(i) Neither the adoption of an impact fee ordinance, nor the failure to adopt such an ordinance, shall be deemed to affect existing authority of a planning board over subdivision or site plan review, except to the extent expressly stated in such an ordinance.

(j) The failure to adopt an impact fee ordinance shall not preclude a municipality from requiring developers to pay an exaction for the cost of off-site improvement needs determined by the planning board to be necessary for the occupancy of any portion of a development. For the purposes of this subparagraph, "off-site improvements" means those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the planning board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. The amount of any such exaction shall be a proportional share of municipal improvement costs not previously assessed against other developments, which is necessitated by the development, and which is reasonably related to the benefits accruing to the development

from the improvements financed by the exaction. As an alternative to paying an exaction, the developer may elect to construct the necessary improvements, subject to bonding and timing conditions as may be reasonably required by the planning board. Any exaction imposed pursuant to this section shall be assessed at the time of planning board approval of the development necessitating an off-site improvement. Whenever the calculation of an exaction for an off-site improvement has been predicated upon some portion of the cost of that improvement being borne by the municipality, a refund of any collected exaction shall be made to the payor or payor's successor in interest upon the failure of the local legislative body to appropriate the municipality's share of that cost within 6 years from the date of collection. For the purposes of this subparagraph, failure of local legislative body to appropriate such funding or to construct any necessary off-site improvement shall not operate to prohibit an otherwise approved development.

VI. (a) In this section, "village plan alternative" means an optional land use control and subdivision regulation to provide a means of promoting a more efficient and cost effective method of land development. The village plan alternative's purpose is to encourage the preservation of open space wherever possible. The village plan alternative subdivision is meant to encourage beneficial consolidation of land development to permit the efficient layout of less costly to maintain roads, utilities, and other public and private infrastructures; to improve the ability of political subdivisions to provide more rapid and efficient delivery of public safety and school transportation services as community growth occurs; and finally, to provide owners of private property with a method for realizing the inherent development value of their real property in a manner conducive to the creation of substantial benefit to the environment and to the political subdivision's property tax base.

(b) An owner of record wishing to utilize the village plan alternative in the subdivision and development of a parcel of land, by locating the entire density permitted by the existing land use regulations of the political subdivision within which the property is located, on 20 percent or less of the entire parcel available for development, shall grant to the municipality within which the property is located, as a condition of approval, a recorded easement reserving the remaining land area of the entire, original lot, solely for agriculture, forestry, and conservation, or for public recreation. The recorded easement shall limit any new construction on the remainder lot to structures associated with farming operations, forest management operations, and conservation uses, and shall specify that the restrictions contained in the easement are enforceable by the municipality. Public recreational uses shall be subject to the written approval of those abutters whose property lies within the village plan alternative subdivision portion of the project at the time when such a public use is proposed.

(c) The submission and approval procedure for a village plan alternative subdivision shall be the same as that for a conventional subdivision. Existing zoning and subdivision regulations relating to emergency access, fire prevention, and public health and safety concerns including any setback requirement for wells, septic systems, or wetland requirement imposed by the department of environmental services shall apply to the developed portion of a village plan alternative subdivision, but lot size regulations and dimensional requirements having to do with frontage and setbacks measured from all new property lot lines, and lot size regulations, as well as density regulations, shall not apply.

(1) The total density of development within a village plan alternate subdivision

shall not exceed the total potential development density permitted a conventional subdivision of the entire original lot unless provisions contained within the political subdivision's land use regulations provide a basis for increasing the permitted density of development within a village plan alternative subdivision.

(2) In no case shall a political subdivision impose lesser density requirements upon a village plan alternative subdivision than the density requirements imposed on a conventional subdivision.

(d) If the total area of a proposed village plan alternative subdivision including all roadways and improvements does not exceed 20 percent of the total land area of the undeveloped lot, and if the proposed subdivision incorporates the total sum of all proposed development as permitted by local regulation on the undeveloped lot, all existing and future dimensional requirements imposed by local regulation, including lot size, shall not apply to the proposed village plan alternative subdivision.

(e) The approving authority may increase, at existing property lines, the setback to new construction within a village plan alternative subdivision by up to 2 times the distance required by current zoning or subdivision regulations, subject to the provisions of subparagraph (c).

(f) Within a village plan alternative subdivision, the exterior wall construction of buildings shall meet or exceed the requirements for fire-rated construction described by the fire prevention and building codes being enforced by the state of New Hampshire at the date and time the property owner of record files a formal application for subdivision approval with the political subdivision having jurisdiction of the project. Exterior walls and openings of new buildings shall also conform to fire protective provisions of all other building codes in force in the political subdivision. Wherever building code or fire prevention code requirements for exterior wall construction appear to be in conflict, the more stringent building or fire prevention code requirements shall apply.

**Source.** 1983, 447:1. 1988, 149:1, 2. 1991, 283:1, 2. 1992, 42:1. 1994, 278:1. 2002, 236:1, 2. 2004, 71:1, 2; 199:2, 3. 2005, 61:1, 2, eff. July 22, 2005. 2008, 63:1, eff. July 20, 2008.

**674:22 Growth Management; Timing of Development. –**

I. The local legislative body may further exercise the powers granted under this subdivision to regulate and control the timing of development. Any ordinance imposing such a control may be adopted only after preparation and adoption by the planning board of a master plan and a capital improvement program and shall be based upon a growth management process intended to assess and balance community development needs and consider regional development needs.

II. The local legislative body may adopt a growth management ordinance under this section only if there is a demonstrated need to regulate the timing of development, based upon the municipality's lack of capacity to accommodate anticipated growth in the absence of such an ordinance. The need to regulate the timing of development shall be demonstrated by a study performed by or for the planning board or the governing body, or submitted with a petition of voters presented under RSA 675:4. The study shall be based on competent evidence and shall consider the municipality's projected growth rate and the municipality's need for additional services to accommodate such growth.

III. An ordinance adopted under this section shall include a termination date and shall restrict projected normal growth no more than is necessary to allow for orderly and good-faith development of municipal services. The planning board in a municipality that adopts such an ordinance shall promptly undertake development of a plan for the orderly and rational development of municipal services needed to accommodate anticipated normal growth; provided, however, that in a town that has established a capital improvement program committee under RSA 674:5, the plan shall be developed by that committee. The ordinance and the plan shall be evaluated by the planning board at least annually, to confirm that reasonable progress is being made to carry out the plan. The planning board shall report its findings to the legislative body in the municipality's annual report.

**Source.** 1983, 447:1, eff. Jan. 1, 1984. 2008, 360:1, eff. July 11, 2008.

**674:23 Temporary Moratoria and Limitations on Building Permits and the Approval of Subdivisions and Site Plans. –**

I. Upon recommendation of the planning board, the local legislative body may adopt or amend an ordinance establishing a moratorium or limitation on the issuance of building permits or the granting of subdivision or site plan approval for a definite term.

II. An ordinance may be adopted under this section in unusual circumstances that affect the ability of the municipality to provide adequate services and require prompt attention and to develop or alter a growth management process under RSA 674:22, a zoning ordinance, a master plan, or capital improvements program.

III. An ordinance under this section shall contain:

(a) A statement of the circumstances giving rise to the need for the moratorium or limitation.

(b) The planning board's written findings, on which subparagraph III(a) is based, which shall be included as an appendix to the ordinance.

(c) The term of the ordinance which shall not be more than one year.

(d) A list of the types or categories of development to which the ordinance applies.

(e) A description of the area of the municipality, if less than the entire municipality, to which the ordinance applies.

IV. An ordinance under this section shall be based on written findings by the planning board which:

(a) Describe the unusual circumstances that justify the ordinance.

(b) Recommend a course of action to correct or alleviate such circumstances.

V. An ordinance under this section may provide for the exemption from the moratorium or limitation of those types or categories of development that have minimal or no impact on the circumstances giving rise to the moratorium or limitation.

VI. An ordinance under this section may provide for a special exception or conditional use permit to allow development that has minimal or no impact on the circumstances giving rise to the moratorium or limitation.

VII. Additional ordinances may be adopted under this section only if they are based on circumstances that did not exist at the time of any prior ordinance. The authority to adopt ordinances under this section shall not be used to circumvent a municipality's need for a growth management ordinance under RSA 674:22.

**Source.** 1983, 447:1. 1989, 266:16. 1997, 15:1, eff. June 21, 1997. 2008, 360:2, eff. July 11, 2008.

**674:33 Powers of Zoning Board of Adjustment. –**

I. The zoning board of adjustment shall have the power to:

(a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(1) The variance will not be contrary to the public interest;

(2) The spirit of the ordinance is observed;

(3) Substantial justice is done;

(4) The values of surrounding properties are not diminished; and

(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

III. The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

IV. A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

V. Notwithstanding subparagraph I(b), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the

condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

**Source.** 1983, 447:1. 1985, 103:20. 1987, 256:1. 1998, 218:1, eff. Aug. 17, 1998. 2009, 307:6, eff. Jan. 1, 2010

### **674:35 Power to Regulate Subdivisions. –**

I. A municipality may by ordinance or resolution authorize the planning board to require preliminary review of subdivisions, and to approve or disapprove, in its discretion, plats, and to approve or disapprove plans showing the extent to which and the manner in which streets within subdivisions shall be graded and improved and to which streets water, sewer, and other utility mains, piping, connections or other facilities within subdivisions shall be installed.

II. The planning board of a municipality shall have the authority to regulate the subdivision of land under the enactment procedures of RSA 675:6. The ordinance or resolution which authorizes the planning board to regulate the subdivision of land shall make it the duty of the city clerk, town clerk, clerk of district commissioners or other appropriate recording official to file with the register of deeds of the county in which the municipality is located a certificate of notice showing that the planning board has been so authorized, giving the date of such authorization.

III. The planning board shall not limit the number of building permits that may be issued except in accordance with an innovative land use control ordinance addressing timing incentives and phased development under RSA 674:21 and adopted under RSA 674:16; or an ordinance to regulate and control the timing of development, adopted under RSA 674:22; or an ordinance establishing a temporary moratorium or limitation on the issuance of building permits, adopted under RSA 674:23. This paragraph shall not be construed to limit the planning board's authority to deny a subdivision application on the basis that it is scattered or premature.

**Source.** 1983, 447:1. 2004, 71:3. 2005, 51:1, eff. July 22, 2005. 2009, 200:2, eff. Sept. 13, 2009.

### **674:36 Subdivision Regulations. –**

I. Before the planning board exercises its powers under RSA 674:35, the planning board shall adopt subdivision regulations according to the procedures required by RSA 675:6.

II. The subdivision regulations which the planning board adopts may:

(a) Provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate

the excessive expenditure of public funds for the supply of such services;

(b) Provide for the harmonious development of the municipality and its environs;

(c) Require the proper arrangement and coordination of streets within subdivisions in relation to other existing or planned streets or with features of the official map of the municipality;

(d) Provide for open spaces of adequate proportions;

(e) Require suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system;

(f) Require, in proper cases, that plats showing new streets or narrowing or widening of such streets submitted to the planning board for approval shall show a park or parks suitably located for playground or other recreational purposes;

(g) Require that proposed parks shall be of reasonable size for neighborhood playgrounds or other recreational uses;

(h) Require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health;

(i) Prescribe minimum areas of lots so as to assure conformance with local zoning ordinances and to assure such additional areas as may be needed for each lot for on-site sanitary facilities;

(j) Include provisions which will tend to create conditions favorable to health, safety, convenience, or prosperity; and

(k) 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.

(l) Provide for efficient and compact subdivision development which promotes retention and public usage of open space and wildlife habitat, by allowing for village plan alternative subdivision as defined in RSA 674:21, VI.

(m) Require innovative land use controls on lands when supported by the master plan.

(n) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or

(2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

III. The subdivision regulations of the planning board may stipulate, as a condition precedent to the approval of the plat, the extent to which and the manner in which streets shall be graded and improved and to which water, sewer, and other utility mains, piping, connections, or other facilities shall be installed. The regulations or practice of the planning board:

(a) May provide for the conditional approval of the plat before such improvements and installations have been constructed, but any such conditional approval shall not be

entered upon the plat.

(b) Shall provide that, in lieu of the completion of street work and utility installations prior to the final approval of a plat, the planning board shall accept a performance bond, irrevocable letter of credit, or other type or types of security as shall be specified in the subdivision regulations; provided that in no event shall the exclusive form of security required by the planning board be in the form of cash or a passbook. As phases or portions of the secured improvements or installations are completed and approved by the planning board or its designee, the municipality shall partially release said security to the extent reasonably calculated to reflect the value of such completed improvements or installations. Cost escalation factors that are applied by the planning board to any bond or other security required under this section shall not exceed 10 percent per year. The planning board shall, within the limitations provided in this subparagraph, have the discretion to prescribe the type and amount of security, and specify a period for completion of the improvements and utilities to be expressed in the bond or other security, in order to secure to the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.

(c) May provide that in lieu of the completion of street work and utility installations prior to the final approval of the plat, the subdivision regulations may provide for an assessment or other method by which the municipality is put in an assured position to do said work and to make said alterations at the cost of the owners of the property within the subdivision.

**Source.** 1983, 447:1. 1986, 200:2. 1988, 3:1. 2002, 73:3; 236:4. 2004, 71:4, eff. July 6, 2004; 199:4, eff. June 7, 2004. 2009, 292:1, eff. Sept. 29, 2009.

**674:39 Four-Year Exemption. –**

I. Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 4 years after the date of approval; provided that:

(a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 12 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;

(b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and

(c) At the time of approval and recording, the subdivision plat or site plan conforms

to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and

(b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.

IV. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 4-year exemption described in paragraph I. The planning board may, for good cause, extend the 12-month period set forth in paragraph I(a).

V. Notwithstanding the time limits established in paragraph I, every subdivision plat and site plan approved by the planning board on or after January 1, 2007 and prior to July 1, 2009 shall be allowed 36 months after the date of approval to achieve active and substantial development or building as described in subparagraph I(a) and every subdivision plat and site plan approved by the planning board on or after July 1, 2005 and prior to July 1, 2009 shall be allowed 6 years after the date of approval to achieve substantial completion of the improvements as described in paragraph II.

**Source.** 1983, 447:1. 1989, 266:17, 18. 1991, 331:1, 2. 1995, 43:5; 291:7, 8. 2004, 199:1, eff. June 7, 2004. 2009, 93:1, eff. June 12, 2009.

#### **674:44 Site Plan Review Regulations. –**

I. Before the planning board exercises its powers under RSA 674:43, it shall adopt site plan review regulations according to the procedures required by RSA 675:6.

II. The site plan review regulations which the planning board adopts may:

(a) Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of:

(1) Inadequate drainage or conditions conducive to flooding of the property or that of another;

(2) Inadequate protection for the quality of groundwater;

(3) Undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties; and

(4) Inadequate provision for fire safety, prevention, and control.

(b) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.

(c) Provide for open spaces and green spaces of adequate proportions.

(d) Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;

(e) Require suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system;

(f) Require, in proper cases, that plats showing new streets or narrowing or widening of such streets be submitted to the planning board for approval;

(g) Require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health;

(h) Include such provisions as will tend to create conditions favorable for health, safety, convenience, and prosperity;

(i) Require innovative land use controls on lands when supported by the master plan; and

(j) Require preliminary review of site plans.

III. The site plan review regulations which the planning board adopts shall:

(a) Provide the procedures which the board shall follow in reviewing site plans;

(b) Define the purposes of site plan review;

(c) Specify the general standards and requirements with which the proposed development shall comply, including appropriate reference to accepted codes and standards for construction;

(d) Include provisions for guarantees of performance, including bonds or other security; and

(e) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or

(2) Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

IV. The site plan review regulations of the planning board may stipulate, as a condition precedent to the approval of the plat, the extent to which and the manner in which streets shall be graded and improved and to which water, sewer, and other utility mains, piping, connections, or other facilities shall be installed. The regulations or practice of the planning board:

(a) May provide for the conditional approval of the plat before such improvements and installations have been constructed, but any such conditional approval shall not be entered upon that plat.

(b) Shall provide that, in lieu of the completion of street work and utility installations prior to the final approval of a plat, the planning board shall accept a performance bond, irrevocable letter of credit, or other type or types of security as shall be specified in the site plan review regulations. The planning board shall have the discretion to prescribe the

type and amount of the bond or other security, require satisfactory evidence of the financial ability of any surety or financial institution to pay such bond or other type of security, and specify a period for completion of the improvements and utilities to be expressed in the bond or other security, in order to secure to the municipality the actual construction and installation of such improvements and utilities. The municipality shall have the power to enforce such bonds or other securities by all appropriate legal and equitable remedies.

V. The planning board may, as part of its site plan review regulations, require an applicant to pay all costs for notification of abutters and may provide for the assessment of reasonable fees to cover the board's administrative expenses and costs of special investigation and the review of documents and other matters which may be required by particular applications.

**Source.** 1983, 447:1. 1985, 103:21. 1986, 200:3. 1987, 256:3. 2004, 71:5, eff. July 6, 2004. 2005, 33:2, eff. July 9, 2005. 2009, 292:2, eff. Sept. 29, 2009.

**674:44-h Housing Commission.** – A housing commission may be established in accordance with RSA 673 for the proper recognition, promotion, enhancement, encouragement, and development of a balanced and diverse supply of housing to meet the economic, social, and physical needs of the municipality and its residents, viewed in the context of the region within which the municipality is situated. The establishment of a housing commission shall in no way limit a municipality's authority relative to a housing authority under RSA 203.

**Source.** 2008, 391:10, eff. Sept. 15, 2008.

**674:44-i Powers.** –

I. Housing commissions shall have authority to:

(a) Conduct a housing needs assessment, which may be done in cooperation with the regional housing needs assessment compiled by the regional planning commission under RSA 36:47, II.

(b) Conduct activities to recognize, promote, enhance, and encourage the development of housing, particularly affordable and workforce housing.

(c) Assist the planning board, as requested, in the development and review of those sections of the master plan which address housing, and those sections of the zoning ordinance, subdivision regulations, and site plan regulations that address housing or otherwise have the potential to affect the cost or availability of housing.

(d) Advise, upon request, local agencies and other local boards in their review of requests on matters affecting or potentially affecting housing resources.

(e) Coordinate activities with appropriate service organizations and nonprofit groups.

(f) Publicize and report its activities.

(g) Hire consultants and contractors.

(h) Receive gifts of money and property, both real and personal, in the name of the city or town, to assist in carrying out the purpose of this section.

(i) Hold meetings and hearings necessary to carry out its duties.

II. The commission may acquire real property, in the name of the town or city, subject

to the approval of the local governing body, by gift, purchase, grant, bequest, devise, lease, development rights, covenant, or other contractual right, including conveyances with conditions, limitations, or reversions, as may be necessary to maintain, improve, protect, limit the future use of, or otherwise conserve and properly use the affordable housing of the city or town, and shall manage and control the same; provided, however, that the city, town, or commission shall not have the right to condemn property for these purposes. The commission shall also have the right to dispose of property so acquired, subject to the approval of the local governing body. Prior to the use of such funds for the purchase of any interest in real property, the housing commission shall hold a public hearing with notice in accordance with RSA 675:7.

**Source.** 2008, 391:10, eff. Sept. 15, 2008.

**674:44-j Appropriations Authorized. –**

I. A town or city, having established a housing commission under this subdivision, may appropriate money to the housing commission as necessary to carry out its purposes. The whole or any part of money so appropriated in any year and any gifts of money received under RSA 674:44-i shall be placed in a housing fund and allowed to accumulate from year to year.

II. The town treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the housing fund and shall pay out the same only upon order of the housing commission. The disbursement of housing funds shall be authorized by a majority of the housing commission.

**Source.** 2008, 391:10, eff. Sept. 15, 2008.

**674:51 Power to Amend State Building Code and Establish Enforcement**

**Procedures. –** The state building code established in RSA 155-A shall be effective in all towns and cities in the state and shall be enforced as provided in RSA 155-A:7. In addition, towns and cities shall have the following authority:

I. The local legislative body may enact as an ordinance or adopt, pursuant to the procedures of RSA 675:2-4, additional provisions of the state building code for the construction, remodeling, and maintenance of all buildings and structures in the municipality, provided that such additional regulations are not less stringent than the requirements of the state building code. The local legislative body may also enact a process for the enforcement of the state building code and any additional regulations thereto, and the provisions of a nationally recognized code that are not included in and are not inconsistent with the state building code. Any local enforcement process adopted prior to the effective date of this paragraph shall remain in effect unless it conflicts with the state building code or is amended or repealed by the municipality.

II. Any such ordinance adopted under paragraph I by a local legislative body shall be submitted to the state building code review board for informational purposes.

III. The local ordinance or amendment adopted according to the provisions of paragraph I shall include, at a minimum, the following provisions:

(a) The date of first enactment of any building code regulations in the municipality and of each subsequent amendment thereto.

(b) Provision for the establishment of a building code board of appeals as provided in RSA 673:1, V; 673:3, IV; and 673:5.

(c) Provision for the establishment of the position of building inspector as provided in RSA 673:1, V. The building inspector shall have the authority to issue building permits as provided in RSA 676:11-13 and any certificates of occupancy as enacted pursuant to paragraph III, and to perform inspections as may be necessary to assure compliance with the local building code.

(d) A schedule of fees, or a provision authorizing the governing body to establish fees, to be charged for building permits, inspections, and for any certificate of occupancy enacted pursuant to paragraph III.

IV. The regulations adopted pursuant to paragraph I may include a requirement for a certificate of occupancy to be issued prior to the use or occupancy of any building or structure that is erected or remodeled, or undergoes a change or expansion of use, subsequent to the effective date of such requirement.

**Source.** 1983, 447:1. 1989, 70:1. 1990, 71:3. 2002, 8:10. 2003, 245:7, eff. July 14, 2003. 2008, 38:1, eff. July 11, 2008

#### **674:56 Flood Hazards. –**

I. Municipalities may adopt floodplain ordinances as part of their enrollment in the National Flood Insurance Program. Such ordinances shall be adopted pursuant to the authority granted under RSA 674:16 and 17, and shall be adopted and amended pursuant to the procedures in RSA 675 for the adoption and amendment of zoning ordinances. Municipalities may adopt floodplain ordinances either as an amendment to an existing zoning ordinance or as a separate ordinance. A municipality which adopts a floodplain ordinance which is separate from its zoning ordinance or without otherwise having adopted a zoning ordinance, shall observe all legal and procedural requirements for the floodplain ordinance that would be required for a zoning ordinance, including the creation of a board of adjustment. If a municipality has adopted a zoning ordinance either before or after the adoption of a floodplain ordinance, the board of adjustment shall be the same for both ordinances.

II. (a) Municipalities may adopt fluvial erosion hazard ordinances. Such ordinances shall be adopted pursuant to the authority granted under RSA 674:16 and 17, and shall be adopted and amended pursuant to the procedures in RSA 675 for the adoption and amendment of zoning ordinances. Municipalities may adopt fluvial erosion hazard ordinances either as an amendment to an existing zoning ordinance or as a separate ordinance. A municipality which adopts a fluvial erosion hazard ordinance which is separate from its zoning ordinance or without otherwise having adopted a zoning ordinance, shall observe all legal and procedural requirements for the fluvial erosion hazard ordinance that would be required for a zoning ordinance, including the creation of a board of adjustment. If a municipality has adopted a zoning ordinance either before or after the adoption of a floodplain ordinance, the board of adjustment shall be the same for both ordinances.

(b) Any fluvial erosion hazard zoning shall be based on delineation of zones consistent with any fluvial erosion hazard protocols established by the department of environmental services in effect on the date of its adoption. If the planning board of a

municipality proposes to adopt, by ordinance or amendment, a fluvial erosion hazard ordinance or an amendment to a fluvial erosion hazard ordinance, the board shall, prior to determining the final form of the ordinance or amendment under RSA 675:2 or RSA 675:3, submit to the department of environmental services a map of all fluvial erosion hazard zones. The department shall review the map and advise the board within 30 days whether the map and zones are consistent with department protocols. The department's comments, if any, shall be advisory only.

**Source.** 2006, 176:2, eff. May 25, 2006. 2009, 181:2, eff. July 13, 2009.

## ***Workforce Housing***

### **Section 674:58**

**674:58 Definitions.** – In this subdivision:

I. "Affordable" means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family housing" for the purpose of workforce housing developments, means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic. If the ordinances and regulations of a municipality make feasible the development of sufficient workforce housing to satisfy the municipality's obligation under RSA 674:59, and such development is not unduly inhibited by natural features, the municipality shall not be in violation of its obligation under RSA 674:59 by virtue of economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

**Source.** 2008, 299:2, eff. Jan. 1, 2010.

**674:59 Workforce Housing Opportunities. –**

I. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing. In order to provide such opportunities, lot size and overall density requirements for workforce housing shall be reasonable. A municipality that adopts land use ordinances and regulations shall allow workforce housing to be located in a majority, but not necessarily all, of the land area that is zoned to permit residential uses within the municipality. Such a municipality shall have the discretion to determine what land areas are appropriate to meet this obligation. This obligation may be satisfied by the adoption of inclusionary zoning as defined in RSA 674:21, IV(a). This paragraph shall not be construed to require a municipality to allow for the development of multifamily housing in a majority of its land zoned to permit residential uses.

II. A municipality shall not fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.

III. A municipality's existing housing stock shall be taken into consideration in determining its compliance with this section. If a municipality's existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with this subdivision and RSA 672:1, III-e.

IV. Paragraph I shall not be construed to require municipalities to allow workforce housing that does not meet reasonable standards or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

**Source.** 2008, 299:2, eff. Jan. 1, 2010

**674:60 Procedure. –**

I. Any person who applies to a land use board for approval of a development that is intended to qualify as workforce housing under this subdivision shall file a written statement of such intent as part of the application. The failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61, but shall not preclude an appeal under other applicable laws. In any appeal where the applicant has failed to file the statement required by this paragraph, the applicant shall not be entitled to a judgment on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

II. If a land use board approves an application to develop workforce housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4, I(c)(1). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

III. Upon receiving notice of conditions and restrictions under paragraph II, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the board, which shall not be less than 30 days.

(a) Upon receipt of such evidence from the applicant, the board shall allow the applicant to review the evidence at the board's next meeting for which 10 days' notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the board may also receive and consider evidence from other sources.

(b) The board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.

(c) Subject to subparagraph (d), the board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the board, in which case it may issue its final decision any time after the expiration of the period.

(d) If an applicant notifies the board in writing at any time that the applicant accepts the conditions and restrictions of approval, the board may issue its final decision without further action under this paragraph.

IV. A municipality may require that an applicant record restrictive covenants acceptable to the land use board that the workforce housing may not be rented to or sold to any household whose income is greater than that specified in RSA 674:58, IV. The covenant shall be for the term specified in the regulations of the land use board. The municipality may adopt regulations to insure compliance with the covenants, which regulations may include requirements for the monitoring of the project by the municipality or by a suitable third party agency qualified to carry out such requirements, including but not limited to requiring the production of annual income verification for renters and non-owner occupiers. The land use board may consider the existence of recorded covenants or income qualification and occupancy criteria as satisfying the purpose of this paragraph if such covenants or criteria are administered by a state or federal entity.

**Source.** 2008, 299:2, eff. Jan. 1, 2010. 2010, 150:1, eff. June 14, 2010.

#### **674:61 Appeals. –**

I. Any person who has filed the written notice required by RSA 674:60, and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the superior court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval otherwise violate such requirements.

II. A hearing on the merits of the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause. If the court determines that it will be unable to meet this requirement, at the request of either party it shall promptly appoint a referee to hear the

appeal within 6 months. Referees shall be impartial, and shall be chosen on the basis of qualifications and experience in planning and zoning law.

III. In the event the decision of the court or referee grants the petitioner a judgment that allows construction of the proposed development or otherwise orders that the proposed development may proceed despite its nonconformance with local regulations, conditions, or restrictions, the court or referee shall direct the parties to negotiate in good faith over assurances that the project will be maintained for the long term as workforce housing. The court or referee shall retain jurisdiction and upon motion of either party affirming that negotiations are deadlocked, the court or referee shall hold a further hearing on the appropriate term and form of use restrictions to be applied to the project.

**Source.** 2008, 299:2, eff. Jan. 1, 2010.

## ***Small Wind Energy Systems***

### **Section 674:62**

**674:62 Definitions.** – In this subdivision:

I. "Small wind energy system" means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kilowatts and which will be used in the first instance for onsite consumption.

II. "System height" means the height above grade of the tower plus the wind generator.

III. "Tower height" means the height above grade of the fixed portion of the tower, excluding the wind generator.

IV. "Wind generator" means blades and associated mechanical and electrical conversion components mounted on top of the tower.

**Source.** 2008, 357:1, eff. July 11, 2009. 2010, 143:5, eff. Aug. 13, 2010.

**674:63 Municipal Regulations of Small Wind Energy Systems.** – Ordinances or regulations adopted by municipalities to regulate the installation and operation of small wind energy systems shall not unreasonably limit such installations or unreasonably hinder the performance of such installations. Unreasonable limits or hindrances to performance shall include the following:

I. Prohibiting small wind energy systems in all districts within the municipality.

II. Restricting tower height or system height through application of a generic ordinance or regulation on height that does not specifically address allowable tower height or system height of a small wind energy system.

III. Requiring a setback from property boundaries for a tower greater than 150 percent of the system height. In a municipality that does not adopt specific setback requirements for small wind energy systems, any small wind energy system shall be set back from the nearest property boundary a distance at least equal to 150 percent of the system height; provided, however, that this requirement may be modified by the zoning board of adjustment upon application in an individual case if the applicant establishes the conditions for a variance under this chapter.

IV. Setting a noise level limit lower than 55 decibels, as measured at the site property line, or not allowing for limit overages during short-term events such as utility outages and severe wind storms.

V. Setting electrical or structural design criteria that exceed applicable state, federal, or international building or electrical codes or laws.

**Source.** 2008, 357:1, eff. July 11, 2009.

**674:64 Aviation Requirements.** – Small wind energy systems shall be built to comply with all applicable Federal Aviation Administration requirements, including 14 C.F.R. part 77, subpart B regarding installations close to airports, and the airport zoning regulations adopted under RSA 424:5.

**Source.** 2008, 357:1, eff. July 11, 2009.

**674:65 Abandonment.** – A small wind energy system that is out-of-service for a continuous 12-month period shall be deemed abandoned. The planning board administrator may issue a notice of abandonment to the owner of an abandoned small wind energy system. The owner shall have the right to respond to the notice of abandonment within 30 days from the receipt date. The planning board shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides the planning board with information demonstrating the small wind energy system has not been abandoned. If the small wind energy system is determined to be abandoned, the owner of the small wind energy system shall remove the wind generator from the tower at the owner's sole expense within 3 months of receipt of notice of abandonment. If the owner fails to remove the wind generator from the tower, the administrator may pursue a legal action to have the wind generator removed at the owner's expense.

**Source.** 2008, 357:1, eff. July 11, 2009.

**674:66 Abutter and Regional Notification.** –

I. (a) A municipal building inspector shall notify all abutters by certified mail upon application for a building permit to construct a small wind energy system. Abutters shall be afforded a 30-day comment period prior to the issuance of a building permit. An appeal may be made to the building code board of appeals pursuant to RSA 674:34 or to the zoning board of adjustment pursuant to RSA 676:5, as may be appropriate.

(b) The cost of abutter notification shall be borne by the applicant.

(c) The building inspector shall provide notice of the application for a building permit to the local governing body.

II. The building inspector, acting as a local land use board pursuant to RSA 672:7, shall review an application for a small wind energy system pursuant to RSA 36:56 to determine whether it is a development of regional impact, as defined in RSA 36:55. If the building inspector determines that the proposal has the potential for regional impact, he or she shall follow the procedures set forth in RSA 36:57, IV.

**Source.** 2008, 357:1, eff. July 11, 2009.