

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

August 5, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated (“RSA”) 654:9, a STATUTE related to voter registration form submission by the town or city clerk, most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:9, a STATUTE related to voter registration form submission by the town or city clerk, most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 289 (2003) amending RSA 654:9 is attached. (Exhibit 654:9 A)
 - 1. Chapter 287 (1992) amending RSA 654:9 is attached. (Exhibit 654:9 B)
- b) Chapter 436 (1979) recodifying RSA 55:09-b as RSA 654:9 is attached. (Exhibit 654:9 C)

- c) The changes made by amendments to RSA 654:9 are as follows:
1. Chapter 289 (2003) replaced the word "...triplicate..." with "...voter..." and replaced the word "...him..." with "...the clerk..." both in the second sentence
 2. Chapter 287 (1992) inserts the sentence "*The provisions of this section shall apply to all cities and in all towns*" as the first sentence of this statute
 3. Chapter 436 (1979) recodified RSA 55:09-b as RSA 654:9
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 289 (Exhibit 654:9 A). The bill was signed into law (by the Governor) on July 18, 2003, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
1. Chapter 289 (2003) adopted July 18, 2003
 2. Chapter 287 (1992) adopted May 18, 1992
 3. Chapter 436 (1979) adopted June 25, 1979

- j) Effective dates:
 - 1. Chapter 289 (2003) effective September 1, 2003
 - 2. Chapter 287 (1992) effective July 17, 1992
 - 3. Chapter 436 (1979) effective July 1, 1979
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
 - 1. The purpose of the Chapter 289 (2003) change is to change the reference to the form used for voter registration from the old system of triplicate cards to the new Help America Vote Act form which is a single 8.5 X 11 inch plain paper form. This matches the changes to RSA 654:7 made in same chapter law changing the character of the form used.
 - 2. The purpose of the Chapter 287 (1992) change is to reflect changes made elsewhere in the statutes that makes it mandatory that all towns and cities allow applicants for registration as a voter to submit an application to the Clerk.
 - 3. The purpose of the Chapter 436 (1979) change is to recodify RSA 55:09-b as RSA 654:9.
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973 (c). They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups ... to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
- o) None known.
- p) RSA 654:9 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:9 D. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.

- r) Exhibit 654:9 E is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

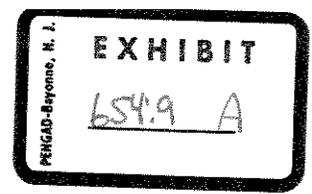
I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

87884.doc



CHAPTER 289

HB 627-FN - FINAL VERSION

25mar03... 0694h

25mar03... 0946h

05/22/03 1640s

24jun03... 2155CofC

30jun03... 2316eba

2003 SESSION

03-0294

03/10

HOUSE BILL **627-FN**

AN ACT relative to domicile for voting purposes, penalties for voter fraud, and access to preserved ballots.

SPONSORS: Rep. Drisko, Hills 46; Rep. Lockwood, Merr 35; Rep. Naro, Graf 15; Rep. Whalley, Belk 31; Sen. Roberge, Dist 9

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill:

- I. Establishes civil penalties for wrongful voting.
- II. Modifies procedures for voter registration and absentee voting.
- III. Modifies the laws concerning domicile as it relates to voting and eligibility for office.
- IV. Exempts preserved ballots from RSA 91-A, the right-to-know law.

This bill is a request of committee established by 2002, 15.

Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25mar03... 0694h

registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:

I do hereby certify, under the penalties ~~[of perjury]~~ **for voting fraud set forth below**, that I am a ~~[duly-qualified]~~ voter in the town (city, village district, school district) of _____, New Hampshire, that I will be observing a religious commitment which prevents me from voting in person, or that on account of physical disability I am unable to vote in person; that I have carefully read the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the within ballot and sealed it in this envelope.

(Signature) _____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

289:48 Election Officer. Amend RSA 652:14 to read as follows:

652:14 Election Officer. "Election officer" shall mean any moderator, **deputy moderator, assistant moderator**, town clerk, **deputy town clerk, city clerk, deputy city clerk, ward clerk**, selectman, supervisor of the checklist, **registrar, or deputy registrar** ~~[or inspector of election]~~.

289:49 Voting Rights of Overseas Citizens. Amend RSA 654:3 to read as follows:

654:3 Voting Rights of Overseas Citizens. Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled ~~[in Canada or Mexico or in any other country]~~ outside the ~~[continent]~~ United States, shall have the right to register absentee to vote in any federal election in the town or city in New Hampshire in which he **or she** had his **or her** domicile immediately prior to his **or her** departure from the United States, even though he **or she** no longer maintains domicile in said town or city and even though his **or her** intent to return thereto is uncertain, provided:

I. He **or she** complies with all other applicable requirements and qualifications of the state of New Hampshire; and

II. He **or she** is not domiciled and is not registered to vote in any other state or election district of a state or in any territory or possession of the United States; and

III. He **or she** has a valid passport or card of identity issued under the authority of the Secretary of State of the United States.

289:50 General Voter Registration; Forms to be Forwarded. Amend RSA 654:9 to read as follows:

~~654:9 Forms to be Forwarded.~~ The provisions of this section shall apply in all cities and in all towns. The town or city clerk shall present to the next meeting of the supervisors of the checklist the ~~[duplicate]~~ **voter** registration forms of all persons making application to ~~[him]~~ **the clerk** since the previous meeting of said supervisors.

289:51 General Voter Registration; Action by Supervisors. Amend RSA 654:13, I to read as follows:

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the ~~[duplicate]~~ registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, Vermont, Maine, Massachusetts, Connecticut, or Rhode Island, and send another copy to the clerk of their town or city.

289:52 Overseas Citizens Voting; Effect. Amend RSA 654:23 to read as follows:



2/4/92...4750s 3996L

7apr92....5492h 92-2330

16apr92.....5745h 10

5/6/92....6144s C of C

05/11/92..6238L-EBA

Enrolled Bill Amendment

1992 SESSION

SENATE BILL NO. 321 (CHAPTER 287, LAWS OF 1992)

INTRODUCED BY: Sen. Cohen of Dist. 24; Sen. Bass of Dist. 11; Sen. Disnard

of Dist. 8; Sen. McLane of Dist. 15; Sen. Roberge of Dist. 9; Rep. Durham of Hillsborough Dist. 18; Rep. P. White of Grafton Dist. 6; Rep. Shackett of Grafton Dist. 10; Rep. Hashem of Strafford Dist. 3; Rep. Baldizar of Hillsborough Dist. 22

REFERRED TO: Public Affairs

AN ACT relative to voter registration and changes in party affiliation with town clerks and relative to supervisors of the checklist.

AMENDED ANALYSIS

This bill amends the election laws by:

(1) Repealing the provision in the election laws which permits a town to vote to have the supervisors of the checklist, rather than the town clerk, accept applications from persons to have their names added to the checklist.

(2) Requiring town and city clerks to accept applications from such persons according to certain conditions.

(3) Repealing the provision in the election laws which requires a city or town to vote to permit applications for changes in party affiliation to be made with the city or town clerk, and requiring that cities and towns shall permit such applications for changes in party affiliation.

(4) Allowing supervisors of the checklist and town and city clerks to request specific information from persons who are registering to vote in order to determine whether the applicant is qualified to vote.

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EXPLANATION: Matter added appears in ***bold italics***.

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

3996L

92-2330

10

Enrolled Bill Amendment

SB 321

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand

nine hundred and ninety-two

AN ACT

relative to voter registration and changes in party affiliation with town clerks and relative to supervisors of the checklist.

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

1 Application Provisions to Apply in all Cities and Towns. Amend the introductory paragraph of RSA 654:8 to read as follows:

The provisions of this section shall apply in all cities and in all towns. Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk, or to the supervisors of the checklist as provided in RSA 654:11, for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall [have the power] be required to accept applications from such persons under the following conditions:

2 Forwarding Forms; Provisions to Apply in all Cities and Towns. Amend RSA 654:9 to read as follows:

654:9 Forms to be Forwarded. *The provisions of this section shall apply in all cities and in all towns.* The town or city clerk shall present to the next meeting of the supervisors of the checklist the

triplicate registration forms of all persons making application to him since the previous meeting of said supervisors.

3 Repeal. RSA 654:10, relative to voter registration duties of town clerks, is repealed.

4 Repeal. RSA 654:34-b, relative to voting to permit applications for changes in party affiliations to be made with the city or the town clerk, is repealed.

5 Permitting Changes in Party Affiliation with Town or City Clerk. Amend RSA 654:34-a, I to read as follows:

I. A town or city [may] **shall** permit changes in party affiliation to be registered with a town or city clerk.

6 Repeal and Reenactment of RSA 654:12. RSA 654:12, relative to determining qualifications of applicants registering to vote, and repealed by 1990, 119:18, is hereby reenacted as it existed immediately prior to its repeal by 1990, 119:18.

7 Authority of Supervisors of the Checklist and Clerks to Determine Qualifications of Applicants Registering to Vote. RSA 654:12, I is repealed and reenacted to read as follows:

I. When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, may require the applicant to present any one of the following from each qualification category:

(a) Citizenship. The applicant's birth certificate, passport,

naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit, or any other reasonable documentation which

indicates the applicant is a United States citizen. The citizenship affidavit shall be in the following form:

Date: _____

CITIZENSHIP AFFIDAVIT

Name: _____

Name at birth if different: _____

Place of birth: _____

Date of birth: _____

I hereby swear, under penalty of perjury, that the information above is true and correct to the best of my knowledge and belief.

(Signature of applicant)

The penalty for perjury is a class B felony with a maximum sentence of imprisonment not to exceed 7 years and/or a fine not to exceed \$4,000.

(b) Age. Any reasonable documentation indicating the applicant is 18 years of age or older.

(c) Domicile. Any reasonable documentation which indicates that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the town, city or ward in which he desires to vote, or an affidavit declaring that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the town, city or ward in which he desires to vote.

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



rd, Coast and Geodetic Survey, and Public Health Service, and all reserve components thereof, while in active service.

including persons (other than members of the armed forces) employed on or members of crews of vessels documented under the laws of the United States, or of vessels owned by the United States, and other than members of the armed forces) enrolled with the United States, or for training for employment, or maintained by the United States for emergency relief service, as officers or members of crews of any such vessels, but does not include persons so employed or enrolled for such employment or for training for such employment, or maintained for such emergency relief service, on the great lakes or the inland waterways.

(c) Civilian employees of the United States government, including the peace corps, serving outside the territorial limits of the several states of the United States and the District of Columbia, whether or not the employee is subject to civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

(d) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces.

(e) The spouses or dependents of any person described in subparagraph (a), (b), (c), or (d) when residing with or accompanying them.

654:5 Disqualification for Felony. A person sentenced for a felony shall forfeit his rights as provided in RSA 607-A:2.

654:6 Disqualification for Bribery or Intimidation. Any person convicted of bribery or intimidation relating to elections under RSA 659:40 shall thereafter be forever disqualified from exercising the right to vote, except that the Supreme Court may, on notice to the attorney general, restore the privileges of a voter to any person who may have forfeited them by conviction of such offenses.

General Voter Registration

654:7 Voter Registration Form. A standard registration application form shall be used throughout the state. The registration form shall be 4 inches by 6 inches and shall be made in triplicate. The secretary of state shall provide for the preparation of the voter registration form which shall be in substantially the following form:

VOTER REGISTRATION CARD (Please print or type)

1. Name Last First Middle Initial

2. Party Affiliation (if any)

3. Address Street City County ZIP

4. Birth Place City State

1979) 5. If a naturalized citizen, give name of court where and date when naturalized

6. Date of Birth (Month/Date/Year)

7. Date of Registration

8. Place last registered to vote, if not a new registrant

I hereby swear, under penalty of perjury, that the answers to the questions above are true and correct to the best of my knowledge and belief.

(Signature of Applicant)

654:8 Application to Town or City Clerk. Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall have the power to accept applications from such persons under the following conditions:

I. The supervisors of the checklist shall determine the qualifications of voters as provided in RSA 654:12.

II. The supervisors of the checklist may issue guidelines to the town clerk for the taking of evidence of qualifications presented by applicants.

III. No application hereunder shall be accepted after the last meeting of the supervisors of the checklist before an election.

IV. Such application shall be made during the regular office hours of the town or city clerk.

654:9 Forms to be Forwarded. The town or city clerk shall present to the next meeting of the supervisors of the checklist the triplicate registration forms of all persons making application to him since the previous meeting of said supervisors.

654:10 Exemption. The provisions of RSA 654:8 and 654:9 shall apply in all cities and in all towns unless, upon a vote at a town meeting, a town chooses to exempt itself from such requirements. In a town which is exempt from the provisions of RSA 654:8 and 654:9, the town clerk shall have none of the powers and duties provided for therein, which powers shall be exercised by the supervisors of the checklist, unless and until at a subsequent annual town meeting the town votes to rescind said exemption.

654:11 Application to Supervisors. When the supervisors of the checklist receive a registration form from the town or city clerk or when an applicant submits the form to said supervisors in person at a session for the correction of the checklist, the supervisors of the checklist shall cause his name to be added to the checklist, unless they are of the opinion that the applicant is not qualified to vote in the city or town under RSA 654:1 through 654:6. All decisions of the supervisors of the checklist shall be made by majority vote thereof.

654:12 Determining Qualifications of Applicant.

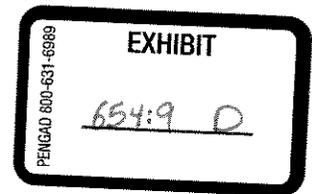
I. When determining the qualifications of an applicant, the supervisors of the checklist may require the applicant to present the following:

- (a) His birth certificate; (b) His naturalization papers if he is a naturalized citizen;



U.S. Department of Justice

Civil Rights Division



JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

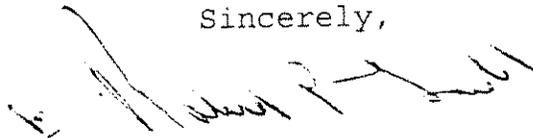
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

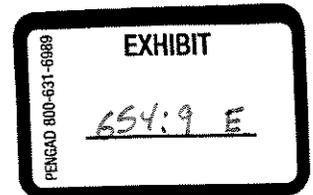
A handwritten signature in black ink, appearing to read "Joseph D. Rich", written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte
SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures
DATE: June 10, 2005
RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov