

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
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MICHAEL A. DELANEY
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

SECTION 5 VOTING SUBMISSION

TO: Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

DATE: July 26, 2010

RE: Submissions Under Section 5 of the Voting Rights Act for:
Laws of 2006, Chapter 243

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 **Laws of 2006, Chapter 243**, relative to removing names from the checklist, for preclearance by the U.S. Department of Justice.

Submission: In accordance with 28 CFR §51.27 and 51.28, the submission is as follows:

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting (new law).

Laws of 2006, Chapter 243, establishing RSA 654:36-a and RSA 654:36-b.
See Attached Exhibit 2006:243 #1

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended or otherwise changed (prior law).

This act establishes two new sections of statute. They formalize existing practice.

RSA 654:28 provides in part “The supervisors of the checklist shall hear all applications for correction of the checklist” This provision has long been construed to mean that anyone can submit an application for correction of the checklist. An application for correction of the checklist is not otherwise defined. Election official and public education by the Attorney General’s Office has indicated that anyone believing that a person is improperly listed on the checklist can make application to the Supervisors by submitting a communication to the supervisors explaining why the person should not be on the checklist and providing any pertinent evidence he or she wishes to submit. Therefore, while this act does not alter RSA 654:28 in any manner, but merely formalizes in statute the process used to carry out this provision in RSA 654:38, we are providing that statute for your reference. RSA 654:28, See Exhibit 2006:243, #2.

RSA 654:36-b is a new provision of law, there is no prior law being repealed, amended, or otherwise changed. Notices from the United States Postal Service or the State’s motor vehicle registration/driver licensing agency indicating that a voter has permanently moved to another town, city, or state from the address listed as their voting address have in past practice been treated as evidence establishing that is it more likely than not that the voter has moved and is no longer domiciled where registered. This new statute establishes authority to remove such voters from the checklist with or without notice.

(c) A clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

RSA 654:36-a codifies current practice in statute. Paragraph I provides that any person, including supervisors and clerks, may submit to the supervisors of the checklist, directly or through the clerk, a request for correction of the checklist.

Paragraph II codifies current practice. If the supervisors determine that it is more likely than not that if the information provided in the request is true that some correction to the checklist should be made, the supervisors are required to send written notice to the voter, affording the voter no less than 30 days to provide the supervisors with proof of his or her qualifications as a voter. If the voter fails to respond or fails to provide proof establishing that it is more likely than not that the voter remains qualified as registered, then the Supervisors shall remove the voter’s name from the checklist or otherwise correct the record.

RSA 654:36-b makes explicit that notice of a permanent address change received from the United States Postal Service or from the Department of Safety are

grounds to remove a voter from the checklist. Supervisors of the Checklist are authorized, but not required to send the voter a 30 day notice.

(d) The name, title, address, and telephone number of the person making the submission.

Orville B. Fitch II, Deputy Attorney General
New Hampshire Attorney General's Office
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-1238

Between 8/1/2010 and 8/31/2010 contact:

Richard Head, Associate Attorney General
New Hampshire Attorney General's Office
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-1248

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

Attorney General Michael A. Delaney
State of New Hampshire

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

Not applicable

(g) Identification of person or body responsible for making the change and the mode of decision (e.g. act of state legislature, ordinance of city council, administrative decision by the registrar).

This change is an act of the New Hampshire General Court, New Hampshire's state legislature, with approval of the legislation by the Governor of the State of New Hampshire.

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

The New Hampshire Constitution Part Second, Article 2, grants supreme legislative power within the state to the House of Representatives and Senate, who with a right to negate each other are granted power to make law through Part Second, Article 5. The legislature, through a bicameral process passed each Chapter Law set forth above. Each bill was signed into law by the Governor or allowed to become law without signature, pursuant to New Hampshire Constitution Part Second, Article 44.

(i) The date of adoption of the change affecting voting.

June 1, 2006.

(j) The date on which the change is to take effect.

July 31, 2006.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

This change to New Hampshire's voting laws has been enforced or administered. As was exhaustively addressed in a 2004 letter to the federal Department of Justice, New Hampshire in engaged in an effort to catch up on preclearance submissions. Regrettably, as a result of budget reductions and personnel losses this 2006 change was not submitted in a timely manner.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

This change affects the entire State of New Hampshire.

(m) A statement of the reasons for the change.

The enactment of RSA 654:36-a codifies existing practice, thereby providing the public and election officials more clear and formal guidance about how to go about seeking to have a person's name removed from the checklist or their address/name corrected. The purpose of the change is to make the election laws more clear and to thereby improve the administration of elections.

The enactment of RSA 654:36-b compliments the development of the statewide voter registration system and its requirements that the validity of voter

registration information be tested or confirmed against other reliable governmental records for motor vehicle registrations/driver's licenses or social security records. In New Hampshire people residing in New Hampshire register their motor vehicles and obtain driver's licenses from the Division of Motor Vehicles (DMV) at the Department of Safety. As people register their vehicle annually, changes to their permanent address are often reported to the DMV sooner than to election officials. Similarly some voters are apt to update their address in the DMV driver's license records long before re-registering to vote in a new community or otherwise giving election officials notice that the voter has moved. The purpose of this law is to ensure that checklists are current and valid by authorizing the removal from the checklist of a voter who has informed either the United States Postal Service or the Department of Safety, Division of Motor Vehicles that he or she has permanently moved to a different town, city, or state. Supervisors are authorized to remove the names without further action or to send the voter a notice that his or her name will be removed unless the voter provides proof that he or she remains qualified to vote in that town or city within 30 days.

Note that New Hampshire's election day registration provisions ensure that no qualified voter will be disenfranchised by these efforts to keep New Hampshire's voter checklists current and accurate. Should the United States Postal Service or Department of Safety records be inaccurate or should the voter move back to town/city after being removed from the checklist, he or she can always register to vote upon arriving at their polling place on election day.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

There is no anticipated adverse effect on members of racial or language minority groups.

(o) Identify any past or pending litigation concerning the change or related voting practice.

There is no known past or pending litigation concerning these changes or related voting practices.

(p1) A Statement that the prior practice has been precleared, with the date, or is not subject to the preclearance requirement and

RSA 654:28 was most recently precleared on 11/16/2005 by Department of Justice non-objection letter 2005-3464.

(p2) A statement that the procedure for the adoption of the change has been precleared, with the date, or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

New Hampshire's Constitution, in its current form, was adopted June 2, 1784, four years before the United States Constitution took effect upon its ratification by New Hampshire on June 21, 1788. No amendments to Part Second, article 2 or Part Second, article 44 have occurred since 1784, therefore the authority for adopting law changes predates New Hampshire's ten towns becoming subject to Preclearance on effective November 1, 1968.

(q) For redistrictings and annexations.

Not applicable.

(r) Supplemental

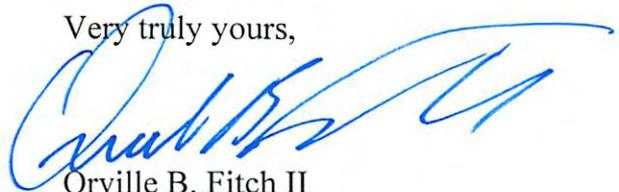
None.

§51.28 (g) Public notice that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection and invites comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

Exhibit A is a copy of a press release issued July 19, 2010 announcing the 2010 round of Preclearance submissions, the availability of copies at the New Hampshire Attorney General's Website and Office, and inviting comments to the United States Attorney General.

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
Deputy Attorney General
bud.fitch@doj.nh.gov
(603) 271-1238

Attachments

CC: Secretary of State William M. Gardner

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CHAPTER 243

HB 1567 – FINAL VERSION

21mar06... 1085h

04/20/06 1800s

2006 SESSION

06-2898

03/10

HOUSE BILL ***1567***

AN ACT relative to removing names from the checklist.

SPONSORS: Rep. O'Neil, Rock 15

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill authorizes any person to request that a person be removed from the checklist based on evidence that the person is not qualified as a voter in the town or ward. This bill also authorizes the supervisors of the checklist to strike names from the checklist based on a report of change of address from the United States Postal Service, the department of safety, or the secretary of state.

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

Matter removed from current law appears [~~in brackets and struckthrough.~~]

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

21mar06... 1085h

04/20/06 1800s

06-2898

03/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT relative to removing names from the checklist.

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

243:1 New Sections; Periodic Maintenance and Verification of Checklists; Request to Correct the Checklist; Reports of Change of Address. Amend RSA 654 by inserting after section 36 the following new sections:

654:36-a Request to Correct the Checklist.

I. A supervisor of the checklist, the town or city clerk, or any other person, may submit a request for correction of the checklist to the supervisors of the checklist or to the town or city clerk based upon evidence that a person listed on the checklist is not qualified as a voter in the town or ward. The clerk shall forward requests for correction of the checklist to the supervisors of the checklist. At the next session of the supervisors, they shall examine the requests and determine whether or not it is more likely than not that the person's qualifications are in doubt.

II. If the supervisors of the checklist determine that it is more likely than not that the person's qualifications are in doubt, they shall send a notice to the person and afford the person at least 30 days to provide proof of his or her qualifications. If the person fails to respond to the 30-day notice or responds but fails to provide proof that establishes that it is more likely than not that the person is qualified to vote in the town or ward, the person's name shall be removed from the checklist.

654:36-b Reports of Change of Address If the supervisors of the checklist receive a report from the United States Postal Service or the department of safety directly or as communicated by the secretary of state through the centralized voter registration database that a voter has permanently changed his or her address to another town, city, or state, they shall strike that name from the checklist at the next session for the correction of the checklist. As an alternative, the supervisors of the checklist may first send a 30-day notice letter and then shall remove the name from the checklist if the voter does not respond to that notice.

243:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 1, 2006

Effective: July 31, 2006

TITLE LXIII ELECTIONS

CHAPTER 654 VOTERS AND CHECKLISTS

Checklists: All State Elections

Section 654:28



654:28 Procedure. – The supervisors of the checklist shall hear all applications for a correction of the checklist and the evidence submitted thereon and shall correct it according to their best knowledge so that it contains only the names of those persons qualified to vote at said election. The names of all persons not qualified to vote at the time of any session, but who shall clearly be qualified to vote on election day, may be added to the checklist at that session. The session which is held on the Saturday 10 days prior to election day shall be held as a minimum requirement between 11:00 a.m. and 11:30 a.m. and at the discretion of the supervisors for additional hours. No additions or corrections shall be made after the Saturday session, except as provided in RSA 659:12 or RSA 654:27, provided, however, that if the Saturday falls on a holiday weekend, that session shall be held on Tuesday, 7 days prior to the election, between 7:00 p.m. and 7:30 p.m. and at the discretion of the supervisors for extended hours. The additions and corrections resulting from such session shall be made to the previously posted checklist on or before midnight on the succeeding Friday either by additions or corrections to said checklist or by posting a new corrected checklist. Notice of such additions or corrections to the checklist shall also be given to the town or city clerk.

Source. 1979, 436:1. 1983, 273:1; 426:23. 1990, 119:5. 1996, 36:2. 2001, 272:2. 2003, 27:3, eff. July 1, 2003.

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DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Michael A. Delaney

SUBJECT: Voting Rights Act – Submissions of requests for preclearance of 2010 changes to New Hampshire Voting laws and procedures

DATE: July 19, 2010

RELEASE TIME: Immediate

Contact: Deputy Attorney General Bud Fitch (603) 271-1238

Attorney General Michael A. Delaney 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. Submissions will be made over the next several weeks until all 2010 changes to New Hampshire's election laws have been submitted.

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. The State has submitted preclearance requests for most of the changes made to New Hampshire voting law and is in the process of completing that updating of preclearance.

Federal regulations require that the public be notified that the State has filed requests for preclearance and that the submissions 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 Delaney and the federal Department of Justice invite persons interested in pending submissions to submit comments and information, in writing or by telephone, to the Voting Section of the Civil Rights Division at the earliest possible date to assure 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 7254 - NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington D.C. 20530 (the envelope and first page should be marked "Comment under Section 5"). Further information on the federal Department of Justice's Voting Rights Section can be found at:

<http://www.justice.gov/crt/voting/>

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

A Letter describing the historical circumstances of the ten New Hampshire towns becoming subject to the Voting Rights Act preclearance requirements, originally sent to the federal Department of Justice in 2004, is available at:

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

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