

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

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 94

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 94**, relative to election affidavits, 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 94, amending RSA 654:31-a; RSA 659:30, and RSA 659:101. See Attached Exhibit 2006:94, #1.

Note section 3's change to RSA 659:101 is separately and simultaneously submitted for preclearance in submission RSA 659:101 which seeks preclearance for multiple changes to that statute, therefore is not part of this submission.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended or otherwise changed (prior law).

Laws of 2003, Chapter 289:53. See Attached Exhibit 2006:94, #2.

Laws of 2003, Chapter 289:58. See Attached Exhibit 2006:94, #3.

Note section 3's change to RSA 659:101 is separately and simultaneously submitted for preclearance in submission RSA 659:101 which seeks preclearance for multiple changes to that statute, therefore is not part of this submission.

(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.

Section 1 amends RSA 654:31-a to conditionally include citizenship and domicile affidavits among the voting records which are exempt from New Hampshire Right-to-Know (sunshine/FOIA) law. The condition is that the citizenship and domicile affidavits are public records to the extent disclosure is for the purpose of challenging the individual registering to vote or voting, challenging the recounting of a ballot, for other ballot challenges authorized by law, or for determining the accuracy of the affidavit.

Section 2 amends RSA 659:30 to limit oath taking for challenged voter, citizenship, domicile, or other affidavits required by the election laws to oaths sworn before an election official. Prior to this change notary publics and justices of the peace could take the oaths of persons swearing to these affidavits.

The change in section 3, to RSA 659:101, is separately and simultaneously submitted for preclearance in submission RSA 659:101 which seeks preclearance for multiple changes to that statute.

(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.

May 9, 2006.

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

July 8, 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 is engaged in an effort to catch up on preclearance submissions. This change is being submitted now to "catch up" the preclearance as there is a change in this act related to the subject of a 2010 change, preclearance for which is being sought simultaneously through submission 2010:182.

(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.

Section 1 changes the availability to the public of citizenship and domicile affidavits, which require disclosure of some information which is typically considered private, to deter identity theft and voter intimidation. The amendment does, however, preserve public access for the purpose of election related challenges.

The reason for the change in Section 2 is to eliminate the current practice of affidavits being prepared and sworn to in front of notary publics or justices of the peace prior to the applicant for voter registration appearing before election officials to vote or a person appearing at the polls offering to vote who is then challenged. Election officials reported concern with not knowing who was a legitimate notary or justice of the peace and having not practical means of verifying authenticity of the oath verification at the polls. Election officials also reported individuals appearing with pre-completed and sworn affidavits who did not understand the form, did not understand that they had sworn an oath, or who reported that the Notary or Justice of the Peace signed the form without taking an oath. Requiring the oath taking in front of an election official is intended to ensure the person understands the form and the significance of taking the oath.

(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 654:31-a, as enacted in 2003, was precleared on 11/16/2005 by Department of Justice non-objection letter 2005-3462.

RSA 659:30, as amended in 2003, was precleared on 7/22/2004 by Department of Justice non-objection letter 2004-2557.

The change in section 3, to RSA 659:101, is separately and simultaneously submitted for preclearance in submission RSA 659:101 which seeks preclearance for multiple changes to that statute.

(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.

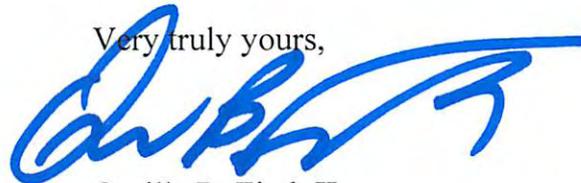
§51.28 (g) Public notice that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available

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,



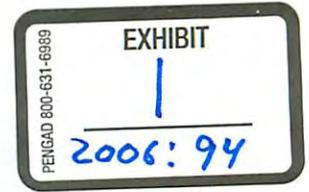
Orville B. Fitch II
Deputy Attorney General
bud.fitch@doj.nh.gov
(603) 271-1238

Attachments

CC: Secretary of State William M. Gardner

494431.doc

[Handwritten signature in blue ink]



CHAPTER 94

HB 391 – FINAL VERSION

01Feb2006... 0208h

01Feb2006... 0486h

2006 SESSION

05-0468

03/10

HOUSE BILL **391**

AN ACT relative to election affidavits.

SPONSORS: Rep. Weed, Ches 3; Rep. Pratt, Ches 2

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill makes citizenship and domicile affidavits public records subject to RSA 91-A for the purpose of voter challenges and modifies requirements for their execution and preservation.

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.

01Feb2006... 0208h

01Feb2006... 0486h

05-0468

03/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT relative to election affidavits.

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

94:1 Right to Know Exemption. Amend RSA 654:31-a to read as follows:

654:31-a Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, street address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, *citizenship and domicile affidavits*, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. ***Notwithstanding the foregoing, citizenship and domicile affidavits are public records subject to RSA 91-A for the sole purpose of challenging an individual registering to vote or voting, challenging ballots to be recounted, to the extent that such ballot challenges are specifically authorized by law, or determining the accuracy of any citizenship or domicile affidavit.*** Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, *citizenship and domicile affidavits*, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

94:2 Affidavit. Amend RSA 659:30 to read as follows:

659:30 Affidavit. The affidavit of a challenged voter, a voter citizenship affidavit, a voter domicile affidavit, or any other affidavit required by the election statutes may be sworn before ~~[any person authorized by law to administer oaths or before]~~ any election officer.

94:3 Preservation of Voting Materials. Amend RSA 659:101 to read as follows:

659:101 Preservation of Absentee Voting Materials, Election Day Affidavits, and Domicile Affidavits. The affidavit envelopes and application forms processed by the moderator as provided in RSA 659:50, and the citizenship affidavits and domicile affidavits as provided in RSA 654:12 and any other documentary proof of qualifications retained by the town or city clerk, the supervisors of the checklist, or other election official may be preserved in the same manner that ballots are preserved. ~~[and]~~ ***Citizenship, voter registration, and domicile affidavits shall be retained for 3 years after the election in which they are used, and other materials*** may be destroyed one year after the first state general election at which the individual may vote.

94:4 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 9, 2006

Effective: July 8, 2006

PENGAD 800-631-6989
EXHIBIT
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2006:94

igious commitment which prevents me from
physical disability I am unable to vote in
structions forwarded to me with the ballot
arked the within ballot and sealed it in this

(Signature) _____

he penalty for knowingly or purposefully
ring to vote or voting is a class A misde-
risonment not to exceed one year and a
egistering to vote or voting is subject to a

652:14 to read as follows:

fficer" shall mean any moderator, deputy
erk, deputy town clerk, city clerk, deputy
visor of the checklist, registrar, or deputy

izens. Amend RSA 654:3 to read as follows:

izens. Notwithstanding any other provision
s citizen being at least 18 years of age as
he Constitution of New Hampshire, who is
l have the right to register absentee to vote
r in New Hampshire in which he or she had
to his or her departure from the United
maintains domicile in said town or city and
ereto is uncertain, provided:
r applicable requirements and qualifications

is not registered to vote in any other state
rritory or possession of the United States;

ort or card of identity issued under the
United States.

orms to be Forwarded. Amend RSA 654:9

provisions of this section shall apply in all
clerk shall present to the next meeting of
r registration forms of all persons making
s meeting of said supervisors.

ction by Supervisors. Amend RSA 654:13,

the name of the applicant to the checklist,
egistration form for their own file, forward
ist of the city or town of the applicant's last
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:

654:23 Effect. Unless the supervisors of the checklist shall be of the opinion that
the applicant does not qualify as an overseas voter in the city or town as provided in
RSA 654:3, domiciled outside the United States, they shall, at their next session for
the correction of the checklist subsequent to their receipt of such affidavit properly
executed, cause his or her name to be added to the checklist together with a mark
or sign clearly indicating that the application has been entered on the checklist for
the purpose of voting in federal elections only. Thereafter, such person shall be
entitled to vote by overseas citizens absentee ballot at both federal primary and
general elections. If the supervisors decide not to add the name of the applicant to
the checklist, they shall send notification to the applicant in writing within 7 days
stating the reason for that denial.

289:53 New Section; Right-to-Know Exemption. Amend RSA 654 by inserting
after section 31 the following new section:

654:31-a Right-to-Know Exemption. The information contained on the checklist
of a town or city, specifically, the name, street address, town or city, and party
affiliation, if any, of registered voters, except as otherwise provided by statute, is
public information subject to RSA 91-A. All other information on the voter
registration form, absentee registration affidavit, and application for absentee ballot
shall be treated as confidential information and the records containing this informa-
tion shall be exempt from the public disclosure provisions of RSA 91-A, except as
provided by statutes other than RSA 91-A. Election officials and law enforcement
personnel in furtherance of their official duties may access and may disclose
information from the voter registration form, absentee registration affidavits, and
applications for absentee ballots, if necessary to resolve a challenge to an individual
registering to vote or voting, or if necessary to investigate or prosecute election law
violations or any crime. Law enforcement access and use of such records for the
investigation or prosecution of crimes unrelated to election law violations shall be
limited to the records of the specific individuals who are the subject of the
investigation or prosecution.

289:54 Absentee Voting; Refusal to Certify, Procedure. Amend RSA 657:16 to
read as follows:

657:16 Refusal to Certify; Procedure. If he or she refuses to certify the
application, the town or city clerk shall notify the applicant in writing within 7 days
to that effect. The town or city clerk shall provide the applicant with an absentee
ballot and a notice that the ballot will not be counted unless the applicant submits
the documents necessary to complete an absentee registration. The applicant shall
be advised in writing what documents, if any, have been received in proper form and
which the applicant must submit in the return envelope that contains the absentee
ballot affidavit envelope. The town or city clerk shall mark the exterior of the
absentee ballot affidavit envelope with the words "Not Registered." If the applicant
returns the required documents in proper form with the absentee ballot and if the
applicant is found to be qualified, he or she shall be registered and his or her

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EXHIBIT
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2006:94

the same manner as the absentee ballot of a voter is returned without the required documents and preserved in the manner set forth for absentee ballots. The clerk shall preserve the absentee ballot registered as a voter until the time set by law for the election at which time the application shall be considered. If a court has jurisdiction in equity upon such application, the name of the person making the application shall be placed upon the checklist or registered as a voter on the absentee ballot.

289:58 Election Procedure; Challenges; Affidavit. Amend RSA 659:30 to read as follows:

289:30 Affidavit. The affidavit of a challenged voter, a voter citizenship affidavit, a voter domicile affidavit, or any other affidavit required by the election statutes may be sworn before any person authorized by law to administer oaths or before any election officer.

289:59 Preservation of Absentee Voting Materials, Citizenship Affidavits, and Domicile Affidavits. Amend RSA 659:101 to read as follows:

659:101 Preservation of Absentee Voting Materials, Election Day Affidavits, and Domicile Affidavits. The affidavit envelopes and application forms processed by the moderator as provided in RSA 659:50, and the citizenship affidavits and domicile affidavits as provided in RSA 654:12 and any other documentary proof of qualifications retained by the town or city clerk, the supervisors of the checklist, or other election official may be preserved in the same manner that ballots are preserved and may be destroyed one year after the first state general election at which the individual may vote.

289:60 Sealing and Certifying Ballots; Exemption from Right-to-Know Law. Amend RSA 659:95 to read as follows:

659:95 Sealing and Certifying Ballots.

I. Immediately after the ballots cast at a state election have been tabulated and the result has been announced and the return has been made, the moderator or the moderator's designee, in the presence of the selectmen or their designee, shall place the cast, cancelled, and uncast ballots, including such ballots from any additional polling places, and further including the successfully challenged absentee ballots still contained in their envelopes, in the containers provided by the secretary of state as required by RSA 659:97 and shall seal such container with the sealer provided by the secretary of state as required by RSA 659:97. The moderator or the moderator's designee shall then enter in the appropriate blanks on such sealer on each container the number of cast, cancelled, and uncast ballots in such container and shall endorse in the appropriate place on such sealer a certificate in substance as follows: Enclosed are the ballots from the state election in the town of _____ (or in ward _____ in the city of _____) held on _____, 19____, required by law to be preserved. The moderator and the selectmen or their designee shall sign their names in the appropriate blanks on the sealer.

II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 659:91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

1. Amend RSA 657:19-a to read as follows:

657:19-a. An armed services voter or federal voter outside the United States qualified to vote in the state shall be permitted to vote in the state ballot by completing a federal post card ballot, and sending it to the secretary of state. The applicant may request an absentee ballot if the applicant is qualified to cast a ballot during the election.

289:26-a Hours of Polling Extended by Order. Amend RSA 659:26 to read as follows:

289:26-a Hours of Polling Extended by Order. In any federal election where the hours of polling are extended by a federal or state court order or other order, the moderator or his or her designee shall mark all ballots cast during the extended hours of polling "EH." These extended hours ballots shall be counted in the usual manner, but shall be separated and held apart from other ballots when stored.

289:58 Election Procedure; Challenges; Affidavit. Amend RSA 659:30 to read as follows:

289:30 Affidavit. The affidavit of a challenged voter, a voter citizenship affidavit, a voter domicile affidavit, or any other affidavit required by the election statutes may be sworn before any person authorized by law to administer oaths or before any election officer.

289:59 Preservation of Absentee Voting Materials, Citizenship Affidavits, and Domicile Affidavits. Amend RSA 659:101 to read as follows:

659:101 Preservation of Absentee Voting Materials, Election Day Affidavits, and Domicile Affidavits. The affidavit envelopes and application forms processed by the moderator as provided in RSA 659:50, and the citizenship affidavits and domicile affidavits as provided in RSA 654:12 and any other documentary proof of qualifications retained by the town or city clerk, the supervisors of the checklist, or other election official may be preserved in the same manner that ballots are preserved and may be destroyed one year after the first state general election at which the individual may vote.

289:60 Sealing and Certifying Ballots; Exemption from Right-to-Know Law. Amend RSA 659:95 to read as follows:

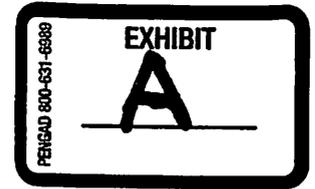
659:95 Sealing and Certifying Ballots.

I. Immediately after the ballots cast at a state election have been tabulated and the result has been announced and the return has been made, the moderator or the moderator's designee, in the presence of the selectmen or their designee, shall place the cast, cancelled, and uncast ballots, including such ballots from any additional polling places, and further including the successfully challenged absentee ballots still contained in their envelopes, in the containers provided by the secretary of state as required by RSA 659:97 and shall seal such container with the sealer provided by the secretary of state as required by RSA 659:97. The moderator or the moderator's designee shall then enter in the appropriate blanks on such sealer on each container the number of cast, cancelled, and uncast ballots in such container and shall endorse in the appropriate place on such sealer a certificate in substance as follows: Enclosed are the ballots from the state election in the town of _____ (or in ward _____ in the city of _____) held on _____, 19____, required by law to be preserved. The moderator and the selectmen or their designee shall sign their names in the appropriate blanks on the sealer.

II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 659:91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



MICHAEL A. DELANEY
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
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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