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**FAX COVER SHEET**

To: Chris Herren, Chief, Voting Section

From: J. Gerald Hebert

Date: July 6, 2012

Subject: Preclearance Submission by State of New Hampshire.  
NH Laws **CHAPTER 289 (HB 1354)**

Message: see attached

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Pages transmitted (including this cover sheet): 15

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July 6, 2012

*Via facsimile to (202) 616-9514*

T. Christian Herren  
Chief, Voting Section  
Civil Rights Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W., Room 7354-NWB  
Washington, D.C. 20530

Re: N.H. Laws 2012, c. 289 (H.B. 1354)  
Submission under Section 5  
*Expedited consideration requested*

Dear Mr. Herren:

As you know, Mr. J. Gerald Hebert and I represent the State of New Hampshire in its effort to perfect compliance with Section 5 of the Voting Rights Act. This letter submits one of several 2012 enactments of the New Hampshire General Court for Section 5 review: N.H. Laws 2012, c. 289 (House Bill 1354), which today became law without the Governor's signature as provided under the New Hampshire Constitution.

This legislation changes the affidavit requirement for voters without photo identification. Prior law required a "qualified voter" affidavit; this legislation requires a more abbreviated "challenged voter" affidavit. The legislation also adds to the existing statutory definitions of voter fraud, and penalties therefor, the submittal of a challenged voter affidavit with false information.

We request expedited consideration of this submission, as we are attempting to make our Section 5 compliance complete in anticipation of a "bailout" action under Section 4(a) of the Voting Rights Act, 28 U.S.C. 1973b(a), and 28 C.F.R. 51.64. To the best of our knowledge, this letter makes one of the last of the Section 5 submissions necessary to that effort.

Chapter 289 was enacted by the New Hampshire General Court, our state legislature, under N.H. Const. Pt. I, Arts. 2 and 5. It became law without the Governor's signature on July 6, 2012, after the period of time prescribed by N.H. Const. Pt. II, Art. 44. The legislation took effect on the date of enactment, except for Section 4, which will take effect on September 1, 2013. Attached to this letter is a copy of Chapter 289 as enacted, showing all changes House Bill 1354 made to existing law.

Chapter 289 will have no special or adverse effect on any person or class of persons protected by Section 5. No known litigation concerns Chapter 289. The State has no further material to present at this time regarding this enactment.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Stephen B. Pershing". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Stephen B. Pershing

cc: J. Gerald Hebert, Esq.  
Matthew Mavrogeorge, Esq.

**HB 1354 – VERSION ADOPTED BY BOTH BODIES**

06/27/12 2512s

2012 SESSION

12-2149

03/09

**HOUSE BILL 1354**

AN ACT relative to voter affidavits.

SPONSORS: Rep. Bates, Rock 4; Rep. Bettencourt, Rock 4; Rep. Jasper, Hills 27; Rep. O'Brien, Hills 4; Rep. D. McGuire, Merr 8; Rep. Renzullo, Hills 27; Rep. Comerford, Rock 9; Sen. Barnes, Jr., Dist 17

COMMITTEE: Election Law

**AMENDED ANALYSIS**

This bill changes the affidavit requirement for voters without photo identification from a qualified voter affidavit to a challenged voter affidavit. This bill also adds submitting a challenged voter affidavit with false information to the voter fraud penalty statute.

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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.

12-2149

06/27/12 2512s

03/09

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to voter affidavits.

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

1 Contingency. If SB 289-FN of the 2012 regular legislative session does not become law, the provisions of this act shall not take effect. If SB 289-FN of the 2012 regular legislative session becomes law, the provisions of this act shall take effect in accordance with section 6 of this act.

2 Obtaining a Ballot. Amend RSA 659:13 to read as follows:

659:13 Obtaining a Ballot.

I. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a

checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction. The ballot clerk shall request that the voter present a valid photo identification meeting the requirements of paragraph II. If the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a [qualified] *challenged* voter affidavit. The voter, if still qualified to vote in the town or ward and having presented a valid photo identification verifying the voter's identity or executed a [qualified] *challenged* voter affidavit, and unless challenged as provided for in RSA 659:27 through 659:33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. The ballot clerk shall also mark the checklist using a ruler or other straight edge to ensure accuracy of the mark in order to show that the voter obtained his or her ballot. The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid photo identification and whether such voter executed a [qualified] *challenged* voter affidavit.

II. The following forms of identification bearing a photograph of the voter shall satisfy the identification

requirements of paragraph I:

- (a) A driver's license issued by the state of New Hampshire or any other state, regardless of expiration date.
- (b) An identification card issued by the director of motor vehicles under the provisions of RSA 260:21.
- (c) A United States armed services identification card.
- (d) A United States passport, regardless of expiration date.
- (e) Any other valid photo identification issued by federal, state, county, or municipal government.
- (f) A valid student identification card.
- (g) A photo identification not authorized by subparagraphs (a) through (f) but determined to be legitimate by the supervisors of the checklist, the moderator, or the town or city clerk, provided that if any person authorized to challenge a voter under RSA 659:27 objects to the use of such photo identification, the voter shall be required to execute a [~~qualified~~] **challenged** voter affidavit as if no identification was presented.
- (h) Verification of the person's identity by a moderator or supervisor of the checklist or the town or city clerk, provided that if any person authorized to challenge a voter under RSA 659:27 objects to such verification, the voter shall be required to execute a challenged voter affidavit.

III. If a voter on the nonpublic checklist executes a [qualified] *challenged* voter affidavit in accordance with paragraph I, the affidavit shall not be subject to RSA 91-A.

IV.(a) The secretary of state shall cause a letter of identity verification to be mailed by first class mail to each voter who executed a [qualified] *challenged* voter affidavit in accordance with paragraph I. The letter shall be mailed within 60 days after the election, except that if the election is a state primary election, the letter shall be mailed 60 days after the general election, and if the election is a regularly scheduled municipal election, the letter shall be mailed by the July 1 or January 1 next following the election. The secretary of state shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the person that a person who did not present valid photo identification voted using his or her name and address and instruct the person to return the letter within 90 days with a written confirmation that the person voted or to contact the attorney general immediately if he or she did not vote. The letter shall also inform the person of the procedure for obtaining a free nondriver's picture identification card for voting purposes.

(b) The secretary of state shall cause any letters mailed pursuant to subparagraph (a) that are returned as undeliverable by the United States Post Office to be referred to the attorney general. The secretary of state shall also prepare and forward to the attorney general a list of all persons who were mailed letters under subparagraph (a) and have not confirmed that they voted.

Upon receipt of notice from a person who receives a letter of identity verification that the person did not vote, or upon receipt of a referral from the secretary of state, the attorney general shall cause an investigation to be made to determine whether fraudulent voting occurred.

(c) Within 60 days after a state general election, the secretary of state shall compile a report of the number of voters that did not present valid photo identification at each election occurring since the previous state general election, and forward the report to the speaker of the house of representatives, the president of the senate, and the chairpersons of the appropriate house and senate standing committees with jurisdiction over election law.

3 Wrongful Voting; Penalties for Voter Fraud; Challenged Voter Affidavit. Amend RSA 659:34, I(a) to read as follows:

(a) When registering to vote; when obtaining an official ballot; when casting a vote by official ballot; or when applying for a photo identification card for voting purposes, purposely or knowingly makes a false material statement regarding his or her qualifications as a voter to an election officer or submits a voter registration form, an election day registration affidavit, a qualified voter affidavit, a domicile affidavit, ***a challenged voter affidavit***, an affidavit of religious exemption, an identification card voucher, or an absentee registration affidavit containing false material information regarding his or her qualifications as a voter;

4 Obtaining a Ballot. Amend RSA 659:13 to read as follows:

## 659:13 Obtaining a Ballot.

I.(a) A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name and address to one of the ballot clerks who shall, if the name is found on the checklist by the ballot clerk, repeat the name and address. If the address announced by voter is different from what appears on the checklist, but is in the same town or ward, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction.

(b) The voter, if the ballot clerk determines that he or she is qualified to vote in the town or ward, and unless challenged as provided for in RSA 659:27 through 659:33, shall then be asked to present proof of his or her identity meeting the requirements of paragraph II. If the voter presents such proof of identity to the ballot clerk, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. The ballot clerk shall also mark the checklist using a ruler or other straight edge to ensure accuracy of the mark in order to show that the voter obtained his or her ballot. If the photo identification is an out-of state driver's license or nondriver's identification card, the ballot clerk shall record the state of issuance on the checklist in accordance with uniform procedures developed by the secretary of state in a color designated for such entries and the supervisors of the checklist or designee shall submit the information to the secretary of state within 30 days of the election. The voter shall then be allowed to enter the space enclosed by the guardrail to mark and cast his or

her ballot.

(c)(1) If the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a [qualified] **challenged** voter affidavit [~~in accordance with RSA 654:12~~]. The voter shall receive an explanatory document prepared by the secretary of state explaining the proof of identity requirements. If the voter executes a [qualified] **challenged** voter affidavit, the ballot clerk shall mark the checklist in accordance with uniform procedures developed by the secretary of state.

(2) If the voter executes a [qualified] **challenged** voter affidavit, the moderator or the moderator's designee shall take a photograph of the voter and immediately print and attach the photograph to, and thus make it a part of, the affidavit form. The photograph shall be 2 inches by 2 inches, or larger, and be in color. The moderator or his or her designee who took the photograph and the voter shall then sign the [qualified] **challenged** voter affidavit. The moderator or designee shall delete the photograph from the camera in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a [qualified] **challenged** voter affidavit without a photograph.

(3) If the voter objects to the photograph requirement because of religious beliefs, he or she may execute an affidavit of religious exemption in accordance with RSA 659:13-b, which shall be attested to by an election officer and attached to the [qualified] **challenged** voter

affidavit.

(4) The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid photo identification and has executed a [qualified] *challenged* voter affidavit.

II. A valid photo identification shall show the name of the individual to whom the identification was issued, and the name shall substantially conform to the name in the individual's voter registration record; it also shall show a photograph of the individual to whom the identification was issued; and it shall also have an expiration date that has not been exceeded by a period of more than 5 years from the current date. The following forms of identification bearing a photograph of the voter shall satisfy the identification requirements of paragraph I:

(a) A driver's license issued by any state or the federal government.

(b) A nondriver's identification card issued by the motor vehicles division, department, agency, or office of any state.

(c) A United States armed services identification card.

(d) A United States passport.

(e) A [qualified] *challenged* voter affidavit in accordance with subparagraph I(c).

III. If a voter on the nonpublic checklist executes an affidavit in accordance with subparagraph I(c), the

affidavit shall not be subject to RSA 91-A.

IV.(a) The secretary of state shall cause a letter of identity verification to be mailed by first class mail to each voter who executed a [~~qualified~~] *challenged* voter affidavit or affidavit of religious exemption in accordance with paragraph I, unless the same person is sent letter of identity verification pursuant to RSA 654:12, V(b). The letter shall be mailed within 60 days after the election, except that if the election is a state primary election, the letter shall be mailed 60 days after the general election, and if the election is a regularly scheduled municipal election, the letter shall be mailed by the July 1 or January 1 next following the election. The secretary of state shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the person that a person who did not present valid photo identification voted using his or her name and address and instruct the person to return the letter within 30 days with a written confirmation that the person voted or to contact the attorney general immediately if he or she did not vote. The letter shall also inform the person of the procedure for obtaining a free nondriver's picture identification card for voting purposes.

(b) The secretary of state shall cause any letters mailed pursuant to subparagraph (a) that are returned as undeliverable by the United States Post Office to be referred to the attorney general. The secretary of state shall also prepare and forward to the attorney general a list of all persons who were mailed letters under subparagraph (a) and have not confirmed that they voted. Upon receipt of notice from a person who receives a letter

of identity verification that the person did not vote, or upon receipt of a referral from the secretary of state, the attorney general shall cause an investigation to be made to determine whether fraudulent voting occurred.

(c) Within 60 days after any election held after November 1, 2012, the secretary of state shall compile a report by voting district of the number of voters who registered or voted on election day but did not present valid photo identification, and forward the report to the speaker of the house of representatives, the president of the senate, and the chairpersons of the appropriate house and senate standing committees with jurisdiction over election law.

V.(a) The secretary of state shall provide to each town or city the photography equipment, supplies, and printing device that are necessary to enable it to comply with the photograph provision of subparagraph I(c), along with instructions in their use.

(b) If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the secretary of state may waive a voter's compliance with the photograph requirement of subparagraph I(c).

5 Applicability of SB 289. Amend section 14 of SB 289-FN of the 2012 regular legislative session to read as follows:

14 Applicability. In accordance with RSA 659:13, as amended by this act, ballot clerks shall request that the voters present a valid photo identification at all elections after the effective date of this act. Notwithstanding the

provisions of RSA 659:13, as amended by this act, prior to November 1, 2012, if the voter does not present such identification, he or she may vote without executing a [qualified] *challenged* voter affidavit, but the ballot clerk shall provide the voter with a copy of the explanatory document specified in RSA 652:26 and explain the need for photo identification after November 1, 2012. The ballot clerks shall tally the number of voters that do not present a valid photo identification at the September 2012 state primary election, and the town or city clerk shall report the number with the election return.

#### 6 Effective Date.

I. Section 4 of this act shall take effect September 1, 2013, at 12:01 a.m.

II. The remainder of this act shall take effect upon its passage.