



Helping Communities face the challenges and impacts of growth while maintaining their character and sense of place.

2009 Legislative Session: Selected Statutes

iTRaC is the Nashua Regional Planning Commission's new approach to community planning that focuses on integrating transportation, land use and environmental planning. The program was developed to assist communities in dealing with the challenges of growth in a coordinated way that sustains community character and a sense of place.

What is an RSA?

Laws in New Hampshire are called Revised Statutes Annotated, or RSAs. "Annotated" means including notes. RSAs include history, case law, and other relevant explanations at the end of each section. RSAs are organized into 64 Titles from Title 1, "The State and its Government" to Title 64, "Planning and Zoning." Each Title is divided into, and typically cited by, Chapters, Sections, and Paragraphs. EXAMPLE: RSA 674:4, II refers to Chapter 674, section 4 paragraph II.



The following is a partial list of RSAs adopted or amended in the 2009

Legislative Session. The data sources are: NH General Court "Quick Bill Status Search," NH Municipal Association "Legislative Bulletin," Final Bulletin / 2009 Session / August 21, 2009, and NH Office of Energy and Planning "Selected 2009 Legislation Relative to Planning and Energy Issues." To access the complete documents, click on the following links:

http://gencourt.state.nh.us/bill_status/quick_search.html

http://www.nhlgc.org/LGCWebSite/Advocacy/Bulletins/Final_Bulletin_8-2009.pdf

http://www.nh.gov/oep/legislation/2009/selected_legislation.htm



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Planning and Zoning Changes

HB210 - Public access to minutes of local land use boards ~ RSA 49:1 to 49:6 Follow up on 2008 revision to RSA 91-A that changed when minutes must be available to the public from 144 hours to 5 business days. This 2009 legislation makes the same change to RSAs 36:57, II; 676:3, II; 677:2; 677:4; and 677:15. (effective date 1/1/2010)

HB156 - Authorizing planning boards to require third-party review and inspection ~ RSA 73:1 and 73:2 Adds new section 4-b, Third Party Review and Inspection, after RSA 676:4-a. This clarifies planning board authority to require third-party plan review and construction inspections at the applicant's expense (reasonable). Detailed invoices are required with reasonable task description for services rendered. Third-party inspector of construction must document and promptly notify town and applicant of any defects or deviation from the approved plan. Anyone aware of a failure to report issues properly and promptly may file a written complaint for joint board review under RSA 310-A:1. (effective date 8/8/2009)

SB93 - Add an additional exemption for active and substantial development and active and substantial completion ~ RSA 93:1 and 93:2 Adds new section V, following section IV of RSA 674:39, Four-Year Exemption. Subdivisions and site plans approved between January 1, 2007 and July 1, 2009 are allowed 36 months (normally 24 months) to achieve active and substantial development. Subdivisions and site plans approved between July 1, 2005 and July 1, 2009 have 6 years (normally 4 years) to achieve substantial completion. (effective date 6/12/2009)

HB44 - Use of alternates by local land use boards to fill vacancies ~ RSA 114:1 and 114:2 Adds new paragraph III following paragraph II of RSA 673:12. The chairperson of the local land use board may designate an alternate member of the board to fill a vacancy within the board temporarily until the vacancy is filled. If the vacancy is for an ex officio member, the chairperson may only designate an alternate for the ex officio member. (effective date 8/21/2009)



HB321- Extend the effective date of workforce housing law ~ RSA 157:1 to 157:3 Amend RSA 299:4, Effective Date; of the 2008 workforce housing law extending the effective date from July 1, 2009 to January 1, 2010. NOTE - New articles for 2010 Town Meeting must be posted before 1/1/10 to comply. (effective date 1/1/2010)

HB106 - Clarifies that each day of the violation constitutes a separate offense for certain land use violations ~ RSA 173:1 and 173:2 Amends RSA 676:17, I; to clarify that each day a land use violation continues, it shall be considered a separate offense. A series of individual fines of \$275 for first offense and \$550 for subsequent offences (after proper written notice to the violator), rather than one cumulative fine, will prevent a fine from exceeding the \$25,000 limit of the district court (> \$25,000 superior court jurisdiction). (effective date 9/11/2009)

HB290 - Authority for municipalities to adopt a fluvial erosion hazard ordinance ~ RSA 181:1 to 181:3 Amends RSA 674:56 to add sections II(a) and II(b). Section II(a) sets forth the same requirements for establishing a fluvial erosion as are required for a floodplain ordinance under section I. Paragraph (b) requires fluvial erosion hazard zones to be delineated following protocol consistent with that of NHDES. When an ordinance is proposed, DES shall review maps and

zones within 30 days to confirm they are consistent with DES protocol. (effective date 7/13/2009)

SB29 - Allow regional planning commissions to develop guidelines for determining development of regional impact ~ RSA 194:1 and 194:2 Amends RSA 36:56, Review Required; to add new section II that allows regional planning commissions, with properly noticed public participation, to develop and update guidelines to assist local land use boards in determining whether a development has a possible regional impact. (effective date 9/11/2009)

SB189 - Availability and recording of land use decisions ~ RSA 266:1 to 266:6 Amend RSA 676:3, Issuance of a Decision; to add to section I that states besides issuing a written final decision for an application, a copy of the decision is to be made available to the applicant. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval. Add a new section III, that states whenever a plat is recorded to memorialize an approval issued by a local land use board, the final written decision, including all conditions of approval, shall be recorded with or on the plat. Finally, to change the time allowed for making minutes available from 144 hours to 5 business days in RSAs 676:3 II, 677:2, 677:4, 677:15 I. This duplicates some changes under HB210, mention previously. (effective date 9/14/2009)

SB29 - Change the manner of selecting ZBA members ~ RSA 286:1 to 286:3 Amends RSA 673:1, IV; to state ZBA members shall be elected or appointed subject to provisions of RSA 673:3. Amend RSA 676:3 II, and III; allowing the local legislative body, by majority vote, to rescind a previous decision to appoint ZBA members. Add new section III-a; allowing to switch back and forth from appointed or elected ZBA members without having to amend the zoning ordinance. The change can be made at any regular or special town meeting, and for SB2 towns, the change may be placed on the official ballot or placed in the warrant and voted on as a separate article. (effective date 1/1/2010)

HB43 - Waiver of subdivision and site plan regulations ~ RSA 292:1 to 292:3 Amends RSA 674:36, II(n) and add a new (n)(2); requiring the basis for a waiver be recorded in the minutes and only granted by majority vote if circumstances of the subdivision, or conditions of the land are such that a waiver will properly carry out the spirit and intent of the regulation. Amend RSA 674:44, III(e) and add a new (e)(2) requiring the basis for a waiver be recorded in the minutes and only granted by majority vote if circumstances of the site plan or conditions of the land are such that a waiver will properly carry out the spirit and intent of the regulation. (effective date 9/29/2009)

SB147 FN - Criteria for zoning variances - define “unnecessary hardship” ~ RSA 307:5 to 307:8 Repealed and reenacted RSA 674:33, I(b) with new text specifying the terms of a variance. RSA 307:5 provides a “Statement of Intent” for new section I(n) that states the following: The intent of section 6 (RSA 674:33, I(b)) of this act is to eliminate the separate “unnecessary hardship” standard for “area” variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor’s Island Club, Inc. v. Town of Gilford*, 124 N.H. 126 (1983). (effective date 1/1/2010)



Environmental Zoning Changes

HB 189—Energy Commissions ~ RSA 38-D

House Bill 189 is an act enabling municipalities to establish energy commissions. It amends RSA 38 by adding chapter 38-D entitled “Energy Commissions.” According to the RSA, any governing or legislative body of a municipality may adopt or rescind an Energy Commission at any appropriately warned meeting. Energy Commissions can be created for the purpose of study, planning, and utilization of energy resources for municipal buildings and built resources. The Commission is charged with researching municipal energy use and costs and making this information available to the town on at least an annual basis. It is also responsible for making recommendations to local boards and committees pertaining to municipal energy plans and sustainable practices, such as energy conservation, energy efficiency, energy generation, and zoning practices. Energy Commission members are appointed to their positions. In cities, appointments are made by the city council and are subject to the provisions of the city charter. In towns, appointments are made by the Board of Selectmen. Once a municipality has formed an Energy Commission, the governing body may appropriate money to the commission to support the purposes and duties outlined in the RSA. Money appropriated to the commission may be placed in a fund and allowed to accumulate from year to year. *(effective date 9/27/2009)*



Building Code Zoning Changes

HB339 - State Building Code Changes and Definitions ~ RSA 41:1 This Act ratifies changes to the state building code adopted by the state building code review board and revises the definition of the state building code. Amends RSA 155-A:1, IV to state that the NH building code means the adoption by reference of the International Building Code 2006, the International Plumbing Code 2006, the International Mechanical Code 2006, the International Energy Conservation Code 2006, and the International Residential Code 2006, as published by the International Code Council, and the National Electric Code 2008. *(effective date 7/14/2009)*



For more details on this topic or an overview of the entire iTRaC program, visit www.nashuarpc.org/itrac or contact Camille Pattison, iTRaC Program Manager, at camillep@nashuarpc.org or 603-424-2240 x14.



Developed by the Nashua Regional Planning Commission in partnership with the NH Department of Transportation & the NH Office of Energy and Planning.