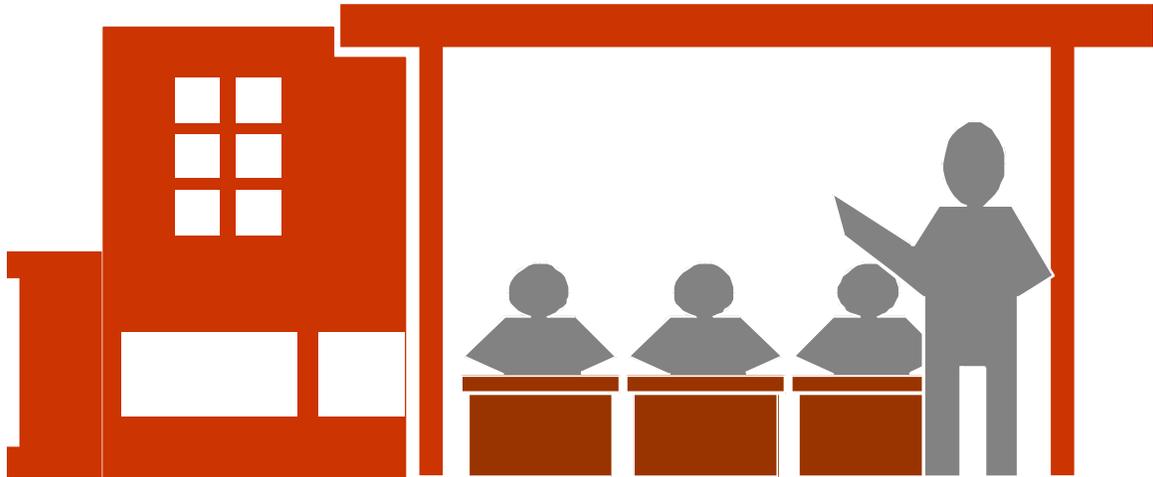


# SmartStart Guide™



## Charter Schools Facilities:

*A Resource Guide for Planning School Space  
and Understanding Building Codes*

First Edition, December 2003

**SHA**

S. HOLLINS ASSOCIATES  
EDUCATION MANAGEMENT CONSULTING

# SmartStart Guide™

## Charter Schools

### Facilities:

*A Resource Guide for Planning School Space  
and Understanding Building Codes*

**William F. Weeks, MSA**

**Susan D. Hollins, Ph.D.**

A special thanks is extended to two members of the New Hampshire Department of Education for their review and suggestions: Joyce Johnson, administrator with specialization in school standards and school approval, and Edward Murdough, administrator with specialization in school facilities.

First Edition, December 2003

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# Introduction

This New Hampshire Charter School Facility Handbook is intended to help you become more knowledgeable of space/facility planning--what needs to be done to succeed in this task and the rules and regulations that apply.

Finding and acquiring needed space is a critical factor in the success of your school. At the outset, space needs may be minimal. In the first year of operation, your school may only need one or two classrooms, for example. Full capacity school space may not be required for 3 or 4 years. And so you may have one set of space needs for the first two years and another set of space needs in years 3 to 5. Depending on your charter's plan, you might have several differing space needs during your first 5 years. Keep this in mind as you consider space planning.

Whether your first space need is for many or few classrooms and offices, one benefit of the charter school model is freeing operators to be creative about facility selection. Unlike traditional public schools grounded in large physical plants that require significant public funding to construct and maintain, charter schools are free to adapt and utilize any available, safe space that might not otherwise be considered as long as your facility choice conforms to appropriate building, ADA, and fire codes for educational occupancy.

A drawback of New Hampshire charter schools is that usual funding mechanisms relying on tax base and bonding capability are not available, e.g. for charter school building projects. Alternate methods of financing a new building would be required. While this might seem daunting, keep in mind that it is unlikely your charter school will go down the path of building a new facility. And should you embark on a building campaign, there are innovative methods, programs, and financing options to accomplish this goal.

## Chapter 194-B: Charter Schools and Open Enrollment Act, Provisions Related to School Space

To begin understanding charter school facilities and space tasks, a smart starting point is reading specific provisions in New Hampshire's charter school law that apply to space.

The following statutory sections apply to facility and space (statute is in *italics*):

194-B:1, V: Statement of Purpose.

*To exempt charter schools from state statutes and rules, other than where specified, to provide innovative learning and teaching in a unique environment,*

[Note: Accordingly, the charter school does not have to comply with all state standards regarding space, e.g. Chapter IX, instructional space.]

194-B:3, I: Charter Schools; Establishment

*Except as expressly provided in this chapter, including but not limited to RSA 194-B:8, charter schools shall be fully exempt from state laws and rules which otherwise apply to public or nonpublic schools, or local school boards or districts. Notwithstanding the foregoing, charter schools shall have all the rights and privileges of other public schools.*

194-B:3, II: (component of charter school application)

*(d) general description and proposed or potential location of facilities to be used, if such information is available.*

[Note: You do not have to identify the school's exact location at the time of charter school application, but you clearly should have a good idea of viable options in the geographic area being considered.]

### 194-B:3, XIII: Establishment

*The board of trustees of a charter school may acquire real property by lease, purchase, lease with purchase option, gift, or otherwise at any time prior to receiving a charter.*

[Note: The founding board or a group of interested advisors or volunteers might locate a space, but it is the school's Board of Trustees that has statutory authority to actually lease space or accept a gift of a building for a school.]

### RSA 194-B:4, V: Procedure for Adoption and Rescission; Limitations

*A charter school may be physically located outside the district establishing it, but shall be deemed within the school district for purposes of RSA 194-B: 4, I (d).*

[In rural areas, space is a challenge. This provision allows a charter school to locate in a facility outside the district authorizing the school. This provision pertains to district-authorized schools.]

### RSA 194-B:5, III: Authority and Duties of Board of Trustees

*(c) To acquire real property from public or private sources by lease, by lease with an option to purchase, or by gift for use as a school facility, provided that such acquisition is consistent with established school purposes.*

*(g) To solicit, accept, manage, and use any grants or gifts, provided that such activities are consistent with established school purposes.*

### RSA 194-B:8, II: Requirements; Options

*A charter school shall comply with all applicable state and federal health and safety laws, rules, and regulations.*

[Note: There are federal, state, and local health and safety codes that will have impact on your space selection. These are attached for reference. Reasonable building modifications can be

financed through start-up grants that allow for some renovation, e.g. bringing bathrooms and entrances up to accessibility codes. The more spent on facility renovations, however, the less start-up grant funding will be available for training, furniture, and instructional needs.]

#### RSA 194-B:8, VI: Requirements; Options

*A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building, or any other suitable location. A charter school may own, lease, or rent its own space, or utilize space based on other innovative arrangements.*

[Note: Study this section. Try to identify all public buildings—local, state, federal—in the area you are considering. Have any schools, camps, or colleges closed? Are there old school or community buildings available, or a wing of an industrial complex? ]

#### RSA 194-B:11, VII: Funding

*No school building aid under RSA 198:15-a through 15-h shall be awarded to a charter school for the purpose of acquiring land or buildings, or for constructing, reconstructing, or improving the charter school, unless the building is owned by the school district, under lease to the charter school, and such lease does not include an option to purchase the building. A charter conversion school shall be eligible for school building aid.*

# Locating Space: Facility Committee or Team

## The Facilities Team

Examination of other charter schools throughout the country shows a wide variety of approaches to facility identification and acquisition.

In New Hampshire, the founding board is not the same board as the governing board of trustees. The founding board must have a facility plan in the charter application. A common approach is for the founders to clarify initial space needs, scour the potential school locations, check out all varieties of space options, and develop initial space plans.

Space planning is confusing because the initial space will likely be smaller than the full-capacity school space. A change of location may be necessary. A positive feature of temporary first space for the school's opening years is the Board of Trustees then has time to establish a facilities committee or team, study future building needs, and even embark on a fundraising program for a complete school complex.

Boards of trustees commonly approach "facility" by delegating space location study to a Facility Team that clarifies current and future needs, identifies potential sites and spaces, and investigates available financing options. This frees the board of trustees to concentrate on the other essentials for success, such as governance, accountability, and the school's financial well-being.

A Facilities Team benefits when one or more members have expertise in buildings and code requirements, e.g. licensed architect and engineer, commercial realtor, attorney, contractor, building inspector or someone familiar with local regulations. All specialists have different, often overlapping, expertise. Their advice can help you determine useable spaces and realistic costs or alternatives for needed renovation, purchase, or lease. A financial advisor familiar with construction, commercial real estate funding, or special facility-related grant programs for charter school facilities could also be helpful.

Whatever the Facility Team decides, their feedback to the board is advisory. Charter school boards have statutory authority for approval of any facility choice and funding mechanism. Since facilities will likely be a major expense and shape the school's character, facility decisions are important in the board's oversight and governance role.

One member of the board can be liaison to the Facility Team in order to keep the board abreast of progress made and assure the board deals with facility issues, concerns, and opportunities as they arise. Communications between board and Facility Team are critical so the Facilities Team stays on track and has the supports it needs.

## **Community Liaison/Communications**

Local community support for your facility location can be very important. In the construction or rehabilitation of buildings, local officials typically call for neighborhood input at a public hearing prior to approval of the planned usage and construction. At the hearing, citizens address their concerns, support, or objection to the proposal. You may not have too many viable space options, so having support is useful from citizens that reside or have businesses near the immediate, potential school location. On the other hand, political and contractual concerns have persuaded certain groups to keep their facility decision somewhat guarded until the plan must be officially shared.

Issues such as traffic, safety (both personal and property), environment, noise, etc., are not to be overlooked when dealing with your future neighbors. Communications at the beginning and throughout the process will help ease any misconceptions your neighbors might have and can help smooth and hasten any permitting that may be needed.

## Factors to Consider

Here are factors to consider when searching for space:

1. The number of students that will be attending, initially and over the growth of the charter school,
2. The type and number of large and small spaces needed for the age of students and type of school program—e.g. science labs, dance studio, basic classroom--and square footage requirements pertinent to specific space use,
3. Administrative or office space,
4. Transportation space and access:
  - a. Public transportation access,
  - b. Utilization of school buses,
  - c. Parking space requirements (staff, visitors, guests, teenage students),
5. Handicapped accessibility: compliance with Americans with Disabilities Act,
6. Outdoor space needs, for recreation or curriculum purposes,
7. State and local zoning, building, and health regulations and codes for educational occupancies,
8. Construction materials, including monitored or hazardous materials, e.g. asbestos,
9. Air quality—air exchange systems, their prior maintenance, and fresh air,
10. Light and acoustics,
11. Energy and water use/efficiency,
12. Food service requirements,
13. Future school expansion plans,
14. Location, within the context of transportation and students,
15. Building security,
16. Condition of the proposed facility (if existing),
17. Need and cost of any modifications, and available funding or financing,
18. Permit for Occupancy, approval process, and timeline,
19. Projected revenue needed to support complete space and facility costs.

# Space Planning Considerations

Estimating your needs in terms of approximate square footage for instructional and non-instructional spaces allows you to quickly rule potential properties in or out before using valuable time for inspection.

## Student Enrollment

The number of students attending your charter school is the most significant factor in determining space needs. The charter outlines initial student population and articulates growth over five years or until the school reaches maximum student enrollment. For each year of your charter, project square footage needs using standard classroom size guidelines of 30–40 square feet per student. Thus, a 25-student class should range in size from 750 to 1,000 square feet.

One approach to space is acquiring facilities from the outset that allows for planned growth. Then again, the cost of unnecessary space could be prohibitive. Another approach is starting in one space and relocating after due diligence on a long-term facility plan. Then again, using precious board time planning where the school will be “next year” could get tedious quickly. If the initial location will not be adequate for your full-capacity enrollment, having time to plan for future space needs can actually be beneficial in terms of working with investors and property owners vis-à-vis their own financial planning and timelines.

## **Instructional Space**

Educational program also is a significant factor influencing space requirements. Most schools need large classrooms for basic instruction as well as small-group classrooms and tutorial-type classrooms. Additionally, schools require shared or dedicated rooms for special purposes, such as a science lab, dance studio, vocational training lab with equipment, tutoring or testing spaces. Often rooms have multiple uses, e.g. one large space used for cafeteria, school assembly hall, and music room.

## **Portable Classrooms**

Traditional public schools sometimes must resort to portable or modular classrooms for the space they need. Charter schools have been developed using portable classrooms. These can be bought or leased from various sources, including other school districts no longer needing these detached spaces.

A 2003 California Air Resources Board study found that portable classrooms they studied had certain problems: inadequate ventilation and poor maintenance of HVAC systems; occasional high formaldehyde levels (mainly from pressed wood furniture, wallboard and carpeting); increased particle counts from carpets and rugs acting as a pollutant reservoir; temperature and humidity measurements outside of recommended standards; moisture and mold problems due to water leaks and condensation; floor dust samples with levels of metals and pesticides; noise, particularly from ventilation systems, above recommended decibel levels; and inadequate lighting.

## **Non-Instructional Space**

Schools need space for outdoor recreation/playground, parking, health services/sick bay, offices, visitor/parent waiting, storage, coats/boots, assembly gatherings, and space for office or student equipment. Storage needs are always more obvious once the school opens and finds itself without a place for the riding lawn mower, several cases of paper, and a year of student/teacher supplies.

## **Administrative Space**

As a small, beginning charter school, you will not have many full-time administrative staff or the need for multiple administrative offices. Possibly your charter school will outsource certain administrative functions. Still, any school should have a private office or two, a space for teachers to work or have a break, storage, room for maintenance/janitorial supplies, and a place to house the school's phone, required records in a fireproof file cabinet, mailboxes, and equipment.

A reasonable guideline for offices is 100 square feet per office. This allows space for equipment, furniture, files, and seating. Faculty workrooms can be smaller in area, using 75 square feet per teacher utilizing the space at one time. Thus, if two teachers use a workroom together, the faculty workroom space requirements would be 150 square feet. Again this provides adequate space for equipment, furniture, and seating. More space is desired if project materials will be housed here.

## **Hallway and Bathroom Space, ADA Compliance**

Hallways and bathroom space are dictated by building, health, and fire codes. ADA (Americans with Disabilities Act) compliance dictates door and hallway widths, ramp or elevator needs, and other items. The number of bathrooms relates to the number of students and staff. Will you want a separate adult bathroom? A building with multiple floors and no elevator is apt to be a problem.

## **Americans with Disabilities Act**

While many facilities that might be considered are ADA compliant already, you must check to ensure that the areas that you wish to utilize comply. Under Title II of the Americans with Disabilities Act, no student may be denied participation in activities and classes because of lack of accessibility. This provision addresses outside classrooms, recreational areas, bathrooms (minimum of one required), stages, ramps, etc. And failure to comply with the ADA can result in costly conflict and challenges. It should also be recognized that the ADA requirements cover parents, teachers, and others who might have occasion to utilize the facility. New Hampshire has adopted the American with Disabilities Act Accessibility Code as the State standard. Software is available for completing your own ADA accessibility space audit. One source is [www.adaag.com](http://www.adaag.com). This product is based on the ADAAG checklist and comes with the full ADA text and an ADAAG checklist. These guidelines may be also be found by contacting the U.S. Department of Justice (800) 514-0301. The Governor's Commission on Disabilities is also a very good source of information: (603) 271-4177.

Industrial space is much desired for charter schools as the room size is generally larger and walls are easily replaced. Still, industrial areas will need to be ADA compliant, depending on the use of the space. Do not assume industrial space will meet all criteria without modification.

## **Furniture, Fixtures and Equipment (FFE)**

In addition to students and their chairs, tables, or desks, your spaces will likely have more than one program function and will need to include tables, chairs, boards, and equipment. Classroom spaces may need space for library, meeting, small-group, lab, computer station, storage, and teacher desk/file areas. Even without a full kitchen you will need a refrigerator—this needs space. Be sure to consider all the FFE you will have in addition to enough space for the students. Consider how ADA requirements will impact some of your FFE choices.

## **Health and Safety**

Health and safety issues are significant. More and more schools are developing policies about dust free, mold free, and pollutant free environments. You can be sure a significant number of students, parents, and staff will have allergy issues that require clean air.

Watch out for old rugs or where animals have visited.

If cafeteria service is to be offered, the state and local food-handling rules will regulate how you operate the service, including food storage, sanitary practices, waste disposal, and more. State Fire Code and local regulations come into play when a kitchen is

involved. Your facility will have to meet all codes applicable for schools, especially in the number and location of exits and entrances.

## **Air Quality**

While there are no present laws or standards established, adequate ventilation is essential. Areas of concern are the HVAC system, vehicle exhaust, dust and mold, and radon to name a few. If you have concerns, environmental engineers or other advisors are available to ensure air quality of your chosen facility is fine and any issues are identified and addressed. The New Hampshire Mechanical Code provides some standards for air exchange. A licensed air exchange/air conditioning professional can evaluate the functioning and cleanliness of air intake units, ducts/vents, and pathways. These cannot always be cleaned and sometimes need replacing.

Windows that can be opened for occasional fresh air are helpful in controlling environmental allergens, sometimes related to air exchange units.

## **Asbestos**

Prior to becoming a health risk concern, asbestos was commonly used for insulation around heating pipes and in floor and ceiling tiles. In 1986 the Asbestos Hazard Emergency Response Act, AHERA, was enacted. All New Hampshire schools were inspected by the end of 1990. Schools continue to have requirements for asbestos planning and management. Be sure to ask about asbestos anywhere you consider. You might find its presence in industrial properties.

Typically, the choice with asbestos is to remove it or have it abated. Either way, the cost of asbestos management is high. All public schools (including charter schools) are required to develop an Asbestos Management Plan and fulfill the requirements of AHERA federal guidelines for inspection, disclosure, and training. If your site has asbestos present, your maintenance staff will be required to monitor asbestos according to current AHERA requirements, have training, keep inspection logs.. Finding a location without asbestos will save headaches and expense.

## **Fire Safety**

Fire safety is a critical element in overall safety planning. Fire/emergency drill requirements include one drill per month when school is in session, including summer school. Kindergarten and first grades must be located on ground floors. If you are in a facility where classrooms are to be located in a basement, the rooms must have a sprinkler system installed and operational. Sprinklers are also required in other areas. Check with your local Fire Chief or Fire Marshall for the specific needs in your facility

Fire inspections should be conducted annually. Fire extinguishers are to be inspected and approved annually, if not more often. Contact the local Fire Chief or Fire Marshall for specific fire safety requirements and criteria for your facility. Your facility will have to conform to the appropriate codes for educational occupancies.

## **Hazardous Materials**

Buildings used for schools must assure that Hazardous Materials are labeled, identified, and handled in specific ways, e.g. kept away from children. These substances include

chemicals, certain cleaning supplies, and pesticides. Specific requirements for storage, disposal, training of personnel, and emergency procedures must be in place.

Material Safety Data Sheets (MSDS) are needed for each hazardous material and are to be kept in the areas where the material is used. Health advisors suggest there also be a central area where MSDS copies are kept for reference in case of emergency, e.g. a substance gets in someone's eye.

### **Building Security**

Building security must not be overlooked when choosing and operating your facility. Is the area considered safe for your students, staff, and parents? What is the incident of crime in the area? Your police department can assist you on this by providing data on crime against persons and property.

Consider safety features such as exterior lighting, ability to secure the premises, monitor access to the building and classrooms, non-instructional (including exterior recreational) areas. When school is in session, do you have control over the points of entry and egress? Are your offices located close to the entrance to better monitor any individual seeking to gain entry? Do you have 'key' control, ensuring that only authorized individuals enter the premises when the building is closed? Proximity badges have become more popular as a means to control and monitor entry into premises and also areas within the facility (such as records room).

## **Recreation Areas/Playgrounds**

Recreational areas/playgrounds should have adequately-constructed and well-maintained equipment, proper surfacing to maximize safety and minimize injury potential. Schools have an important duty of care for children—no matter where the children are—so an outdoor area where adults can see all the children is a benefit to supervision. Recreational areas should be well supervised. Schools sometimes separate students by age groups to prevent older-younger student problems. ADA requirements are applicable in this area as well. The Handbook for Public Playground Safety issued by the U.S. Consumer Product Safety Commission, publication number 325, also provides guidelines ([www.cpsc.gov](http://www.cpsc.gov)). The Public Playground Safety Checklist (publication number 327; found at same website) is a very useful tool in planning your recreational facility.

## **Water**

Lead testing is required every 3 years, at present. If your facility is supplied by a private well, testing for contaminants will be required. If the municipal system is used, additional tests, i.e. radon, may be required. Contact the Department of Environmental Services for specific requirements related to your facility. Identify if water pipes and water coolers are lead, lead-lined, or lead-soldered as these will have to be replaced.

## **Agency Resources**

Many agencies have resource-rich web sites and helpful facility-related products. Note these:

*The US Consumer Product Safety Commission ([www.cpsc.gov](http://www.cpsc.gov))*

Offers bulletins on fire safety, electrical safety, indoor air quality, children's furniture, and playground safety. Covers such topics as extension cords, smoke detectors, chimneys, wiring hazards, arc fault circuit interrupts, and fire safety checklists.

*New Hampshire Department of Environmental Services (www.des.state.nh.us)*

Offers booklets and information on air quality, waste management, water resources, water analysis, hazardous materials, oil tank replacement grants, etc.

## **Technology**

Whether or not schools use computers in their instructional program, the school will need computers. If you cannot afford to budget for computers, someone will donate useful but older models to your school. It is difficult to imagine a school today without a web site and internet access at least on office computers.

Moveable laptop computers with wireless lab capacity are the most adaptable for multiple space use, but these may not be useful for all ages and situations. Internet access can be via dial-up, cable, or satellite. Each system requires a different wiring/cabling set-up. The number and location of computers and the peripheral equipment that accompanies them (printers, scanners, etc.) may require phone lines, wiring, cable access, or outlets that may not be available in certain building locations or may not be according to code. It may be possible that the business/owner of your site will allow you to use their connectivity resources.

## Transportation

Ask any school director if pick-up, drop-off, and parking are important considerations with school facility. You'll quickly receive an education as to the importance of transportation space needs. How students and parents move on foot in and around vehicles is extremely important for safety reasons.

Questions to consider:

- 1) How will students likely come and go to school? Bus? Walk? Parent? Bicycle? Student driver? Public transportation?
- 2) Is there a drop-off space within reasonable distance from the school?
- 3) How many school busses will approach the school? Is there a place for them to drop or pick up students? Is there a space for busses to turn around, if needed?
- 4) If your school will own a vehicle, is there a place for it to be parked? Garaged?
- 5) If your school has teens, will there be a place for student drivers to park?
- 6) How many staff will come in the morning and stay all day? Where will their vehicles be parked?
- 7) How many staff will be coming to school for short periods of time during the day, e.g. itinerant teachers? Will they have a place to park? And parents? Guests?
- 8) What are local requirements for parking? What options exist nearby for spaces?
- 9) How many Handicapped spots will be reserved? The required number of handicapped parking spaces is defined in the ADA Accessibility Guidelines.
- 10) How much space is needed for each vehicle and for travel lanes?
- 11) Do you need to paint lines or otherwise set off each allowable space?
- 12) Other questions on your mind \_\_\_\_\_?

## Space Options for Charter Schools in NH

New Hampshire charter school statute, RSA 194-B, provides guidance as to how a New Hampshire charter school may obtain space:

***“A charter school may be located in a part of any existing public school building, in space provided on a private work site, in a public building, or any other suitable location. A charter school may own, lease, or rent its own space, or utilize space based on other innovative arrangements.”***

Let’s explore these options, looking at questions that assist in locating suitable space:

- 1) Space “in a part of any existing public school building:”
  - a. What school buildings are in the community or neighboring communities? Do any of them have available space?
  - b. If there is space within an existing public school, could a charter school run by an independent board of trustees successfully operate in that same space?
- 2) Space “on a private work site:”
  - a. What work sites are in the community or neighboring communities?
  - b. Are there vacant strip malls, bowling alleys, business buildings? Floors of business buildings? Is there space within an industrial park? Store fronts in town?
  - c. Who is the owner of these spaces, if so? Is there a persuasive argument that would encourage this owner to offer you the space for your school?

- 3) Space “in a public building:”
  - a. Where is the complete listing of all federal buildings in the area?
  - b. Where is the complete listing of all the state buildings in the area?
  - c. Where is the complete listing of all the city or town-owned buildings in the town, city, or neighboring towns.
  - d. Who manages, assigns, closes, or leases town, state, and federal buildings?
  - e. Are any of these vacant or soon to be vacant?
  - f. Is there a former school, grange, city building, armory, prison, mansion, train station, city hall, or library that is no longer in use or that is underutilized during certain hours of the day or evening?
  - g. Is there a cluster of different buildings or spaces available within walking or short driving distance so that a school space might be pieced together, e.g. in a campus arrangement using different spaces? Perhaps a combination of private and public spaces?
- 4) Are there any other locations in or around the areas being considered that might be suitable?
  - a. Are there any private schools, church schools, or colleges in the area that have closed or have space?
  - b. Are there any large houses that might be suitable for a school?
  - c. Are there any unused museums, theatres, stores, YMCA’s, community centers, or music centers, which are not fully utilizing their space during the time you need space for your schools?

- 5) Is there a community member or business leader who might donate space to your school?
- 6) Is there a suitable piece of land where a school might be built and then leased to your school? If so, would this be affordable with or without raising significant funds through a building campaign?

Notwithstanding the need to have a location in time to ready for school opening, decisions about space should wait until all the intended options and available buildings are identified and considered. Using an unused public building could be a boon to a community, or it could have so many renovation needs that even you can't possibly finance or justify the expense.

With all options known, the questions are:

- 1) which of the options are initially available and suitable for your school,
- 2) what options are available in existing buildings, renovated to your purposes,
- 3) which options are most affordable, and
- 4) is there a viable way to consider a new building within the constraints of New Hampshire statute initially or in the future?

Whatever the decision, remember that once you have located an affordable, safe space for the first two years, there is time for a building committee to start looking at additional, longer-range options.

## **ADDITIONAL SPACE COST CONSIDERATIONS**

A few significant costs must be considered in your facility financial planning, regardless of choice:

1. Points, Fees, Taxes : Identify/include any up-front or ongoing expenses that go along with the deal. For instance, many leases are “triple net” – the lease or rent payment does not include real estate taxes, heat, and utilities.
2. Termination costs: What prepayment penalties might you face for paying off the loan or terminating the lease early? If you wish to relocate to larger or more suitable space or if more favorable financing is available, will you face significant costs to do so?
3. Hazardous waste clean-up, if found, or repairs to mechanical systems.
4. Sliding scale options (e.g. the longer you are in the deal, the lower the terminating costs)
- 5.) Lease costs that are graduated, so that initial lease costs are less and are higher in years when more students and more funding is available.

### **New Construction**

If you consider new construction versus renovating existing space to meet your needs, one factor above all must be addressed—money! How will new construction be financed? New Hampshire Charter School law does not provide for any state building aid for

acquiring land or buildings or constructing a charter school, unless the building is owned by the school district and under lease.

***RSA 194-B: 11, VII.***

***No school building aid under RSA 198:15-a through 15-h shall be awarded to a charter school for the purpose of acquiring land or buildings, or for constructing, reconstructing, or improving the charter school, unless the building is owned by the school district, under lease to the charter school, and such lease does not include an option to purchase the building. A charter conversion school shall be eligible for school building aid.***

New construction is very difficult for a charter school to finance, but not impossible.

Purchase or new construction can be pursued under the favorable circumstances of:

- 1) a benefactor,
- 2) a successful building fund-raising program, or
- 3) investors who want the tax or business advantage of buying/building your facility and then leasing it to you.

Funders of construction, whether they are banks or private investors, do not favor short-term, high-risk investments. Charter schools are considered a risk due to the initial short period (in investment terms) of the charter (5 years) and the limited resources they have available. Another risk for investors is charters may not be renewed if their performance meets criteria for non-renewal. Thus, investors may require additional collateral to back up the financial viability of the project. There are now federal programs that provide support to charter schools in this area.

The "loan to value ratio" (the ratio of the loan amount to the value of the collateral) must be within an investor's risk tolerance. Higher risk also results in higher interest rates being incurred. A lender may offer financing at a cost that you cannot accept or afford. Do not assume that the potential lender understands what you are trying to accomplish or how little per pupil funding you might have available, particularly if their experience is in other states where an equitable per pupil allowance follows students to charter schools.

Well-thought-out and -presented business plans, clear accountability plans, and detailed facility development plans can greatly enhance investor understanding and willingness to work with you. Charter schools are new to New Hampshire; investors may not have the awareness of these programs and their potential benefits. Investors may underestimate the potential of New Hampshire charter schools to succeed and flourish.

Investors may approach a charter school request based on the merit of the school's proposal or strictly based on business reasoning--dollars and cents. Will the mortgage be paid back, as agreed? Does the charter have a sustainable cash flow? Will the budget fund the debt? If you have an individual or group willing to guarantee the mortgage, you will be able to find mortgage financing to build the facility.

## **Existing Space**

Charter schools throughout the country have shown great creativity in transforming existing buildings into innovative learning centers.

Existing space is favored by most charter schools because of advantages in:

1. Options,
2. Suitability in meeting the charter school's goals,
3. Costs,
  - a. Facility,
  - b. Financing,
4. Availability,
5. Time.

## **Options**

Charter schools have worked with existing industrial, retail, and commercial buildings, under-utilized or empty district schools, modular buildings, civic organization/services locations, and churches for classroom space.

The **City on a Hill Charter School** in Boston, MA, partners with the YMCA near Northeastern University. Their rental arrangement allowed for the charter school to pay for renovations. Students take advantage of YMCA programs. Northeastern University has provided both library and recreational facilities to the teachers at the school. The University also allows eligible **City on a Hill** seniors to take classes.

**New Century Charter School** in Carrboro, North Carolina, is situated in an old and abandoned schoolhouse that had fallen into disrepair. **New Century** moved into the old 1930s school building as its permanent home in February of 1999. Prior to that, the charter school had been located in five different facilities.

The **St. Paul Family Learning Center**, an elementary charter located in St. Paul, MN, was located in a new office/warehouse building reconfigured to be a school for its first two years.

**Marble Charter School** took advantage of available historic preservation funds and located in a 1910 historic schoolhouse. In acquiring funds for the needed renovations, the charter school obtained two grants from Colorado Historical Society totaling \$198,000.

**Cedar Riverside Community School** (elementary) is located in a high-rise apartment complex in south Minneapolis, MN. The space is not ideal in every way, but does allow the program to be based in the community it serves.

**Minnesota New Country School** occupied multiple storefronts in downtown LeSueur, MN, prior to locating in a new single facility.

Schools have been set up in portables, museums, on college campuses, in industrial complexes, in recording studios, on campgrounds, using parks and recreation facilities.

### **Suitability in Meeting the Charter School's Goals**

In selecting space for your charter school, you must expect to make some compromises. It's a slim chance you will find a location that meets all your wishes and needs. You and your advisors will need to prioritize features that are necessities versus those that are wishes or 'would be nice' items. By focusing on essentials, you will not immediately overlook space that does not meet every requirement on your list.

## **Underutilized or Empty Existing School Space**

Underutilized or empty school buildings are extremely desirable for locating your school. They were likely built to exacting codes and regulations of a different era and can generally be brought into conformance with existing codes and regulations without reconfiguring the spaces as well..

An unused former school building may be a town liability and may not be achieving the best use of taxpayers' money. The charter school's presence can mitigate the school district's carrying costs (even empty buildings require a certain amount of upkeep and investment).

Old school buildings have many non-classroom spaces schools need--cafeteria, playground, offices, storage, parking, etc. In some cases, an old school building will be part of a larger complex and it is possible all needs can be met. As public space, the rent or lease costs can compare very favorably to commercial space that might be available. A local school district might even provide this space at no rent, looking to your charter school to provide heat, utilities, and some maintenance.

Working with your local school district is essential to explore use of vacant facilities. Communication between your board of trustees and the local school district is critical. Not only will the potential availability of facilities be discussed, but by providing a better understanding of what your charter school is (and is not), you can alleviate fears and misconceptions and perhaps identify the "mutually advantageous" contractual relationships encouraged under New Hampshire charter school statute.

## **Underutilized or Empty Existing Municipal or State Space**

An underutilized or empty municipal building is also extremely desirable as a charter school location. Whether space in your town or city or nearby, affordable (possibly ‘free’) public facility space is worth pursuing. Your town manager or city property manager will be able to direct you to these locations. They will need to understand the benefits of providing your school with this space, and might have to be able to defend their decision in public. State facilities come under a wide variety of departments; these departments can be contacted as to the planned use or non-use of available properties.

### **Civic/Organization space**

Civic groups and organizations have space that might be available for your purposes. Any organization or civic group in your area should be contacted if they have property that might be suitable for your school. In many cases, the property is used only during evening or weekend hours, and thus can be made available to you during the school day. Rents could prove to be very reasonable, and you also have the possibility of finding partnership or sponsorship by the group or organization.

### **Commercial and Retail space**

Commercial and retail locations have been built to many of the codes and regulations that you will be required to meet. In the present economic environment, many businesses have downsized and have space available at very reasonable costs. Furthermore, employers have found that schools on location are a draw for workers with children and save staff time and absence (parent meetings do not require a day’s absence).

Commercial space is generally open and readily renovated for classrooms and other needed school areas. Parking is normally more than adequate. In commercial space, technological wiring/cabling needs are often already in place or can be added at minimal cost. Safety issues need careful attention in a business zone but fencing can be installed to resolve any concerns.

Shorter leases are negotiable when more unoccupied space is on the market. In the past, the norm was for five-year leases. Today, leases for three years and shorter are more common. It is even possible to obtain a one-year lease with an option to renew...just be sure you can afford to move spaces in one year. Make sure you have a provision for adequate notice in any lease.

### **Industrial space**

While less expensive than commercial or retail space, industrial space is an option. Issues to consider:

1. Accessibility,
2. Environmental concerns--hazardous materials,
3. Renovation costs,
4. Safety--personal and property.

Industrial properties are more often situated in industrial parks or complexes, in isolated areas away from residential and retail commerce, and may involve heavily trafficked roads or very limited traffic. Many parents drive their students to school, so with

industrial space consider traffic flow, driving rates of speed, truck traffic, and on/off merging.

Check industrial spaces for accessibility, stairs, elevators, outdoor areas, types of businesses ongoing in the complex, and use of technology connectivity or other business resources. Industrial property (including warehouses) is probably the least expensive space that can be found in the private sector. Paying less for facility leaves more funding for many other needs.

The cost of renovations can vary widely in industrial facilities because so much depends on the type of initial construction. A wooden facility can be opened and reshaped easier than one that is poured concrete or concrete and block. However, you will find that in most cases the openness of the premises allows you to build modular classes, use partitions and other such devices to break up the space, and provide separation from the various classrooms and activity areas. This can result in very inexpensive renovation.

## **Costs**

Costs related to facilities can be separated into a number of categories:

1. Acquisition/Lease costs,
2. Financing costs,
3. Operating/Maintenance costs.

## **Acquisition/Lease Costs**

Renovating existing facilities generally costs less than new construction, although this point is often subject to debate. The property owner has an economic benefit in seeing that the space utilized and generating revenue in the form of lease or rent payments.

Even if a building is empty, owners must still pay real estate taxes, a certain amount of maintenance and upkeep, and utilities, e.g. heat, for insurance purposes. Owners and lenders will have incentives to work with you to reach a viable financial arrangement.

Your charter school can take responsibility for utilities used—the portion over and above what the owner would be paying anyway, a portion (or all) of real estate taxes if you can find a free-rent arrangement, certain items of maintenance, and certain building upgrades.

A school may also provide an income source in the form of monthly payments. A charter school might draw attention to the property or to businesses or business opportunities in the area and be a source of free advertising, perhaps.

If you are fortunate to obtain municipal or state space, your acquisition/lease cost will be minimal. A rent/security prepayment may be requested and can be negotiated. Again, it is the uncertainty on the part of the lessor in your ability to fulfill the lease that needs to be addressed. If it can't be negotiated away completely, the amount might be reduced, or you might be able to spread it over a period of time to minimize impact on cash flow.

## **Financing Costs**

Existing space financing costs will most likely be for renovations. Your Facilities Team will have outlined exact renovations required to make the selected space suitable. With

those specifics, the Team can help obtain bids for the work or coordinate volunteers and needed materials. If the renovations are small and can be worked into your budget without detracting from educational needs, then internal financing is recommended. This reduces overall costs and minimizes debt.

If you need to finance renovations, some of the same rules apply as if you were constructing new. The ability to pay the debt will be foremost in any lender's thoughts. The term (or number of years) of the debt will most certainly be shorter. There might be upfront costs (points) and fees. These can, for the most part, be folded into the note. Thus a \$100,000 loan with 1 point will actually be written for \$101,000 against which interest will be charged.

### **Maintenance Costs**

No matter which space you choose, your school will have maintenance responsibilities and expenses--for wear and tear from use. You may or may not be responsible for some or all utilities costs (such as water, sewer, electric, heating or air conditioning, cooking fuel). Ask regarding any equipment in place and keeping it in proper working order. This might include the heating/ac equipment, cooking/kitchen appliances, etc. Your school cannot afford to replace expensive air exchange or kitchen equipment.

All operating/maintenance areas for which you are responsible must be spelled out from the beginning. This will allow you to budget properly and reduce problems from unclear expectations. You must clarify the landlord's responsibilities to the property (whether it is municipality, school district, civic group, or private individual/company). The landlord

could be responsible for facility repair costs (roof, windows, etc.) over X amount of dollars or its entirety. Prior to assuming a lease, identify current, known building repair needs. Address these in the lease/rental agreement. Also, discuss how major mechanical system upgrades or replacements will be handled and how much responsibility for these expenses would fall to the charter school.

Initial cleaning of the premises to create 'move in' condition is also negotiable. Since this is usually a cost borne by the landlord, by providing volunteers to perform or assist, you may reduce costs—perhaps reduce a month or two of rent or bargain for less maintenance during the year.

Other costs to consider are custodian(s), refuse removal, snow plowing/removal, grounds upkeep, minor repairs, and so forth.

## Identifying Future Facility Costs

It is in your financial interest to think of every cost and any way your school could be entrepreneurial and save or reduce these same costs. Charter schools can be quite clever.

By talking with local realtors, contractors, and other individuals familiar with facility costs in the area, you can deduce a fairly reliable range of costs for items listed below:

- Leasing commercial space - approximate cost:  
\$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year
- Utility Costs (including heat, light, sewer, water):  
\$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year
- Real Estate Taxes, if any: \$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year
- Casualty Insurance (covering fire, theft, vandalism, storms):  
\$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year
- Common Area Maintenance (CAM) fee (e.g. in a mall):  
\$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year
- Minor Maintenance/Repairs: \$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year
- Cleaning: \$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year
- Security monitoring: \$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/Month
- Furniture (new): \$\_\_\_\_\_ to \$\_\_\_\_\_ per student
- Liability Insurance: \$\_\_\_\_\_ to \$\_\_\_\_\_ per year.
- Remodeling/Renovation: \$\_\_\_\_\_ to \$\_\_\_\_\_ per sq. ft/year.

## Facility Budgeting

When all site selection preliminary work is completed and all costs are identified, you can assimilate this data into a comprehensive school facility budget. Your complete costs include costs associated with facility, readiness for school opening, and facility operations during the year.

Looking at the complete facility finance picture and contrasting this with your available funds for facilities (probably a limited amount) 1) determines your budgetary needs, 2) clarifies where you need to and might trim costs, and 3) clarifies if alternative financing is needed. Volunteers help defray costs—e.g. a local architect could donate needed design work, contractors might donate materials/labor or provide a discount, local retail or wholesale establishments might donate furniture, equipment, or other such items. Consider volunteer services as you attempt to make your budget numbers work.

The budgeting process is not only to determine financing needs, but also to help your board to think through the entire facility process and minimize costly surprises. Contingencies are needed in a facility budget to allow for unforeseen needs (i.e. renovation costs are higher due to increases in materials costs—or the Fire Chief on his/her walk through inspection adds additional safety requirements and devices (smoke detectors, sounding devices, fire extinguishers, etc.) based on the layout of the premises.

## Facility Budget: Have You Identified All Costs?

### Renovation, Acquisition, or Construction

1. Purchase price, building or land,
2. Site work,
3. Demolition (this could be for leased or purchased facilities to bring them into suitable shape),
4. Construction,
5. Renovation,
6. Electrical,
7. Plumbing,
8. Heating/ventilation, Air exchange systems, Fireplaces
9. Roof,
10. Drywall and painting,
11. Floors/Carpets,
12. Major cleaning
13. Windows,
14. Fixtures,
15. Furniture,
16. Equipment,
17. Inspection costs (for licensed inspectors hired)
- 18. Sub-Total, Facility**
19. Building/Renovation Cost Contingency (5 to 10%)
- 20. Total Facility Budget**

### **Other Associated Costs**

21. Legal Fees
22. Appraisal (if purchase)
23. Architect
24. Project Manager
25. Engineering
26. Insurance during construction or renovation
27. Closing Costs (purchase)
28. Financing fees (loan origination fee etc.)
29. Interest during construction or renovation
30. Inspection fees
31. Environmental studies (if needed )
32. Accounting
33. Security
34. Bonding (if construction or renovation is of significant nature)

### **Total Other Associated Costs**

35. Other Cost Contingency (5%)

### **36. Grand Total**

### **SOURCES OF FUNDS (Revenues)**

37. Start-Up Grant
38. Donations
39. Loans
40. In-kind Contributions (materials, labor, furniture, equipment, etc.)

### **41. Grand Total Revenues**

## Facilities Check List – Space Planning

<b>Indoor Space Needs</b>	Space Required ( <u>Square feet</u> )	<u>Dual Use?</u>
Instructional space, full classrooms	_____	_____
Instructional space, small classrooms	_____	_____
Instructional space, tutoring services	_____	_____
Offices, administrative	_____	_____
Offices, support staff (tutors, counselors)	_____	_____
Science room	_____	_____
Computer lab	_____	_____
Bathrooms	_____	_____
Cafeteria	_____	_____
Library	_____	_____
Teachers' Workroom	_____	_____
Storage/mechanical space	_____	_____
Hallways/circulation	_____	_____
Indoor recreational space	_____	_____
Practice Rooms	_____	_____
Storage	_____	_____
Health	_____	_____
<b>Other Items</b>	_____	_____
	_____	_____
	_____	_____
	_____	_____
<b>TOTAL INDOOR SPACE NEEDED</b>	_____	Square Feet

**Outdoor Space Needs**

Space  
Required  
(Square feet)

Dual Use?

Parking spaces

\_\_\_\_\_

\_\_\_\_\_

Outdoor recreational space

\_\_\_\_\_

\_\_\_\_\_

Outdoor instructional space

\_\_\_\_\_

\_\_\_\_\_

Entry Areas/Gardens

\_\_\_\_\_

\_\_\_\_\_

**Other Items**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TOTAL OUTDOOR SPACE REQUIRED \_\_\_\_\_ Square Feet

TOTAL INDOOR/OUTDOOR SPACE REQUIRED \_\_\_\_\_ Square Feet

## Facilities Check List – Suitability

	<u>Yes</u>	<u>No</u>	<u>Possibly</u>
Adequate size (Sq. footage) for needs	_____	_____	_____
Accommodate future growth	_____	_____	_____
Structurally sound	_____	_____	_____
Adequate Egress/Fire Exits	_____	_____	_____
Hallways/Circulation	_____	_____	_____
ADA Compliant	_____	_____	_____
Adequate Student/Staff Bathroom(s)	_____	_____	_____
Cafeteria/Food Handling	_____	_____	_____
Plumbing	_____	_____	_____
Heating/Ventilation	_____	_____	_____
Energy efficient	_____	_____	_____
Roof	_____	_____	_____
Basement	_____	_____	_____
Hazardous Materials	_____	_____	_____
Drywall and painting	_____	_____	_____
Floors/Carpet	_____	_____	_____
Windows	_____	_____	_____
Fixtures	_____	_____	_____
Furniture	_____	_____	_____
Equipment	_____	_____	_____
<b>Other Items</b>	_____	_____	_____
	_____	_____	_____

## Facilities Check List – Access

	<u>Yes</u>	<u>No</u>
Easy bus access	_____	_____
Public transportation	_____	_____
Bike racks	_____	_____
Parking	_____	_____
Accessible for parents and staff	_____	_____
Walkway or bikeway	_____	_____
Reasonable adjacent traffic	_____	_____
Easy emergency vehicles access	_____	_____
Easy emergency egress	_____	_____
Proximity to affiliated institutions	_____	_____
Adjacent businesses appropriate	_____	_____
Area safe for students, staff, premises	_____	_____
Unauthorized access preventable	_____	_____
<b>Other Items</b> _____	_____	_____
_____	_____	_____
_____	_____	_____

## Facilities Check List - Maintenance

	<u>Yes</u>	<u>No</u>
Allergen Sensitive Cleaning Materials	_____	_____
Floors swept/washed	_____	_____
Carpets vacuumed	_____	_____
Windows cleaned	_____	_____
Equipment/Furnishings dusted	_____	_____
Waste baskets/ Trash bins emptied	_____	_____
Mechanical equip. (heating, HVAC) serviced	_____	_____
Exterior grounds clean/picked up	_____	_____
Exterior trash receptacles emptied	_____	_____
Grass mowed	_____	_____
Snow removed	_____	_____
Parking area clean	_____	_____
Parking Space Lines Painted	_____	_____
Lights/lamps operational		
Interior	_____	_____
Exterior	_____	_____
Air vents cleaned	_____	_____
Asbestos Abated	_____	_____
Outdoor Equipment and walks	_____	_____
<b>Other Items</b> _____	_____	_____
_____	_____	_____

## Sample Facilities Policies

The Board of Trustees should consider policies that clarify its commitment and approach to charter school facilities. Will there be board commitments to support an ongoing or future facility effort? Might the building be named for a benefactor? Will the board seek legal counsel to assure its approach to fundraising is within the law? Advance thinking and policy develop can shape commitments as well as future actions of future boards. This effort can be a form of protection, since boards must operate according to their policies.

A few sample facility policies are provided.

## **Facilities Goals**

The Board recognizes its obligation to assess the status of its facilities and attempt to overcome deficiencies that might exist and assure a safe, clean, and adequate environment for learning and teaching.

The Board's goals for school facilities are:

1. Maintenance program that oversees cleanliness and compliance with safety requirements and codes,
2. Facilities design and renovation/construction that supports minimal acquisition cost, and
3. Facilities that provide cost effective and efficient use of energy.

The Board acknowledges that its school space may be a single facility or combination of locations using innovative, creative, and/or non-traditional arrangements of space to meet the school's program needs.

The Board values and encourages the viewpoints of students, teachers, staff, parents, and others directly involved with the school's facilities use.

## **Facilities Planning and Curriculum**

A school's curriculum requires certain types of educational space to meet its goals. In developing a facilities plan for current and future operations, the Board believes a thorough assessment of the educational program needs is essential.

The Board has responsibility to ensure that facilities are adequate for the program and planned growth outlined in its charter. One member of the Board will be delegated the responsibility to stay abreast of school facility concerns and ensure that the Board is apprised of all facilities issues.

## **Facilities Fundraising**

Should the Board decide to embark on a fundraising program for school facilities, it will first secure advice of legal counsel to ensure compliance with current charter and general school law.

## **Acknowledging Benefactors**

The Board seeks and welcomes the generosity of philanthropy in all forms, including gifts for facilities acquisition and use. The Board would consider a school or facility name that recognized the community member whose support made a building or school segment possible.

The Board supports acknowledging benefactors and, with consent, will provide tasteful plaques of recognition.

## **Facilities Renovation/Construction Items to Consider**

When considering renovation or construction, the Board's planning will address these factors: specifications, task timelines, bonding and insurance coverage, budgetary control, and quality of contracted work.

### **Specifications:**

The Board will approve a set of specifications for the end project, following review by the local building inspector and fire official for code compliance.

### **Timeline:**

The Board will require a timeline that gives completion dates for various stages of work and a process for resolving delays. Major subtasks, such as rough-out and site preparation, will be included.

### **Bonding and Insurances:**

The Board will require all contractors and subcontractors to provide proof of insurance, licensing, and bonding, as applicable.

### **Payment Terms:**

The Board will require a listing of initial and progress payment dates and conditions to assure project budgetary control. The agreement will list any percentage or materials

payment required at the project's start and/or any benchmarks for work completion payments.

**Retainage:**

The agreement will detail the percent of total contracted price held by the Board until project work is accepted by authorities, as applies, and the Board of Trustees, after a final walk-through with the contractor. Any deficiencies noted and must be remedied by the contractor before the final retainage payment is made or as otherwise negotiated.

# Appendix A: CHAPTER 195-D NEW HAMPSHIRE HEALTH AND EDUCATION FACILITIES AUTHORITY

## Section 195-D:1

**195-D:1 Declaration of Policy.** – It is declared to be the policy of the state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youths be given the fullest opportunity to learn and develop their intellectual and mental capacities; that it is essential that participating educational institutions within the state be provided with appropriate additional means to assist such youths in achieving the required levels of learning and development of their intellectual and mental capacities; that it is essential that participating health care institutions within the state be provided with appropriate additional means to expand, enlarge and establish health care and other related facilities; that it is essential that participating health care institutions and participating educational institutions within the state be encouraged and assisted in reducing the costs of providing health care or education; that it is essential that powers be conferred on the New Hampshire health and education facilities authority as will assure the successful completion of projects to be initiated by the corporation or the refinancing of existing indebtedness as provided in this chapter so as to accomplish the purposes of this chapter all to the public benefit and good. It is further declared that the exercise by the corporation of the powers conferred on the corporation under this chapter will constitute the performance of an essential governmental function.

**Source.** 1969, 318:1. 1970, 16:1. 1979, 384:1. 1981, 532:1. 1982, 16:1. 1991, 298:1, eff. Aug. 19, 1991. 1999, 253:2, eff. July 9, 1999.

## Section 195-D:3

**195-D:3 Definitions.** – As used in this chapter, the following words and terms have the following meanings, unless the context indicates another or different meaning or intent:

I. "Corporation" means the New Hampshire health and education facilities authority created and established as a corporation and constituted and established as a public body corporate and agency of the state under RSA 195-D:4, or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the corporation by this chapter shall be given by law.

II. "Project."

(a) In the case of a participating educational institution, means any structure designed for use as a dormitory or other housing facility, dining facility, student union, academic building, administrative facility, library, classroom building, research facility, faculty office facility, athletic facility, health care facility, laboratory, maintenance, storage or utility facility, child day care facility, or other building or structure essential, necessary or

useful for instruction in a program of education provided by a participating educational institution, or any multi-purpose structure designed to combine 2 or more of the functions performed by the types of structures enumerated above, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the aforementioned structures, and shall also include landscaping, site preparation, furniture, machinery, equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended, and;

(b) In the case of a participating health care institution means any structures designed for use as a hospital, clinic, nursing home providing sheltered care, intermediate care, life-care, continuing care or medical services, health maintenance organization, home health care provider, ambulatory care clinic or other health care facility, laboratory, laundry, nurses' or interns' residence or other multi-unit housing facility for staff, employees, patients or relatives of patients admitted for treatment in such health care facility, doctors' office building, appropriately designed housing facilities for the residence or care of the elderly, administration building, research facility, maintenance, storage, or utility facility or other structures or facilities related to any of the foregoing or required or useful for the operation of a participating health care institution, including parking and other facilities or structures essential or convenient for the orderly conduct of such participating health care institution, and shall include all real and personal property, lands, improvements, driveways, roads, approaches, pedestrian access roads, rights-of-way, utilities, easements, parking lots, machinery and equipment, and all other appurtenances and facilities either on, above or under the ground which are used or usable in connection with any of the aforementioned structures, and shall also include landscaping, site preparation, furniture, machinery and equipment and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended.

III. "Cost" as applied to a project or any portion thereof financed under the provisions of this chapter shall mean the cost of construction, building, acquisition, equipping, alteration, enlargement, reconstruction and remodeling of a project and acquisition of all lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and interests acquired, necessary, used for, or useful for or in connection with a project and all other undertakings which the corporation deems reasonable or necessary for the development of a project, including but not limited to the cost of demolishing or removing any buildings or structures on land so acquired, the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction, and if judged advisable by the corporation, for a period after completion of such construction the cost of financing the project, including interest on bonds and notes issued by the corporation to finance the project; provisions for working capital, whether or not in connection with a project; reserves for principal and interest and for extensions, enlargements, additions and improvements; cost of architectural, engineering, financial, legal or other special services, plans, specifications, studies, surveys, estimates of cost and revenues; administrative and operating expenses; expenses necessary or incident to determining the feasibility or

practicability of constructing the project; and such other expenses necessary or incident to the construction and acquisition of the project, the financing of such construction, and acquisition and the placing of the project in operation and all costs and expenses necessary or incidental to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any federally insured mortgage note.

IV. "Bonds" or the words "revenue bonds" means revenue bonds of the corporation issued under the provisions of this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by the mortgage or the full faith and credit of a participating educational institution or of a participating health care institution or any other lawfully pledged security of a participating educational institution or of a participating health care institution.

V. "Institution for postsecondary education or higher education" means an educational institution situated within the state which by virtue of law or charter is a public or other nonprofit educational institution empowered to provide a program of education beyond the high school level and awards a bachelor's or graduate degree or provides a program of not less than 2 years' duration which is accepted for full credit toward a bachelor's degree. Said definition shall include the university system of New Hampshire or any of its components when revenue bonds are to be issued for the acquisition, construction, renovation or refinancing of any structure designed for use as a dormitory or other housing facility, dining hall or other food service facility, student union, bookstore, or other revenue-producing facility of the university system of New Hampshire or any of its components, which revenue bonds are to be secured by the pledge of the revenue from such revenue-producing facilities, but not by the full faith and credit of the university system, any of its components, or the state of New Hampshire.

VI. "Participating educational institution" means an institution for postsecondary education or higher education; an institution for secondary education; an institution providing an educational program; or a child care provider which, pursuant to the provisions of this chapter undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or other obligations or of a mortgage or of advances as provided in and permitted by this chapter.

VI-a. "Institution providing an educational program" means a not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to section 501 of the Internal Revenue Code of 1986, as amended, and which provides a program of education for the purpose of enhancing the knowledge or abilities of its members or the general public.

VII. "Hospital" means any nonprofit hospital located within and incorporated under the laws of the state which is licensed by the department of health and human services.

VIII. "Participating health care institution" means a hospital; nursing home; health maintenance organization; home health care provider; an institution providing a health care program; or ambulatory care clinic which, pursuant to the provisions of this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of bonds or other obligations or of a mortgage or of advances as provided in and permitted by this chapter.

VIII-a. "Institution providing a health care program" means a not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to

section 501 of the Internal Revenue Code of 1986, as amended, and which is either licensed by the state of New Hampshire to provide any health care service or function or which, although not itself licensed by the state of New Hampshire, provides a program involving or otherwise related to the delivery of healthcare by institutions or professionals licensed by the state of New Hampshire, whether in the form of treatment, education, the provision or delivery of health care services or otherwise.

IX. "Refinancing of existing indebtedness" means (a) liquidation, with the proceeds of bonds or notes issued by the corporation, of any indebtedness of a participating institution incurred to finance or aid in financing a lawful purpose of such participating institution which would constitute a project had it been undertaken and financed by the corporation; or (b) consolidation of such indebtedness with indebtedness of the corporation incurred for a project of such participating institution; or (c) purchase of a federally guaranteed security issued with respect to the financing of a lawful purpose of a participating institution which would constitute a project had it been undertaken and financed by the corporation.

X. "Federally guaranteed security" means any security, investment or evidence of indebtedness which is issued pursuant to the national housing act or any successor provision of law, each as amended from time to time, and which is either, directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of principal and interest by the United States of America or any instrumentality thereof.

XI. "Federally insured mortgage note" means any loan secured by a mortgage for any facility of a participating institution which is either, directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instrumentality thereof to so insure or guarantee such a loan secured by a mortgage.

XII. "Nursing home," notwithstanding any other provision of law to the contrary, means any nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended, and which is engaged in the operation of, or formed for the purpose of operating, a facility in which nursing care, sheltered care, intermediate care, life-care or continuing care, and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in New Hampshire, and in whole or in part is, or shall be upon completion, (a) licensed as a residential care facility under RSA 151:2, I(e) or (b) can be upon receipt of a certificate of need under RSA 151-C licensed as a nursing home under the laws of New Hampshire.

XIII. "Health maintenance organization" means the same as defined in RSA 420-B which is nonprofit and whether or not it is affiliated with a hospital or any other association of medical practitioners.

XIV. "Institution for secondary education" means a nonprofit institution for education, which is located within the state and which:

(a) Provides a program of education within the state which is preparatory for postsecondary or higher education; or

(b) Is a residential facility which is licensed as a group home or child care institution by the department of health and human services pursuant to RSA 170-E.

XV. "Participating institution" means a participating educational institution or a

participating health care institution.

XVI. "Home health care provider" means a home health care provider as defined in RSA 151:2-b which offers, and is licensed under RSA 151:2, I(b) to offer health care services and which is a nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended.

XVII. "Ambulatory care clinic" means any nonprofit or charitable institution or organization, public or private, which is exempt from federal taxation pursuant to section 501 of the United States Internal Revenue Code of 1986 as amended, and which is engaged in the operation of, or formed for the purpose of operating, an ambulatory health care facility in which health care services are offered to the public on an outpatient basis by or under the direction of physicians licensed by the state of New Hampshire and licensed health care professionals.

XVIII. "Child care provider" means a provider of child day care as defined in RSA 170-E:2, III, including a child day care agency as defined in RSA 170-E:2, IV, and any other not-for-profit or charitable institution, public or private, which is exempt from federal taxation pursuant to the Internal Revenue Code of 1986 as amended, 26 U.S.C. section 501 et seq., and which provides or otherwise assists in the provision of facilities, equipment, services, or economic assistance of any type to a child day care agency.

**Source.** 1969, 318:1. 1970, 16:3-6. 1971, 198:2-6. 1979, 384:2, 3. 1981, 532:2-4. 1982, 16:2-4. 1983, 291:1, I; 423:24-26. 1986, 151:1. 1990, 90:1. 1991, 298:2. 1992, 276:5-8. 1993, 335:17, 18, eff. June 29, 1993. 1998, 303:3-5, eff. June 26, 1998. 1999, 253:4-10, eff. July 9, 1999.

#### **Section 195-D:4**

##### **195-D:4 New Hampshire Health and Education Facilities Authority Constituted Public Body Corporate and Agency of the State. –**

I. The New Hampshire Health and Education Facilities Authority is created as a corporation and is constituted and established as a public body corporate and agency of the state for the exercising of the powers conferred on the corporation by this chapter.

II. All of the powers of the corporation are vested in a board of directors of 7 members who shall be appointed by the governor and council. The terms of 2 of the members shall expire on June 30, 1970; the terms of 2 members shall expire on June 30, 1971; and the terms of 3 members shall expire respectively on June 30, 1972, June 30, 1973 and June 30, 1974. Successors to those members of the board of directors whose terms expire each year shall be appointed by the governor and council prior to June 1 in each year, for terms of 5 years each. If a vacancy occurs in the membership of the board of directors, the governor and council shall appoint a successor for the unexpired term. Any member of the board of directors shall be eligible for re-appointment.

III. Each member of the board of directors, before entering upon his duties, shall take an oath to administer the duties of his office faithfully and impartially, and such oath shall be filed in the office of the secretary of state.

IV. The board of directors shall elect one of its members as chairperson, another as vice chairperson, and shall also elect a secretary, who need not be a member of the board.

Four members of the board of directors constitute a quorum, and the vote of a majority of the members constituting a quorum present and voting is necessary for any action taken by the corporation. A vacancy in the membership of the board of directors of the corporation does not impair the right of a quorum to exercise all the powers and perform the duties of the corporation. Notwithstanding RSA 91-A or any other law to the contrary, members of the board shall be permitted to participate in meetings by telephone, provided that any board member so participating shall be able to be heard and to hear every other board member participating in the meeting, and unless the board is meeting in nonpublic session pursuant to RSA 91-A:3, shall be able to hear and be heard by all members of the public attending the meeting, and that the meeting is held at a physical location available to the public and identified in the notice of the meeting, and that at least 2 members of the authority are physically present at the meeting. Voting members of the board participating by telephone shall be treated as present at the meeting for all purposes, including the establishment of quorum.

V. Any action taken by the corporation under the provisions of this chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. However, any action taken that directly affects any institution by name is not effective as to that institution until notice of the action has been delivered to the institution, by mail or otherwise.

VI. The members of the board of directors and the officers of the corporation shall not receive any compensation for the performance of their duties under this chapter, but each such member or officer shall be paid his necessary expenses incurred while in the performance of such duties. These expenses, as well as any expenses incurred by the corporation as a result of indemnifying or holding harmless its directors, officers, and employees, are part of the expenses authorized by RSA 195-D:5, to be a charge as an administration cost.

**Source.** 1969, 318:1. 1970, 16:7-10. 1994, 86:1, eff. July 5, 1994. 1999, 253:11, 12, eff. July 9, 1999.

## **Appendix B: CHAPTER 155-A NEW HAMPSHIRE BUILDING CODE**

### **Section 155-A:1**

**155-A:1 Definitions.** – In this chapter:

I. "Building" means building as defined and interpreted by the International Code Council's International Building Code 2000.

II. "County" means the local legislative body of a county in which there are unincorporated towns or unorganized places.

III. "Local enforcement agency" means for a municipality that has adopted enforcement provisions or additional regulations under RSA 674:51, the building inspector or other local government official with authority to make inspections and to enforce the laws, ordinances and rules enacted by the state and by local government that establish standards and requirements applicable to the construction, alteration, or repair of buildings.

IV. "New Hampshire building code" or "state building code" means the adoption by reference of the International Building Code 2000, the International Plumbing Code 2000, the International Mechanical Code 2000, the International Energy Conservation Code 2000, as published by the International Code Council, and the National Electric Code 1999. The provisions of any other national code or model code referred to within a code listed in this definition shall not be included in the state building code unless specifically included in the codes listed in this definition.

V. "Person" means any individual or organized group of any kind, including partnerships, corporations, limited liability partnerships, limited liability companies, and other forms of association, as well as federal, state or local instrumentalities, political subdivisions, or officers.

VI. "Structure" means structure as defined and interpreted by the International Code Council's International Building Code 2000.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

### **Section 155-A:2**

**155-A:2 State Building Code.** –

I. Except as provided in paragraphs II and III, all buildings, building components, and structures constructed in New Hampshire beginning one year after the effective date of the section, shall comply with the state building code and state fire code. The construction, design, structure, maintenance, and use of all buildings or structures to be erected and the alteration, renovation, rehabilitation, repair, maintenance, removal, or demolition of all buildings and structures previously erected shall be governed by the provisions of the state building code.

II. Standards, including definitions, established by the most recent edition of the Life Safety Code, NFPA Doc. No. 101, shall take precedence over all standards in the state building code relative to means of egress.

III. All new buildings shall conform to the requirements of the state fire code adopted pursuant to RSA 153:5 and to the extent that there is any conflict between the state

building code and the state fire code, the state fire code shall take precedence unless otherwise determined by the board, subject to the review provisions contained in RSA 155-A:10.

IV. To the extent that it does not conflict with any other provision of law, the issuance of permits and the collection of fees pursuant to the state building code is expressly reserved for counties, towns, cities, and village districts.

V. Except for buildings owned by the state or the university system, the issuance of certificates of occupancy pursuant to the state building code is expressly reserved for counties, towns, cities, and village districts.

VI. Counties, towns, cities, and village districts may adopt by ordinance pursuant to RSA 674:51 any additional regulations provided that such regulations are not less stringent than the requirements of the state building code pursuant to this chapter and the state fire code pursuant to RSA 153.

VII. For any municipality which has not adopted an enforcement mechanism for the state building code under RSA 674:51, the contractor of the building, building component, or structure shall notify the state fire marshal concerning the type of construction before construction begins excluding one- and 2-family dwellings.

VIII. The contractor of a building, building component, or structure shall be responsible for meeting the minimum requirements of the state building code. No municipality shall be held liable for any failure on the part of a contractor to comply with the provisions of the state building code.

IX. Nothing in this chapter shall be construed as amending, repealing, or superseding any local law, ordinance, code, or regulation, except local building code requirements that are less stringent than the state building code, and all buildings, building components, and structures shall comply with all applicable state or local building and fire code requirements, land use restrictions including but not limited to subdivision regulations, use and location restrictions, density and dimensional limitations, or historic district laws or ordinances.

X. Nothing in this chapter shall be construed to permit or encourage the state to initiate or assume an independent role in the administration and enforcement of the New Hampshire building code for a building or structure that is not owned or operated by the state unless otherwise authorized by law.

XI. No state agency, authority, board, or commission shall modify the state building code, unless approved by the state building code review board pursuant to RSA 155-A. Nothing in this chapter shall affect the statutory authority of the public utilities commission, the state board for the licensing and regulation of plumbers, or the state electricians' board, to administer their respective programs, provided that any changes to codes adopted under the rulemaking authority of these agencies shall not be implemented until approved by the state building code review board.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

### Section 155-A:3

**155-A:3 Local Amendments; Application.** – For a municipality which has adopted an enforcement mechanism or additional regulations to the state building code pursuant to RSA 674:51:

I. The municipality may adopt local amendments to the state building code which do not prohibit minimum implementation and enforcement of the state building code.

II. The procedure for amendment shall be in accordance with applicable statutes and local regulations.

III. At a minimum, the municipality shall ensure that implementation and enforcement includes:

(a) Review and acceptance of appropriate plans.

(b) Issuance of building permits.

(c) Inspection of the work authorized by the building permits.

(d) Issuance of appropriate use and occupancy certificates.

IV. (a) The provisions of this chapter and any local amendments under this section shall not be construed to restrict or encumber the local governing body's authority relative to the appointment, removal, or duties of municipal employees and the organization of municipal departments.

(b) Any provision of the state building code that conflicts with existing or amended local ordinances, regulations, policies, practices, or procedures regarding the appointment, removal, or duties of municipal employees and the organization of municipal departments, shall not apply.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

#### **Section 155-A:4**

**155-A:4 Permit Required.** – Before starting new construction or renovation of schools, halls, theaters or other public buildings the person responsible for such construction shall obtain a permit signed by the board of selectmen, after its due consideration of any written recommendations of the fire chief. In municipalities that have adopted an enforcement mechanism pursuant to RSA 674:51, the permit under this section shall conform to the locally adopted process.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

#### **Section 155-A:5**

**155-A:5 Accessibility of Public Buildings.** – Notwithstanding RSA 155-A:2, all new buildings constructed by the state or any of its agencies, and all new schools, halls, theaters, or other public buildings in this state in which more than 100 people can be assembled shall be required to provide at least one entrance and exit designed so that the public areas of the entire building are accessible to persons with disabilities.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

### Section 155-A:6

**155-A:6 Inspection of State Buildings.** – The commissioner of safety and the commissioner of transportation shall provide for periodic safety inspection of all occupied public buildings owned by the state.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

### Section 155-A:7

#### **155-A:7 Enforcement Authority.** –

I. The local enforcement agency appointed pursuant to RSA 674:51 shall have the authority to enforce the provisions of the state building code, provided, however, that where there is no building inspector, the state fire marshal or the state fire marshal's designee shall have the authority to enforce the provisions of the state building code, subject to the review provisions contained in RSA 155-A:10.

II. Upon the request of a local enforcement agency, state agencies, boards, and commissions may provide advisory services and technical assistance concerning any building or any construction project in the local enforcement agent's jurisdiction.

III. The local enforcement agency appointed to enforce the state building code shall have the authority to inspect all buildings, structures, construction sites, and other places in the jurisdiction. If consent for such inspection is denied or not reasonably obtainable, the local enforcement agency may obtain an administrative inspection warrant under RSA 595-B.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

### Section 155-A:8

**155-A:8 Penalty.** – Fines, penalties, and remedies for violations of this chapter shall be the same as for violations of title LXIV, as stated in RSA 676:15 and 676:17.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

### Section 155-A:9

**155-A:9 Fees.** – The municipality may establish fees to defray the costs of administration, implementation, and enforcement of the state building code and any local amendments. Such fees shall be for the general use of the municipality having responsibility over the local enforcement agency.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

## Section 155-A:10

### **155-A:10 State Building Code Review Board. –**

I. There is established a state building code review board consisting of the commissioner of safety or the commissioner's designee, and 15 additional members appointed by the commissioner of safety as follows:

- (a) One architect licensed in this state for a minimum of 5 years, nominated by the board of architects established in RSA 310-A:29.
- (b) One structural engineer licensed in this state for a minimum of 5 years, nominated by the board of engineers established in RSA 310-A:3.
- (c) One mechanical engineer licensed in this state for a minimum of 5 years, nominated by the board of engineers established in RSA 310-A:3.
- (d) One electrical engineer licensed in this state for a minimum of 5 years, nominated by the board of engineers established in RSA 310-A:3.
- (e) One representative of the state's municipalities, nominated by the New Hampshire Municipal Association.
- (f) One municipal building official, nominated by the New Hampshire Building Officials Association.
- (g) One municipal fire chief, nominated by the New Hampshire Association of Fire Chiefs.
- (h) One municipal volunteer fire chief, nominated by the New Hampshire Association of Fire Chiefs.
- (i) One building contractor, primarily engaged in the business of constructing non-residential buildings, nominated by the Associated General Contractors of New Hampshire.
- (j) One building contractor primarily engaged in the business of constructing residential buildings, nominated by the New Hampshire Home Builders Association.
- (k) One representative from the state energy conservation code office under RSA 155-D, nominated by the New Hampshire public utilities commission.
- (l) One master plumber licensed in this state for a minimum of 5 years, nominated by the state board for the licensing and regulation of plumbers established in RSA 329-A.
- (m) One mechanical contractor with a minimum of 5 years experience, primarily engaged in the business of mechanical construction, nominated by the New Hampshire Plumbing and Mechanical Contractors Association.
- (n) One master electrician licensed in this state for a minimum of 5 years, nominated by the electricians' board established in RSA 319-C.
- (o) One representative of the Committee on Architectural Barrier - Free Design nominated by the governor's commission on disability.

II. The term of each member shall be 3 years except that persons initially appointed under subparagraphs I(a), (d), (g), (j) and (m) shall serve one-year terms, and persons initially appointed under subparagraphs I(b), (e), (h), (k) and (n) shall serve 2-year terms. The chair shall be appointed by the commissioner of safety. Board members shall be appointed for no more than 2 consecutive 3-year terms.

III. The board shall be administratively attached to the department of safety under RSA 21-G:10.

IV. The board shall meet to review and assess the application of the state building code

and shall recommend legislation, as the board deems necessary, to modify the requirements of the state building code and the state fire code in order to provide consistency with the application of other laws, rules, or regulations, and to promote public safety and best practices.

V. The board may adopt rules to update or change the state building code manuals for the codes described in RSA 155-A:1, IV, to the extent the board deems that such updates or changes are necessary, provided that any such updates or changes are ratified by the adoption of appropriate legislation within 2 years of their adoption. If such updates or changes are not ratified, then the rules shall expire, notwithstanding RSA 541-A:17, I, at the end of the 2-year period. With the approval of the commissioner of safety, the board shall be authorized, pursuant to RSA 541-A, to adopt rules relative to procedures of its operation and appeals to the board.

VI. The board shall review the National Fire Protection Association Building Code and its companion manuals when published, and shall review any other building codes when published, in order to evaluate whether the state should continue with the International Building Codes and its manuals, switch to other codes or adopt a combination of codes.

**Source.** 2002, 8:3, eff. Apr. 17, 2002; 270:4, eff. Apr. 17, 2002 at 12:01 a.m.

### **Section 155-A:11**

#### **155-A:11 Appeals of Decisions of the State Fire Marshal. –**

I. The board shall hear appeals of variances or exceptions to the state fire code that have been granted or denied by the state fire marshal or the state fire marshal's designee, and appeals of a decision of the state fire marshal or the state fire marshal's designee, in enforcing provisions of the state building code pursuant to RSA 155-A:7, I.

II. The board shall hold a hearing within 40 days of receipt of a complaint, unless an extension of time has been granted by the board at the written request of one of the parties and shall render a decision within 30 days of the conclusion of a hearing.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

### **Section 155-A:12**

#### **155-A:12 Appeal From Board's Decision. –**

I. A party to the proceeding shall have the right to file a petition in the superior court of the county in which the building or structure is located to review the final order of the board within 30 days of the date of the final order.

II. At the earliest practical time, the court shall review the record as developed before the board, together with any written legal argument presented to the court. Based on that review, the court may affirm or reverse the decision of the board or order that oral argument be held. As justice may require, the court may remand the case to the board for further findings and rulings. The petition for appeal shall set forth all the grounds upon which the final order is sought to be overturned. Issues not raised by the appellant before the board shall not be raised before the superior court. The burden of proof shall be on the appellant to show that the decision of the board was clearly unreasonable or unlawful.

III. No new or additional evidence shall be introduced in the superior court, but the case shall be determined upon the record and evidence transferred, except that in any case, if justice requires the review of evidence which by reason of accident, mistake, or misfortune could not have been offered before the board, the superior court shall remand the case to the board to receive and consider such additional evidence.

**Source.** 2002, 8:3, eff. Sept. 14, 2002.

## Appendix C: CHAPTER Saf-C 6000 STATE FIRE CODE

Statutory Authority: RSA 153:5; RSA 153:10-a, III; RSA 153:14, IV; and RSA 158:28, V(a)

### PART Saf-C 6001 DEFINITIONS

Saf-C 6001.01 Definitions. When used in any part of the state fire code, the terms enumerated in this part shall be defined as set forth herein, unless a different meaning is specifically included in the text:

- (a) "ANSI" means the American National Standards Institute.
- (b) "Approved" as used in these rules and codes adopted by reference means:
  - (1) Determined to be acceptable by the state fire marshal;
  - (2) Installed in accordance with all applicable provisions of the code adopted;  
and
  - (3) In reference to appliances, that they have been tested and found suitable for installation and use by a nationally recognized laboratory acceptable to the state fire marshal.
- (c) "Approved detection system" means a combination of smoke and heat detectors providing detection in occupied rooms and designated hazardous areas of the building. Detectors are interconnected electrically and the entire system is electrically monitored and has a battery back-up system.
- (d) "Automatic fire warning device" means a single station type detector powered by house electricity and listed by a testing laboratory approved by the state fire marshal.
- (e) "Authority having jurisdiction" or "fire official" as used in any code adopted by reference means the state fire marshal, unless the state fire marshal has delegated such authority to the local fire official.
- (f) RESERVED
- (g) "Commissioner" means the commissioner of the New Hampshire department of safety.
- (h) "Code official" as used in any code adopted by reference means the state fire marshal, unless the state fire marshal has delegated such authority to the local fire official.
- (i) "Cultural properties" means buildings, structures or sites, or portions thereof, that are culturally significant, or that house culturally significant collections. Such properties

include, but are not limited to, museums, libraries, historic structures, and places of worship.

(j) "Local fire official" means the fire chief of the applicable jurisdiction, or his designee.

(k) "Multi-unit dwelling" means any structure which contains 2 or more single units which provide permanent or transient living facilities which might or might not include cooking and eating facilities, for one or more persons. This term shall include but not be limited to rooming houses, dormitories, motels, hotels, apartment buildings, buildings which contain condominium units, duplexes and houses.

(l) "NFPA" means the National Fire Protection Association.

(m) "State Fire Code" means the compilation of all rules inclusive in Saf-C 6000.

(n) "State fire marshal" means the state fire marshal of the state of New Hampshire.

(o) "State fire marshal's office" means the state fire marshal, any of his deputies, fire investigators, fire inspectors or his authorized agent.

(p) "Unvented space heater" means a heating device either wick, wickless or potburner, which uses gas, oil, or kerosene oil as fuel, and is either stationary or portable and the products of combustion of which are not directly conducted to the outside of the building via a chimney connector pipe.

Saf-C 6001.02 Statutory Definition. Any term used in the state fire code and not defined in the text or in this part shall be defined as in RSA 153, if applicable.

## **PART Saf-C 6002 DESCRIPTION OF FIRE MARSHAL'S OFFICE**

Saf-C 6002.01 State Fire Marshal. The state fire marshal shall be responsible for:

(a) The enforcement of all applicable state laws; and

(b) Ensuring the following functions are performed by the appropriate personnel in the fire marshal's office:

(1) Approve or disapprove, and grant exemptions from fire safety regulations promulgated by any state agency to the extent authorized by RSA 153:4-a, I;

(2) Certify private firefighting units under RSA153:4-a, I;

(3) Assist counties, cities, towns, village districts and precincts in supervising and enforcing local laws relative to:

a. The prevention of fires;

- b. The storage, sale and use of combustibles;
  - c. The installation and maintenance of fire alarm and fire extinguishing equipment;
  - d. The construction, maintenance and regulation of fire escapes;
  - e. The means and adequacy of exits from places of assembly;
  - f. The investigation of the cause of fires; and
  - g. The storage and handling of flammable liquids and gases;
- (4) Coordinate the activities of the state fire marshal's office with those of other state and local agencies and officials responsible for developing or enforcing fire safety regulations pursuant to RSA 153:4-a, II;
- (5) Assist, advise and counsel officials responsible for the enforcement of fire safety regulations and assist them in the organization and efficient operation of fire departments pursuant to RSA 153:4-a, II;
- (6) Coordinate state services during an accident involving the transportation of hazardous material;
- (7) Assume the duties of the fire officer-in-charge at an accident involving the transportation of hazardous material when requested by the fire officer-in-charge or if in the best interest of public safety under RSA 153:4-a, III;
- (8) Grant exemptions and variances to rules he shall deem necessary for the protection from fire and fire hazards for people in the state and for the general welfare of property and people within the state;
- (9) Approve or disapprove all plans for construction or revision of all state buildings and properties as to compliance with fire safety measures under RSA 153:8-a, I(a);
- (10) Enforce and grant exemptions to the life safety code, NFPA 101 as authorized by RSA 153:4-a, RSA 153:5 and RSA 153:8-a, I(c);
- (11) Enforce the provisions of RSA 153:10-a relative to automatic fire warning devices;
- (12) Investigate fires of suspicious origin seeking to arrest and prosecute those responsible under RSA 153:11;

- (13) Notify insurance companies believed to have an interest in fire loss property, as an insurer pursuant to RSA 153:13-a, III;
- (14) Upon complaint or when deemed necessary, inspect all buildings or premises and order the correction of fire hazardous conditions pursuant to RSA 153:14, II;
- (15) With the approval of the commissioner, control the sale of dangerously flammable fabrics pursuant to RSA 153:14-a;
- (16) Approve or disapprove plastic containers as specified in NFPA 30 designed for storage of flammable liquids offered for sale in this state under RSA 153:16-a;
- (17) Investigate complaints alleging that local ordinances relating to fire safety measures are not being fully complied with and enforce such ordinances where such complaints are substantiated pursuant to RSA 153:17;
- (18) Whenever he deems it advisable, investigate any fire by which property is endangered, damaged or destroyed and conduct hearings pursuant to Saf-C 200 into the causes, circumstances and origin thereof pursuant to RSA 153:18;
- (19) At the request of any fire chief, enter and inspect any building or premises to the extent permitted by RSA 153:21, for the purpose of determining the existence of any violations of RSA 153, rules adopted by the commissioner, or local law or ordinances relating to fire protection;
- (20) Keep and maintain a record of all fires occurring in the state and of all facts concerning those fires to the extent required under RSA 153:22;
- (21) Upon request, give assistance in coordinating the service of fire departments giving mutual aid in the extinguishment of fires pursuant to RSA 154:30;
- (22) If petitioned, call the first organizational meeting of a newly forming mutual aid system under RSA 154:30-a and 154:30-b;
- (23) Render advice, recommendations and assistance to any district fire mutual aid system pursuant to RSA 154:30-c, III;
- (24) Provide for periodic safety inspections of all occupied public buildings owned by the state pursuant to RSA 155-A:4;
- (25) Inspect all New Hampshire youth development center facilities to insure compliance with fire safety rules as specified in RSA 621:8;

- (26) Establish a program to promote fire safety education and reduce fire loss by encouraging fire-safe practices throughout the state, pursuant to RSA 153:10-c;
- (27) Regulate liquid propane gas pipeline safety, except propane gas pipelines regulated by the public utilities commission; and
- (28) Investigate the cause of all fires with death resulting;
- (29) Investigate the cause of all structural building collapses with death resulting;
- (30) Investigate the cause of all incidents involving the release of carbon monoxide, other than from a motor vehicle, with death resulting;
- (31) Investigate the cause of structural building collapses;
- (32) Investigate the cause of incidents involving the release of carbon monoxide, other than from a motor vehicle;
- (33) Administer the modular building program pursuant to RSA 205-C; and
- (34) Perform such other functions as are necessary to comply with RSA 153 or any other statutes.

Saf-C 6002.02 Scope. Nothing contained in Saf-C 6002.01 above shall be construed as altering any duty imposed by applicable state law.

Saf-C 6002.03 Deputy Fire Marshals. Deputy fire marshals, under the direction of the state fire marshal, shall supervise:

- (a) The inspection of buildings;
- (b) Investigation of fires and enforcement of state statutes, local ordinances and administrative rules dealing with fire prevention; and
- (c) In the absence of the state fire marshal, shall assume responsibility for all activities of the state fire marshal's office and all duties assigned to the state fire marshal's office by statute.

Saf-C 6002.04 Fire Investigators/Fire Inspectors. Fire investigators and fire inspectors under the direction of the state fire marshal and under the supervision of the deputy fire marshals, shall:

- (a) Investigate fires, structural building collapses, and incidents involving the release of carbon monoxide other than from a motor vehicle in accordance with procedures established by the state fire marshal;
- (b) Inspect state owned and other buildings in accordance with procedures established by the state fire marshal;
- (c) Assist local fire officials in promulgation and enforcement of local fire codes;
- (d) Review architectural and engineering plans and specifications for compliance with the state fire code; and
- (e) Perform such other duties as directed by the state fire marshal or his deputies.

#### **PART Saf-C 6003 AVAILABILITY OF CODES ADOPTED BY REFERENCE**

Saf-C 6003.01 NFPA Codes and Standards. Copies of NFPA codes and standards shall be available for purchase through the National Fire Protection Association, Inc., One Batterymarch Park, PO Box 9101, Quincy, Massachusetts, 02269-9101.

Saf-C 6003.02 - RESERVED

#### **PART Saf-C 6004 APPLICABILITY**

Saf-C 6004.01 Scope.

- (a) The state fire code shall apply in full force and effect in all state owned property and in all political subdivisions of the state.
- (b) The state fire marshal shall determine whether any local law or ordinances and their application and enforcement are less comprehensive or less protective of the public safety, and if so found the state fire code shall apply.
- (c) Any person aggrieved by such determination shall be entitled to a hearing in accordance with Saf-C 6006.02.

#### **PART Saf-C 6005 EXCEPTIONS AND VARIANCES**

Saf-C 6005.01 Availability. The state fire marshal shall grant exceptions or variances to the state fire code to the extent that such action will provide a degree of safety substantially equivalent to that provided under the provisions from which the exception or variance is granted.

Saf-C 6005.02 Permits.

(a) Unless a provision is contained herein for the issuance of permits required by any code adopted by reference no such permits shall be required by the state fire marshal.

(b) Nothing in this section shall be construed as preventing local fire officials from instituting permit procedures for codes adopted in their jurisdictions.

## **PART Saf-C 6006 HEARINGS**

Saf-C 6006.01 Use of Department Procedures. Unless otherwise provided herein, all hearings conducted by the state fire marshal's office shall be conducted in accordance with general department of safety procedures for conducting hearings contained in Saf-C 200.

Saf-C 6006.02 Applicability Hearings.

(a) Any person aggrieved by a determination made by the state fire marshal shall be entitled to a hearing provided that said person complies with all requirements contained in paragraphs (b), (c) and (d) of this section.

(b) All applicants shall within 20 days after said determination of rule applicability, file an application with the state fire marshal. The application shall be forwarded in the form of a letter to:

"State Fire Marshal  
Department of Safety  
Division of Fire Safety  
James H. Hayes Building  
10 Hazen Drive  
Concord, NH 03305"

(c) The letter in (b) above shall include all of the following:

(1) Request for a hearing which shall cite the provision(s) of the state fire marshal's rules which the applicant believes should not be applied because of a more protective or more comprehensive local law or ordinance;

(2) Citation of the local law or ordinance upon which the applicant is relying;

(3) The reason why the applicant believes the local law or ordinance to be more protective or comprehensive than the state fire marshal's rule;

(4) Applicant's name and address; and

(5) Applicant's signature.

(d) The letter required by paragraph (c) shall be accompanied by a certified copy of the local law or ordinance upon which the applicant is relying.

(e) This requirement shall be waived by the state fire marshal if he is:

(1) Otherwise apprised of the text of the ordinance or law; and

(2) Satisfied as to its authenticity and validity.

(f) Upon receipt of an application filed in accordance with paragraphs (b), (c) and (d) above, the state fire marshal shall:

(1) Schedule a hearing pursuant to RSA 541-A:31, III, and

(2) Inform the applicant of the date, time and location thereof.

(g) After considering the evidence and arguments presented at said hearing, the state fire marshal shall render a decision. Written notice of said decision shall be forwarded to the applicant.

(h) Subject to any provision of RSA 153, RSA 541 or any other statute to the contrary, all decisions issued under paragraph (d) above shall be final.

Saf-C 6006.03 Requests for Variances or Exceptions.

(a) Any person wishing to obtain a variance or exception pursuant to Saf-C 6005 shall make an application in the form of a letter which shall be forwarded to:

"State Fire Marshal

Department of Safety

Division of Fire Safety

James H. Hayes Building

10 Hazen Drive

Concord, NH 03305"

(b) The letter in (a) above shall contain:

- (1) Request for variance or exception which shall specify the code or rule provision involved, and the nature and extent of the relief requested therefrom;
- (2) Reason for the request;
- (3) Address and description of the structure(s) for which relief is requested;
- (4) A detailed description, including architectural or engineering plans, of the structure, equipment, or process that will be affected by the exception or variance, if approved;
- (5) A detailed explanation of how the exception or variance, if approved, will provide a degree of safety substantially equivalent to that required by the code or rule provision involved;
- (6) Name and address of applicant; and
- (7) Signature of applicant.

Saf-C 6006.04 Consideration of Variances or Exceptions.

(a) The state fire marshal shall:

- (1) Consider all applications filed pursuant to Saf-C 6006.03, and
- (2) Render a decision as to the disposition of the application.

(b) Notice of his decision shall be forwarded to the applicant in writing, and shall contain:

- (1) Where the variance or exception is granted:
  - a. The extent of such variance or exception which shall cite the code or rule provision(s) involved;
  - b. Any limitations placed on the exception or variance;
  - c. The effective date and/or termination date thereof, where applicable; and
  - d. Address or other identification of the structure(s) involved.
- (2) Where the variance or exception is denied:

- a. Statement of the variance or exception requested which shall include citation of the code or rule provision involved;
- b. Reason for denial of such request; and
- c. Such other information as the state fire marshal shall deem necessary.

(3) Signature of state fire marshal.

(c) Where an application is granted in part and denied in part, the notice shall conform to the provisions of this paragraph relevant to each type of action.

(d) Any person aggrieved by a denial of an application for variance or exception, may within 20 days following written notice thereof, apply for a hearing at which his application shall be reconsidered, as follows:

(1) The hearing may be requested by letter forwarded to the state fire marshal at the address noted in Saf-C 6006.03(a).

(2) The letter shall include all of the following:

a. Request for a hearing and reconsideration of the application for variance or exception;

b. Description of the variance or exception which was denied;

c. The reason for which the applicant believes his application should be reconsidered;

d. Such further supporting information or documentation the applicant shall choose to submit.

(3) Upon request of an application which conforms to the requirements of (2) above, the state fire marshal shall schedule a hearing and shall notify the applicant by mail of the time, date and location thereof.

(4) After considering the evidence and arguments presented at said hearing, the state fire marshal shall render a decision based upon whether the variance will or will not result in a lesser degree of safety than that required by the code or rule provision involved. Written notice of said decision shall be forwarded to the applicant, and shall contain the information specified in Saf-C 6006.04(b).

(e) Subject to any provisions of RSA 153, RSA 541, or any other statute to the contrary, all decisions issued under the paragraph shall be final.

## **PART Saf-C 6007 FIRE INCIDENT REPORTING**

### **Saf-C 6007.01 New Hampshire Fire Incident Report Form.**

(a) All fires which are required to be reported under RSA 153:11 shall be reported using the New Hampshire fire incident reporting form, NHFIRS 1, which shall be available through the state fire marshal's office or using computer software which has been approved by the National Fire Information Council, Inc.

(b) The reporter shall submit the following on form NHFIRS 1 or software:

(1) For all incidents:

- a. Fire department name, identification number, incident number, and exposure number;
- b. Day/date of incident;
- c. Alarm time, arrival time and time "in service";
- d. Address/census tract location of incident;
- e. Occupants and owners:
  1. Name(s);
  2. Address(es); and
  3. Telephone number;
- f. Method of alarm from public;
- g. Situation found and action taken;
- h. Number of alarms, personnel responding, engines, aerial apparatus, tankers or other vehicles used;
- i. Whether mutual aid given or received;
- j. Type of fixed property use;
- k. The ignition factor;
- l. Officer in charge; and
- m. Member making report, if different from l. above;

(2) For casualty the number of incident related injuries or fatalities for:

a. Fire service personnel; and

b. Others;

(3) For all fires:

a. All ignitions, including:

1. Area and level of fire origin;

2. Equipment involved in ignition, if any;

3. Form of heat ignition;

4. Material involved in ignition, such as type and form;

5. Method of extinguishment;

6. Estimated total dollar loss; and

b. For structure fires only:

1. Number of stories;

2. Construction type;

3. Extent of damage by flame and smoke;

4. Detector and sprinkler performance;

5. If flame/smoke traveled beyond room of origin, indicate the;

i. Type of material generating smoke or flame;

ii. Avenue of travel; and

iii. Form of material generating most smoke;

(4) For all fires, when applicable:

a. If mobile property, year, make, model, serial number, and license number, if applicable; and

b. Equipment involved in ignition, year, make, model, and serial number, if applicable; and

(5) If mutual aid was given, the following information for the department receiving mutual aid:

a. Fire department identification number;

b. Incident number; and

c. Number of structures exposed to fire.

(c) In the instance of a civilian casualty reported pursuant to (b)(2)b. above, the reporter shall submit the following on form NHFIRS-2, "Civilian Casualty Report":

(1) Fire department name and identification number;

(2) Incident number;

(3) Date and day of the week of the incident;

(4) Alarm time of incident;

(5) For each casualty:

a. Name, address and telephone number;

b. Date of birth and age;

c. Time of casualty;

d. Gender;

e. Casualty type, such as:

1. Fire;

2. Action; or

3. Emergency medical service;

f. Whether injured or deceased;

g. Whether civilian or other emergency personnel;

h. Familiarity with structure;

- i. Location at ignition;
- j. Condition before injury;
- k. Condition preventing escape;
- l. Activity at time of injury;
- m. Cause of injury;
- n. Nature of injury;
- o. Part of body injured;
- p. Disposition;
- q. Exposure number;
- r. Casualty number; and

(6) Name of officer in charge and date report was completed;

(7) Name and date of member making report, if different from (6) above; and

(8) An indication whether the report is a deletion or change.

(d) In the instance of a fire service personnel casualty reported pursuant to (b)(2)a. above, the reporter shall submit the following on form NHFIRS 3, "Fire Service Casualty Report":

(1) Fire department name and identification number;

(2) Incident number;

(3) Casualty number;

(4) Date and time of injury;

(5) For each casualty:

a. Name, age and gender;

b. Type of casualty;

c. Severity of injury;

- d. Primary apparent symptom of injury and where located on the body;
- e. Destination of where transported to;
- f. Assignment;
- g. Number of responses prior to injury;
- h. Physical condition prior to injury;
- i. Status before alarm;
- j. Firefighter activity;
- k. Where injury occurred;
- l. Cause of fire fighter injury;
- m. Type of medical care provided;
- n. Type, status and problems, if any, with protective coat worn;
- o. Type, status and problems, if any, with protective trousers worn;
- p. Type, status and problems, if any, with boots or shoes worn;
- q. Type, status and problems, if any, with helmet worn;
- r. Type and problems, if any, with face protection worn;
- s. Type, status and problems, if any, with breathing apparatus worn;
- t. Type and problems, if any, with gloves worn;
- u. Type, status, and problems, if any, of special equipment worn;
- v. The number of structures exposed to fire; and

(6) Name of officer in charge and date report was completed;

(7) Name and date of member making report, if different from (6) above; and

(8) An indication whether the report is a deletion or change.

(e) In the instance of a hazardous materials incident, the reporter shall submit the following on form NHFIRS 4, "Hazardous Materials Incident Report":

- (1) Fire department identification number;
- (2) Incident number;
- (3) Exposure number;
- (4) Date;
- (5) Whether the report is a deletion or change;
- (6) The hazardous material response action;
- (7) What the material is used for;
- (8) The area where the material was released;
- (9) The factors which caused the release of the material;
- (10) Any equipment involved in the release;
- (11) Weather conditions at time of the release;
- (12) The temperature at the time of the release;
- (13) Estimated number of chemicals/hazardous materials involved;
- (14) Disposition of incident;
- (15) Name of personnel identifying the hazardous materials;
- (16) List of reference materials used to identify the hazardous material;
- (17) The chemical trade name for chemicals involved in the release;
- (18) The department of transportation identification number;
- (19) The department of transportation hazard class;
- (20) Identification number for hazardous materials;
- (21) How the material was stored;
- (22) How much of the material was released;
- (23) The physical state of the portion of material released;

- (24) Unit of measure used to measure the release;
- (25) A list of the suspected environmental contamination;
- (26) Type of container used;
- (27) Any special container features;
- (28) What the container is made of;
- (29) The capacity of the container;
- (30) Unit of measure used to determine the capacity of the container;
- (31) How the material was being transported;
- (32) Vehicle year, make and model;
- (33) The state and license plate number of the vehicle;
- (34) The vehicle identification number;
- (35) Interstate commerce commission code for shipping hazardous materials;
- (36) License number and state of driver; and
- (37) Name of member making report and date of the report.

## **PART Saf-C 6008 BUILDING SAFETY**

### Saf-C 6008.01 Adoption of Fire Prevention Code.

- (a) Pursuant to RSA 153:5 and 21-G:9, II(b), the commissioner hereby adopts as a rule NFPA 1 Fire Prevention Code 2000 edition, except as modified by Saf-C 6008.02.
- (b) All persons constructing, reconstructing, modifying, maintaining or operating any structure and all owners or occupants of existing structures or premises shall comply with the requirements of NFPA 1, except as modified by Saf-C 6008.02.
- (c) All persons installing, modifying, operating or maintaining equipment or processes that are regulated under the provisions of NFPA 1 shall comply with the requirements of NFPA 1, except as modified by Saf-C 6008.02.
- (d) All persons processing, handling, or storing materials that are regulated under the provisions of NFPA 1 shall comply with the requirements of NFPA 1, except as modified by Saf-C 6008.02.

Saf-C 6008.02 Exceptions to Fire Prevention Code.

(a) The following sections of the NFPA 1 Fire Prevention Code (2000) shall be excluded from adoption under these rules:

- (1) Section 1-8 Board of Appeals;
- (2) Section 1-17 Certificates of Fitness;
- (3) Section 16-1 Fireworks Displays;
- (4) Section 16-4 Fireworks Manufacturing; and
- (5) Section 16-8 Explosives.

Saf-C 6008.03 Adoption of Life Safety Code.

(a) Pursuant to RSA 153:5, the commissioner hereby adopts as a rule NFPA 101, "Life Safety Code", 2000 edition.

(b) All persons constructing, reconstructing, modifying, maintaining or operating any structure and all owners or occupants of existing structures or premises shall comply with the requirements of NFPA 101.

Saf-C 6008.04 Modification to Life Safety Code.

(a) Section 14.7.1.2 and Section 15.7.1.2 of NFPA 101, "Life Safety Code", adopted in Saf-C 6008.03(a) are amended to read as follows:

- (1) "Emergency egress and relocation drills shall be conducted as follows:
  - a. At least one emergency egress and relocation drill shall be conducted every month the facility is in session;
  - b. Exception No. 1: In climates where the weather is severe, the monthly emergency egress and relocation drills shall be permitted to be deferred provided that the required number of emergency egress and relocation drills is achieved and at least 4 are conducted before the drills are deferred; and
  - c. Exception No.2: With the approval of the local fire official, no more than 2 of the required emergency egress and relocation drills may be eliminated and replaced by drills that test emergency response to hazards such as earthquakes, hurricanes, floods, bomb threats, and domestic terrorism. No required emergency egress and relocation drills shall be replaced by hazard drills unless an emergency response plan is submitted

to the local fire official and the New Hampshire Office of Emergency Management;

(2) All occupants of the building shall participate in the drill; and

(3) One additional emergency egress and relocation drill, other than for educational occupancies that are open on a year-round basis, shall be required within the first 30 days of operation.

Saf-C 6008.05 - RESERVED

Saf-C 6008.06 Single-family Dwellings and Two-Family Dwellings. Requirements for the construction of structures categorized as Use Group R-3, also known as single-family or two-family dwellings, and Use Group R-4, also known as single-family or two-family dwellings, shall be excluded from adoption under Saf-C 6008.05.

Saf-C 6008.07 - RESERVED

Saf-C 6008.08 Certificate of Occupancy. The requirement for the issuance of a certificate of occupancy shall apply only to buildings that are owned by the State of New Hampshire, including the university system.

Saf-C 6008.09 Adoption of Standard for the Protection of Cultural Resources.

(a) Pursuant to RSA 153:5, the commissioner hereby adopts as rule NFPA 909 Standard for the Protection of Cultural Resources Including Museums, Libraries, Places of Worship, and Historic Properties, 2001 edition.

(b) All persons constructing, reconstructing, modifying, maintaining or operating any cultural property and all owners or occupants of cultural properties shall comply with the requirements of NFPA 909.

Saf-C 6008.10 Adoption of Code for Fire Protection of Historic Structures.

(a) Pursuant to RSA 153:5, the commissioner hereby adopts as rule NFPA 914 Code for Fire Protection of Historic Structures, 2001 edition.

(b) All persons renovating, modifying, maintaining or operating any historic structure and all owners or occupants of historic structures shall comply with the requirements of NFPA 914.

## **PART Saf-C 6009 FLAMMABLE AND COMBUSTIBLE MATERIALS**

### **Saf-C 6009.01 Adoption of Fuel Code.**

(a) Under the authority provided by RSA 153:5 the commissioner hereby adopts as a rule NFPA 54, "National Fuel Gas Code", 1999 edition.

(b) All persons installing, repairing, maintaining or operating fuel gas piping systems, fuel gas utilization equipment, and related accessories shall comply with the requirements of NFPA 54.

### **Saf-C 6009.02 Adoption of Automotive and Marine Service Station Code.**

(a) Pursuant to RSA 153:5 the commissioner hereby adopts as a rule NFPA 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages", 2000 edition, except as modified by Saf-C 6009.03.

(b) All persons owning or operating automotive and marine service stations shall comply with requirements of NFPA 30A except as modified by Saf-C 6009.03.

### **Saf-C 6009.03 Modification to Code for Motor Fuel Dispensing Facilities and Repair Garages.**

(a) Section 9-5.2 6.3.8, Requirements for Dispensing Devices, shall be amended to read: "At unattended self-service motor fuel dispensing facilities, coin- and currency-type devices shall be prohibited."

(b) Section 9.5.6, Unattended Self-Service Stations, shall be amended to read: "An approved automatic fire suppression system shall be installed to protect all pump and dispensing areas in all new unattended self-service stations. Activation of the automatic fire suppression system will automatically transmit an alarm to an alarm receiving point approved by the local fire official. A manual fire alarm station that transmits an alarm to the approved alarm receiving point shall be located in immediate proximity to the emergency electrical disconnect specified in Section 6.7.2. Each delivery transaction of gasoline shall be limited to no more than 40 gallons per transaction. Each delivery transaction of diesel fuel shall be limited to no more than 100 gallons per transaction."

### **Saf-C 6009.04 Adoption of Compressed Natural Gas Code.**

(a) Under the authority provided by RSA 153:5 the commissioner hereby adopts as a rule NFPA 52, "Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems", 1998 edition.

(b) All persons storing or handling compressed natural gas for engine fuel systems on vehicles of all types, or constructing facilities for the storage or handling of said gas shall comply with the requirements of NFPA 52.

## **PART Saf-C 6010 ELECTRICAL INSTALLATIONS**

Saf-C 6010.01 Compliance Required. All persons constructing, repairing or modifying electrical wiring systems in any structure shall comply with this chapter unless granted an exception or variance by the state fire marshal pursuant to part Saf-C 6005.

Saf-C 6010.02 Adoption of Electrical Code. Under the authority provided by RSA 153:5 the commissioner hereby adopts as a rule NFPA 70, "National Electrical Code", 1999 edition.

## **PART Saf-C 6011 HEATING DEVICES COMPLIANCE**

Saf-C 6011.01 Compliance Required.

(a) All persons installing, causing to be installed or modifying, repairing or maintaining oil burning equipment shall comply with the requirements of NFPA 31 as adopted under part Saf-C 6012.

(b) All persons constructing, installing, maintaining or repairing chimneys, fireplaces, solid fuel burning appliances or vents in any structure shall comply with the requirements of NFPA 211 as adopted under part Saf-C 6013.

(c) All persons testing, selling, purchasing, installing or using unvented space heaters or storing fuel for said heaters shall comply with all applicable provisions of RSA 158:28 and Saf-C 6014.

(d) All persons installing, causing to be installed, modifying, maintaining or repairing gas fired equipment shall comply with the requirements of NFPA 58 as adopted under Saf-C 6008.01 and NFPA 54 as adopted under Saf-C 6009.01.

## **PART Saf-C 6012 OIL BURNING EQUIPMENT**

Saf-C 6012.01 Adoption of Oil Burning Equipment Code. Pursuant to RSA 153:5 the commissioner hereby adopts as a rule NFPA 31, "Standard for the Installation of Oil Burning Equipment", 2001 edition, except as modified by Saf-C 6012.02.

Saf-C 6012.02 Compliance Required.

(a) All persons installing, causing to be installed or modifying, repairing or maintaining oil burning equipment shall comply with the requirements of NFPA 31 as adopted by Saf-C 6012.

(b) Whenever an oil supply or return line is installed within buildings under concrete, sub-floors, or earth surfaces the line shall:

(1) Be continuous from the burner to the tank; and

(2) Not contain any splices.

Saf-C 6012.03 Oil Permit Approval Process.

(a) Any person wishing to install any fuel oil burner shall make application in writing on form DSFS 7 as specified by Saf-C 6012.04 for a permit to the local fire official in the locality in which the fuel oil burner is to be installed, or if none, the state fire marshal's office.

(b) Upon receipt of an application for the installation of an oil burner, the local fire official or the state fire marshal's office shall issue a temporary permit authorizing such installation.

(c) Upon completion of the installation the installer shall notify the local fire official or the state fire marshal's office of such completion and shall request a final inspection of the oil burner installation. Provided that all applicable provisions of NFPA 31 and Saf-C 6012 have been complied with, the local fire official or the state fire marshal's office shall issue a permit to operate oil burning equipment. The completed permit, signed by the local fire official or state fire marshal's office, shall constitute approval to operate the oil burning equipment. The local fire official or state fire marshal may require the installer to be present during the final inspection of any oil burning equipment for the purpose of testing the oil burner's safety and controls.

Saf-C 6012.04 Oil Burner Permits.

(a) All permits issued by local fire officials or the state fire marshal's office pursuant to Saf-C 6012.03 shall be on form DSFS 7 disseminated by the state fire marshal's office. DSFS 7 may be replicated by local fire officials.

(b) DSFS 7 shall contain the following information provided by the applicant:

(1) The following information relative to the location of the oil burning equipment:

- a. Address;
- b. Type of occupancy and number of stories;
- c. Name and address of owner; and
- d. Name of building occupant;

(2) Information relative to the type of equipment:

- a. Make and serial number of the burner; and

- b. Size and location of the tank;
  - (3) Name, address and telephone number of installer, including business name;  
and
  - (4) Date and signature of owner or installer.
- (c) DSFS 7 shall contain the following information provided by the local fire official or state fire marshal:
- (1) When at the oil burner equipment installation stage:
    - a. Notification that when signed by the local fire official or state fire marshal's office that the form may be used as a temporary permit to install the equipment at the location as stated in the application:
    - b. Permit number; and
    - c. Date and signature of local fire official; and
  - (2) When at the oil burner equipment operation stage:
    - a. Notification that when signed by the local fire official or state fire marshal's office that permission is hereby granted to operate the oil burning equipment described above which has been inspected and found to be in compliance with Saf-C 6012; and
    - b. Date and signature of local fire official.

Saf-C 6012.05 Posting of Permits. All permits issued by the local fire official or state fire marshal's office pursuant to Saf-C 6012.04, shall be conspicuously posted near the oil burning equipment. Multiple oil burner installations shall require that permits be properly identified as to which oil burner each permit applies.

### **PART Saf-C 6013 CHIMNEYS, FIREPLACES, VENTS AND SOLID FUEL BURNING APPLIANCES**

Saf-C 6013.01 Model Code for the Installation and Operation of Solid Fuel Heating Appliances. Pursuant to RSA 153:5 and RSA 153:14, IV, the commissioner hereby adopts as a rule NFPA 211, 2000 edition, "Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances".

## **PART Saf-C 6014 UNVENTED SPACE HEATERS**

(a) All persons testing, selling, purchasing, installing or using unvented space heaters or storing fuel for such heaters shall comply with all applicable provisions of RSA 158:28 and Saf-C 6014.

(b) No person shall install or use in any building which is used in whole or in part for human habitation an unvented space heater which uses fuel other than kerosene, propane, or natural gas with the exception of flameless catalyst type heaters.

Saf-C 6014.02 Testing Criteria. No unvented space heater shall be offered for sale in New Hampshire unless said heater has been listed by a nationally recognized laboratory whose testing criteria, at a minimum, meet Underwriters' Laboratory Standard 647 or ANSI Z21.11.2.

Saf-C 6014.03 Laboratory Approval. No laboratory engaged in the testing of unvented space heaters shall be approved by the state fire marshal unless said laboratory's testing procedure conforms to Underwriters' Laboratory Standard 647 or ANSI Z21.11.2 as a minimum criteria for testing and approving such heaters.

Saf-C 6014.04 Fuel.

(a) No fuel type other than that specifically identified by the manufacturer and listed accordingly shall be used in any unvented space heater.

(b) Under no circumstances shall any type of fuel additive be used in any such heater.

(c) All fuel used in kerosene heaters shall be certified as being K-1 fuel.

(d) The following shall apply to space heaters:

(1) All unvented space heater fuel shall be stored in proper containers approved for the storage of flammable liquids;

(2) No unvented space heater shall be filled with fuel in any manner other than that directed by the manufacturer of said heater, where "filled" means the process of pouring, injecting or otherwise introducing fuel into an unvented space heater; and

(3) In no event shall a person pour fuel into an unvented kerosene space heater while inside an occupied structure, as defined in RSA 158:28, II(c), or while said heater is hot.

(e) All installations of propane and natural gas unvented space heaters shall comply with Saf-C 6008.01 and Saf-C 6009.01.

(f) All installations of Kerosene unvented space heaters shall comply with Saf-C 6008.01 and Saf-C 6009.01.

(g) All propane or natural gas unvented space heaters shall be securely fastened to the wall or floor to prevent accidental tipping.

**PART Saf-C 6015 GENERAL COMPLIANCE - FIRE PROTECTION - RESERVED**

**PART Saf-C 6016 FIRE EXTINGUISHERS - RESERVED**

**PART Saf-C 6017.01 through Saf-C 6017.04 - SPRINKLER SYSTEMS - RESERVED**

**PART Saf-C 6018 AUTOMATIC FIRE WARNING DEVICES**

Saf-C 6018.01 Compliance. Owners of structures shall install and maintain automatic fire warning devices as required by RSA 153:10-a and NFPA 1, 2000 edition, adopted under Saf-C 6008.01.

Saf-C 6018.02 Installation and Maintenance. All automatic fire warning devices in multi-unit dwellings, including, but not limited to, nursing homes, rooming houses, dormitories, hotels, motels,

apartment buildings, and buildings containing condominium units shall be powered by the house electrical service.

Saf-C 6018.03 Modifications to National Fire Alarm Code.

(a) No person shall connect any automatic fire warning device to an electrical circuit that is dedicated solely to providing power to automatic fire warning devices.

(b) The use of automatic fire warning devices that are connected to an electrical power source by means of a plug and cord connector shall be prohibited.

(c) NFPA 72 is modified to include the following section:

(1) "Section 8-1.2.5 Temporary Silencing of Alarms. Smoke alarms shall be provided with a feature that allows the user to temporarily silence an alarm or to temporarily decrease the sensitivity during activities that may lead to a nuisance alarm."

(d) NFPA 72 is modified to read as follows:

(1) "Section 8-4.5 Primary Power Supply - Monitored Battery. Unless otherwise prohibited by RSA 153:10-a, or these rules, household fire warning equipment

shall be permitted to be powered by a battery, provided that the battery is monitored to ensure the following conditions are met:

- a. All power requirements are met for at least 1 year of battery life for photoelectric smoke detectors, including monthly testing;
- b. All power requirements are met for at least 10 years of battery life for ionization smoke detectors, including monthly testing;
- c. A distinctive audible trouble signal sounds before the battery is incapable of operating the device(s) for alarm purposes, from causes such as aging or terminal corrosion;
- d. For a unit employing a lock-in alarm feature, automatic transfer is provided from alarm to a trouble condition;
- e. The unit is capable of producing an alarm signal for at least 4 minutes at the battery voltage at which a trouble signal is normally obtained, followed by not less than 7 days of trouble signal operation;
- f. Acceptable replacement batteries for photoelectric smoke detectors are clearly identified by the manufacturer's name and model number on the unit near the battery compartment;
- g. A readily noticeable, visible indication is displayed when a primary battery is removed from the unit; and
- h. Any unit that uses a non-rechargeable battery as the primary power supply that is capable of a 10-year or greater service life, including testing, and meets the requirements of Sections 8-4.5 (b) through (e) shall not be required to have a replaceable battery;"

(2) "Section 8-4 Where automatic recharging is not provided, the battery shall be monitored to ensure that the following conditions are met:

- a. All power requirements are met for at least 1 year of battery life for photoelectric smoke detectors and 10 years of battery life for ionization smoke detectors;
- b. A distinctive trouble signal sounds before the battery capacity has been depleted below the level required to produce an alarm signal for 4 minutes."

**PART Saf-C 6019 COMMERCIAL, INSTITUTIONAL COOKING EQUIPMENT - RESERVED**

**PART Saf-C 6020 CERTIFICATION OF PRIVATE FIREFIGHTING UNITS**

Saf-C 6020.01 Purpose and Scope.

- (a) The purpose of this part is to assure the public safety by establishing minimum certification requirements for private firefighting units.
- (b) All private firefighting units required to be certified under RSA 154 shall comply with the requirements of Saf-C 6020.

Saf-C 6020.02 Definition of Officer. "Officer", for the purposes of this part, means any person who is assigned any of the following ranks or titles:

- (a) Director;
- (b) Executive director;
- (c) Fire chief;
- (d) Assistant fire chief;
- (e) Deputy fire chief;
- (f) Commissioner;
- (g) Fire engineer;
- (h) Fireward;
- (i) President;
- (j) Vice-president;
- (k) Secretary;
- (l) Treasurer; or
- (m) General manager.

Saf-C 6020.03 Felony Conviction of an Officer or Owner of a Private Firefighting Unit.

No person who has been convicted of a felony shall serve as an officer of a private firefighting unit or hold any ownership interest of 10 percent or more in the private firefighting unit.

Saf-C 6020.04 Application for Certification.

- (a) A private firefighting unit shall apply to the state fire marshal for certification.

(b) An applicant shall submit a complete and detailed written statement, signed under oath or affirmation, by the applicant, if an individual, or by the officers of the applicant, if a corporation or an association.

(c) The written statement in (b) above shall contain:

(1) The following information about every person who possesses an ownership interest of 10 percent or more in the applicant and of every person who is an officer of the private firefighting unit:

- a. Name;
- b. Residence address;
- c. Place and date of birth;
- d. Number of shares of stock held, if applicable; and
- e. How shares of stock, in d. above, were obtained;

(2) A statement that the applicant has conducted a criminal record check of all officers of the private firefighting unit and person who hold any ownership interest of 10 percent or more and that no officer or person who holds any ownership interest of 10 percent or more has been convicted of a felony; and

(3) Proof of being a legal corporation capable of transacting business under the laws of the state of New Hampshire, including:

- a. A copy of the legal name certificate issued by the secretary of state; and
- b. The name and address of a legal agent within the state upon whom process may be served.

(d) An applicant shall submit to the state fire marshal the letter of agreement which indicates the willingness of an insurance company to carry a comprehensive general liability policy, including broad form coverage with basic limits and excess limits in amounts agreed upon between the applicant and the governing body of the city, town or village district. The policy shall include professional liability and errors and omissions coverage for all applicant employees, including volunteer and call members. The city, town or village district shall be named as an additional insured party if required by the city, town or village district.

(e) An applicant shall submit to the state fire marshal a letter of agreement which indicates the willingness of an insurance company to provide workers' compensation coverage for all applicant employees, including volunteer and call members. The workers' compensation coverage shall conform to New Hampshire laws and applicable rules.

(f) For the purposes of (d) and (e) above, a letter of agreement from an agent of an insurance company shall not be acceptable.

(g) An applicant shall submit a signed agreement with the state fire marshal in which the applicant agrees to the conditions stated in (h) below.

(h) For the purposes of (g) above, an applicant shall:

(1) Require all full-time firefighters hired by it to comply with the same educational and training requirements of the fire standards and training commission as firefighters employed by municipal fire departments, unless higher standards are required by the contract or these rules;

(2) Meet all applicable requirements under state law and rules for emergency medical services;

(3) Require that if new motorized fire apparatus is purchased, leased or otherwise acquired by the private firefighting unit, it shall meet or exceed the most recent edition of the following applicable National Fire Protection Association standards:

a. NFPA 1901, Standard for Fire Pumper Apparatus;

b. NFPA 1902, Standard for Initial Attack Fire Apparatus;

c. NFPA 1903, Standard for Mobile Water Supply Fire Apparatus; and

d. NFPA 1904, Standard for Aerial Ladder and Elevating Platform Fire Apparatus;

(4) Require that all motorized fire and rescue apparatus shall be maintained in accordance with the manufacturer's recommendations;

(5) Require that if buildings and structures are erected, leased or supplied by the private firefighting unit, they shall conform to applicable federal, state and local fire, safety, sanitary and zoning laws, ordinances, codes, or standards;

(6) Conduct an in-service training and education program for all fire personnel employed by the applicant, training to be in accordance with the standards set forth by the New Hampshire fire standards and training commission;

(7) Disclose to the board of selectmen, town manager, village district commission, mayor or city manager and update annually a detailed plan showing how the applicant would continue to provide fire services in the event of a job action or strike;

- (8) Comply with all statutes, laws, rules, regulations and orders of federal, state, county or municipal authorities which shall impose any duties or obligations on the applicant;
- (9) Participate in and abide by the provisions of any mutual aid agreement which the governing body of the town, city, or village district has entered into;
- (10) Cause every fire within its area of operation to be investigated and determine and record, if possible, the cause and origin of each fire;
- (11) Report findings of evidence of illegal actions or actual personal injury or death of a person or persons to the state fire marshal when conducting an investigation in accordance with (h)(10) above;
- (12) Take adequate steps to determine that all fire apparatus, vehicles and ambulances shall at all times be operated in compliance with the applicable state motor vehicle laws pertaining to emergency vehicles;
- (13) Perform annual testing of all hose, ladders, fire and ambulance apparatus with the results of the tests recorded and maintained as permanent records;
- (14) Employ no person to fulfill the contract with the city, town, or village district, known to the contractor or who it could have been determined by reasonable diligence has been convicted of a crime the elements of which would constitute arson or burglary under New Hampshire law;
- (15) Permit the state fire marshal or his authorized agents to enter any premises under the applicant's control during the term of the contract for the purpose of examining records, apparatus, personnel, or facilities if deemed to be necessary to determine the contractor's ongoing compliance with the agreement;
- (16) Disclose to the city, town or village district, upon request, the criminal and motor vehicle records and training records of all its employees engaged in firefighting or ambulance duties within the city, town or village district prior to employment, available under New Hampshire laws;
- (17) Behave in all respects in the same manner as a public fire department with regard to the authority of the state fire marshal and the duty to cooperate with the state fire marshal regarding:
  - a. Fire investigations;
  - b. Fire incident reporting;
  - c. Fire inspections;
  - d. Hazardous materials emergencies; and

e. All other matters within the purview of the state fire marshal;

(18) Maintain and submit to the city, town, village district or state, as appropriate, all reporting logs and forms and other records required by the city, town, village district or state;

(19) Not assign or transfer the contract with the city, town or village district without prior written consent from the city, town or village district and of the state fire marshal;

(20) Conduct a fire prevention campaign of such nature and extent as specified in the contract with the governing body of the city, town or village district; and

(21) Maintain and make available to the public upon request the following official records;

- a. Emergency dispatch center logs;
- b. Records of fire safety inspections;
- c. Fire and other emergency incident reports; and
- d. Fire investigation reports, unless it involves:
  1. Arson fire;
  2. Part of an ongoing criminal investigation; or
  3. A juvenile.

(i) An applicant shall submit along with the detailed written statement in (c) above, the name of the city, town or village district with which the applicant intends to contract and a copy of any proposed bid specifications or contract.

Saf-C 6020.05 Notification of Decision.

(a) After reviewing all the information submitted by the applicant, pursuant to Saf-C 6020.04 above, the state fire marshal shall:

(1) Certify the private firefighting unit, if it has complied with all requirements in this part; and

(2) Notify in writing the applicant and the governing body of the city, town, or village district with which the applicant seeks to contract, of his/her decision.

Saf-C 6020.06 Annual Update of Application. Any applicant who is certified shall maintain the conditions of his or her certification and annually file with the state fire marshal an update of the information required in Saf-C 6020.04.

Saf-C 6020.07 Administrative Action Against a Certification.

(a) For any of the reasons set forth in (b) below, the state fire marshal shall, after notice and hearing, take any of the following administrative action(s) depending on the circumstances in the cases, ranging from most severe to least severe:

- (1) Revocation of private firefighting unit's certification;
- (2) Suspension of private firefighting unit's certification;
- (3) Issue a warning letter; or
- (4) Issue an order to comply with these rules.

(b) Pursuant to (a) above, the following reasons shall subject a private firefighting unit to administrative action:

- (1) Failure to comply with any of the provisions of these rules;
- (2) Failure to abide by the provisions of the agreements executed pursuant to Saf-C 6020.04(h);
- (3) Failure to abide by the provisions of the contract with the city, town or village district as evidenced by a formal complaint of the governing body of the city, town or village district;
- (4) Providing false or misleading information as part of the certification process;
- (5) Conviction of the proprietor, partners, corporation, its officers or partners, or associates of arson, bribery or any felony;
- (6) Filing a petition for bankruptcy or reorganization;
- (7) Making an assignment for benefit of creditors;
- (8) Consenting to the appointment of a receiver or trustee; or
- (9) Default in discharging any obligation for the payment of money owed to the city, the state or a third party.

(c) For the purposes of (a) above, the severity of the administrative action taken against a private firefighting unit shall correlate positively with the factors set forth below:

- (1) The seriousness of the private firefighting unit's actions;
- (2) The private firefighting unit's history of compliance with Saf-C 6019 or any other order by the state fire marshal;

(3) The degree of purposefulness on behalf of the private firefighting unit in carrying out any of the actions stated in (b) above; and

(4) Any other factor which indicates a disregard on behalf of the private firefighting unit for its responsibility to public safety and its ability to carry forth its responsibility pursuant to these rules.

## **PART Saf-C 6021 LIGHTNING ROD DEALERS AND SALESMEN**

### **Saf-C 6021.01 Compliance.**

(a) All lightning rod salesmen, dealers, manufacturers and agents shall comply with the requirements RSA 323 and Saf-C 6021.

(b) All persons designing, installing, testing, modifying, repairing or maintaining lightning protection equipment shall comply with the requirements of NFPA 780, 1997 edition.

### **Saf-C 6021.02 Application for Dealer's License.**

(a) Those required to obtain a license pursuant to RSA 323:1 shall do so by applying to the state fire marshal on form DSFS #71.

(b) An applicant shall submit the following on form DSFS #71:

- (1) Whether the application is for a new license or a renewal;
- (2) If a renewal, the previous year's license number;
- (3) Trade name of dealer;
- (4) List of name(s) and address(es) of individual partners, principal officers, and director;
- (5) Address of principal place of business;
- (6) Telephone number of principal place of business;
- (7) Whether licensed in another state, and if so, what state;
- (8) Certification of knowledge of and agreement to comply with Saf-C 6021; and
- (9) Signature of applicant sworn before a notary public or justice of the peace.

### **Saf-C 6021.03 Application for Agent's License.**

(a) A licensed lightning rod dealer who has appointed an agent(s) to sell or install lightning rods shall obtain a license for said agent(s) by applying to the state fire marshal on form DSFS 72.

(b) The following information shall be supplied on DSFS 72:

(1) Statement of applicant:

- a. Name and address, age;
- b. Business address;
- c. Residence for past 5 years;
- d. Whether applicant is licensed in another state, list states;
- e. Whether such a license has ever been suspended or revoked;
- f. Occupation, for last 5 years;
- g. Name of licensed dealer represented;
- h. Certification of knowledge and intent to comply with state law and fire code;
- i. Notarized signature; and

(2) Statement of licensed dealer:

- a. Request that named agent(s) be licensed;
- b. Whether license is original or renewal;
- c. Where licenses are to be sent; and
- d. Date and signature of licensed dealer.

Saf-C 6021.04 Adoption of Lightning Protection Code. Pursuant to RSA 153:5, the commissioner hereby adopts as a rule NFPA 780, "Lightning Protection Code", 1997 edition.

## **PART Saf-C 6022 PYROTECHNICS**

Saf-C 6022.01 Adoption of Pyrotechnics Code. Pursuant to RSA 153:5 the commissioner hereby adopts as a rule NFPA 1126, "Standard for the Use of Pyrotechnics before a Proximate Audience", 2001 edition.

Saf-C 6022.02 Compliance Required.

(a) All persons using pyrotechnic special effects in the performing arts in conjunction with theatrical, musical, or any similar productions before a proximate audience, performers, or support personnel shall comply with all applicable provisions of NFPA 1126, 2001 edition.

(b) For the purposes of this part "pyrotechnic special effect" means a special effect created through the use of pyrotechnic materials and devices.

(c) For the purposes of this part "pyrotechnic material" means a chemical mixture used in the entertainment industry to produce visible or audible effects by combustion, deflagration, or detonation. Such chemical mixtures predominantly consist of solids capable of producing a controlled, self-sustaining, and self-contained exothermic chemical reaction that results in heat, gas, sound, light or a combination of these effects. The chemical reaction functions without external oxygen.

Saf-C 6022.03 Permit Required.

(a) For the purposes of this section, "pyrotechnic operator" means the person actually in charge of creating the pyrotechnic special effects.

(b) No person shall use any pyrotechnic special effects in the performing arts in conjunction with theatrical, musical, or any similar productions before a proximate audience, performers, or support personnel without having first obtained a permit from the state fire marshal.

(c) Any person wishing to use pyrotechnic special effects in the performing arts in conjunction with theatrical, musical, or any similar productions before a proximate audience, performers, or support personnel shall apply in writing to the state fire marshal on form DSFS #79 and shall submit a plan, pursuant to (e) below, to the state fire marshal.

(d) Form DSFS #79 shall contain the following information:

- (1) The name of the person, group or organization sponsoring the production;
- (2) Address of the person, group, or organization sponsoring the production;
- (3) Telephone number of the person, group, or organization sponsoring the production;
- (4) The date and time of day of the production;
- (5) The exact location of the production;
- (6) The name of the pyrotechnic operator;
- (7) The names and ages of all assistants that will be present;
- (8) The qualifications of the pyrotechnic operator;
- (9) The experience of the pyrotechnic operator in using pyrotechnic special effects;
- (10) Date and signature of the applicant;

- (11) Notification that the permit and the plan have been submitted to the local fire official prior to submittal to the state fire marshal.
  - (12) Notification of any special requirements for the performance that have been established by the local fire official;
  - (13) Date and signature of the local fire official;
  - (14) Notification of any special requirements for the performance that have been established by the state fire marshal;
  - (15) Notification that when signed by the state fire marshal or his designee the applicant may operate the pyrotechnic special effects in accordance with the plan that has been submitted to the state fire marshal and subject to any special requirements noted above by the local fire official and the state fire marshal.
- (e) The plan that is submitted to the state fire marshal shall include the following information and documents:
- (1) A diagram of the grounds or facilities at which the production will be held, including indications of the point at which:
    - a. The pyrotechnic devices are to be fired;
    - b. The fallout radius for each pyrotechnic device used in the performance;  
and
    - c. The lines behind which the audience shall be restrained;
  - (2) The point of on-site assembly of pyrotechnic devices;
  - (3) The manner and place of storage of the pyrotechnic materials and devices;
  - (4) A material safety data sheet (MSDS) for the effect(s) to be used;
  - (5) Evidence of the permittee's insurance carrier or proof of financial responsibility;
  - (6) The number and types of pyrotechnic devices and materials to be used;
  - (7) The operator's experience with those devices and effects to be used, as listed in (6) above;
  - (8) A definition of the general responsibilities of the assistants;

- (9) A copy of any pyrotechnic, fireworks, or explosives licenses held by the pyrotechnic operator;
  - (10) A copy of the Place of Assembly Permit, if the location where the pyrotechnic devices are to be used is required to be a licensed place of assembly in accordance with RSA 155:18.
- (f) Upon receipt of the items required in (d) and (e) above, the state fire marshal or his designee shall:
- (1) Review the information submitted;
  - (2) Render a decision as to whether the proposed display of pyrotechnic effects will comply with the requirements of Saf-C 6022.01;
  - (3) Forward notice of his decision to the applicant and to the local fire official in writing.
- (g) The notice of decision shall contain:
- (1) Where the state fire marshal has determined that the display will comply with Saf-C 6022.01:
    - a. The signed permit; and
    - b. Any special conditions established by the state fire marshal to ensure that the requirements of Saf-C 6022.01 will be complied with and;
  - (2) Where the state fire marshal has determined that the display will not comply with Saf-C 6022.01 reason for the denial of the permit request.

<b>RULE NUMBER</b>	<b>STATUTE IMPLEMENTED</b>
Saf-C 6001.01(f) (repeal)	RSA 541-A:7, 541-A:8 and 155-A
Saf-C 6003.02 (repeal)	RSA 153:5 and 155-A
Saf-C 6008.01(a)	RSA 153:4-a and 153:5
Saf-C 6008.02	RSA 153:5
Saf-C 6008.03(a)	RSA 153:4-a, 153:5 and 153:8-a, I(b)
Saf-C 6008.04	RSA 153:5
Saf-C 6008.05 (repeal)	RSA 153:5 and 155-A
Saf-C 6008.07 (repeal)	RSA 155-A
Saf-C 6008.09(a)	RSA 153:4-a and 153:5
Saf-C 6008.10	RSA 153:4-a and 153:5
Saf-C 6009.01(a)	RSA 153:4-a and 153:5
Saf-C 6009.02(a)	RSA 153:4-a and 153:5
Saf-C 6009.03	RSA 153:5
Saf-C 6012.01	RSA 153:5
Saf-C 6013.01	RSA 153:4-a, 153:5 and 153:14, IV
Saf-C 6018.01	RSA 153:10-a and 153:10-b
Saf-C 6018.02	RSA 153:10-a and 153:10-b
Saf-C 6022.01	RSA 153:5
Saf-C 6022.02(a)	RSA 153:5