



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

30 DAYS ARE REQUIRED by RSA for this

Please submit Agenda Request Form, including back up information, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted ~~X~~ 30**

days prior to the requested meeting date to meet publication deadlines (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: October 31, 2017 Date of Meeting: December 7, 2017
 Submitted by: Dawn Tuomala Time Required: 15 minutes
 Department: DPW Background Info. Supplied: Yes No
 Speakers: Dawn Tuomala, Kyle Fox, Jim Bouchard, Lisa Martin

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/Retirement:	<input type="checkbox"/>
Public Hearing:	<input checked="" type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

Bedford Road - Petition to Layout a Class V Highway Easement

DESCRIPTION OF ITEM

See attached

REFERENCE (IF KNOWN)

RSA: 231 Warrant Article:
 Charter Article: Town Meeting:
 Other: N/A:

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input checked="" type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input checked="" type="checkbox"/>	None:	<input type="checkbox"/>

CONTACT INFORMATION

Name: **Dawn Tuomala** Address: **6 Baboosic Lake Road**
 Phone Number: **424-5137** Email Address: **dtuomala@merrimacknh.gov**

APPROVAL

Town Manager: Yes No Chair/Vice Chair: Yes No

Hold for Meeting Date:



TOWN OF MERRIMACK, New Hampshire

Public Works Department
6 Baboosic Lake Road
Merrimack, NH 03054

www.merrimacknh.gov
TEL: (603) 424-5137
FAX: (603) 424-1408

PUBLIC HEARING NOTICE

Bedford Road Highway – Layout of Class V Highway Easement

Merrimack, New Hampshire

The Town of Merrimack Town Council has set a public hearing to discuss the public road layout of a section of Bedford Road that is subject to a Highway Construction Easement to confirm and definitively establish become a Permanent Highway Easement. The layout area is by the “Darrah Bridge” over Baboosic Brook between Pearson Road and Catskill Drive.

The meeting will be held at the Merrimack Town Hall, 6 Baboosic Lake Road, Merrimack, NH 03054, Matthew Thornton Room, on Thursday, December 7, 2017 at 7:00 PM.

We, the Town Council, hereby give written Notice to said Petitioners and the owners of land over which said Highway Construction Easement passes, and to all others interested by posting a like copy of this Notice in a least two (2) public places in the Town of Merrimack, and leaving a copy with the Town Clerk at least thirty (30) days before the said day of hearing.

This meeting is a public hearing proceeding under RSA Chapter 231. The intent of the meeting is for the Town Council to take testimony for their decision making as requested by Petition to Layout a Class V Highway Easement. Interested landowners, local officials and highway users are welcome and will be given the opportunity to express their comments relative to this subject. Testimony will be recorded.

Plans and documents are available at the Town of Merrimack, Department of Public Works, 6 Baboosic Lake Road, Merrimack, NH 03054 for inspection and copying. Please contact the Public Works Department with any questions at (603) 424-5137.

Any individuals needing assistance or auxiliary communication equipment due to sensory impairment of other disability should contact Department of Public Works, 6 Baboosic Lake Road, Merrimack, NH 03054, (603) 424-5137. Notification of the need for assistance must be made no later than November 28, 2017.

Kyle Fox, PE
Director Public Works Department

November 1, 2017



TOWN OF MERRIMACK, New Hampshire

Baboosic Lake Road
Merrimack, NH 03054

TEL: (603) 424-5137

BEDFORD ROAD LAYOUT PETITION LAYOUT OF CLASS V HIGHWAY EASEMENT

Beginning at a point on the southerly sideline of Bedford Road at the northeast corner of land now or formerly of the Merrimack Christian Church of Old Bedford Road, said point also being the northwest corner of the parcel herein described, thence

1. North 73° 38' 08" East a distance of 54.23 feet by the southerly sideline of Old Bedford Road, thence continuing by the southerly sideline of Bedford Road
2. Southerly by a curve to the right having a radius of 875.00 feet a distance of 171.93 feet to a point, thence
3. North 84° 53' 38" East a distance of 139.43 feet, thence
4. Easterly by a curve to the right having a radius of 275.00 feet a distance of 125.73 feet to a point, thence
5. South 68° 54' 40" East a distance of 178.22 feet to a point, thence
6. Easterly by a curve to the left having a radius of 1025.00 feet a distance of 192.66 feet to a point, thence
7. South 79° 40' 50" East a distance of 100.65 feet to a point at land of the Town of Merrimack, thence by said Town of Merrimack land
8. South 24° 47' 19" West a distance of 25.82 feet to a point at the Open Space land of Orange Blossom Estates, thence by the Open Space land
9. North 86° 04' 32" West a distance of 902.97 feet to a point at land of the Merrimack Christian Church of Old Bedford Road, thence
10. North 17° 48' 14" West a distance of 55.30 feet to the point of beginning.

Being shown as Highway Construction Easement on a plan entitled "Residential Cluster Development Plan, Orange Blossom Estates, Merrimack, N. H., Prepared for Strazzula Brothers Company, Inc." scale: 1 inch = 100 feet dated March 23, 1980, last revised April 16, 1980, said plan being recorded as Plan Number 14615 in the Hillsborough County Registry of Deeds.



Town of Merrimack, New Hampshire

Public Works Department
6 Baboosic Lake Road
Merrimack, New Hampshire 03054

TEL: (603) 424-5137
FAX: (603) 424-1408

October 27, 2017

**RE: Public Hearing Meeting
Bedford Road Highway – Layout A Class V Highway Easement**

Dear Bramber Estates Resident,

The Town of Merrimack Town Council has set a public hearing on December 7, 2017 to discuss the public road layout of a section of Bedford Road that is subject to a Highway Construction Easement to confirm and definitively establish a Permanent Highway Easement. The easement is shown on the Orange Blossoms Estates Residential Cluster Development Plan dated March 23, 1980, last revised April 16, 1980 recorded in the Hillsborough County Registry of Deeds as Plan No. 14615. The layout area is by the “Darrah Bridge” over Baboosic Brook between Pearson Road and Catskill Drive.

The meeting will be held at the Merrimack Town Hall, 6 Baboosic Lake Road, Merrimack, NH 03054 in the Matthew Thornton Room, on Thursday, December 7, 2017, at 7:00 PM.

The meeting is a public hearing proceeding under RSA Chapter 231. The intent of the meeting is for the Town Council to take testimony for their decision making as requested by Petition to Layout a Class V Highway Easement. Interested landowners, local officials and highway users are welcome and will be given the opportunity to express their comments relative to this subject. Testimony will be recorded.

Plans and documents are available at the Town of Merrimack, Department of Public Works, 6 Baboosic Lake Road, Merrimack, NH 03054 for inspection and copying. Please contact the Public Works Department with any questions at (603) 424-5137.

Please feel free to contact me with questions or comments by phone or email.

Sincerely,

Dawn Tuomala, PE, LLS, CWS
Deputy DPW Director/Town Engineer
dtuomala@merrimacknh.gov

CC: Eileen Cabanel, Town Manager
Kyle Fox, Public Works Director

TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Laying Out Highways

Section 231:1

231:1 Class IV, V and VI. – All class IV highways not financed in whole or in part with federal aid highway funds, and class V and VI highways shall be laid out by the mayor and aldermen of the city, the selectmen of the town or the commissioners of a village district formed for the purpose of RSA 52:1, I(m) in which such highways are located, or by the superior court as hereinafter provided. In the case of a village district formed for the purpose of RSA 52:1, I(m), references in this title to "town" and "selectmen" shall be deemed to be references to "village district" and "village district commissioners", respectively.

Source. 1945, 188:1, part 3:2. RSA 232:2. 1967, 157:2. 1975, 455:3. 1981, 87:1, eff. April 20, 1981.

Section 231:2

231:2 Class IV Compact Section Highways. – All class IV highways shall be wholly constructed, reconstructed and maintained by the city or town in which they are located, and no state funds shall be expended thereon except as may be authorized by RSA 235.

Source. 1945, 188:1, part 2:7. 1949, 79:2. RSA 231:7. 1955, 333:1. 1981, 87:1, eff. April 20, 1981.

Section 231:3

231:3 Class V Town Roads. –

I. All class V highways shall be constructed, reconstructed, and maintained by the city or town in which they are located; provided, however, that town road aid may be used for such purposes, and town bridge aid may be used for the construction or reconstruction of any bridge thereon, as hereinafter provided.

II. If a city or town accepts from the state a class V highway established to provide a property owner or property owners with highway access to such property because of a taking under RSA 230:14, then notwithstanding RSA 229:5, VII, such a highway shall not lapse to class VI status due to failure of the city or town to maintain and repair it for 5 successive years, and the municipality's duty of maintenance shall not terminate, except with the written consent of the property owner or property owners.

Source. 1945, 188:1, part 2:8. RSA 231:8. 1981, 87:1. 1995, 77:2, eff. June 8, 1995.

Section 231:4

231:4 Village Districts Not Eligible for Road Funds. – Notwithstanding the provisions of RSA 231:1 and any other statutes to the contrary, village districts shall not be eligible to receive funds pursuant to RSA 235.

Source. RSA 232:2-a. 1975, 455:4. 1981, 87:1. 1983, 122:1, eff. July 1, 1983.

Section 231:5

231:5 Class IV Highways Financed by Federal Aid Funds. – Class IV highway projects financed in whole or in part with federal aid highway funds shall be laid out under the procedures set forth in RSA 230 for class I and class II highways, except for the payment of expenses by the state under RSA 230:31. The commissioner of transportation shall keep an account of the cost of the land and other property taken or acquired, and of the cost of the services and the expenses of the commissioners, appointed to lay out the highway, and the cost of litigation incurred by the commission in the taking of the land and property, and he shall make these costs and expenses a charge against the federal aid highway project.

Source. RSA 232:1-a. 1967, 157:1. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:6

231:6 Highways to Public Waters. – Highways to public waters, when not a part of the primary or secondary highway system, may be laid out as class V highways by the mayor and aldermen of the city or the selectmen of the town in which such highways are located, or may be laid out as hereinafter provided by a commission appointed by the governor and council.

Source. 1945, 188:1, part 3:3. RSA 232:3. 1981, 87:1, eff. April 20, 1981.

Section 231:7

231:7 Applicable Provisions. – The provisions of RSA 230:9, 10, 11 and 12 are applicable to the mayor and aldermen of the city, the selectmen of the town and commissioners of a village district, in laying out class IV, V or VI highways.

Source. RS 49:9-11. CS 52:9-11. GS 61:9-11. GL 67:9, 10, 13. PS 67:10, 11, 14. PL 74:10, 11, 14. RL 90:11, 12, 15. 1945, 188:1, part 3:4-6. RSA 232:4-232:7. 1959, 294:1. 1981, 87:1, eff. April 20, 1981.

Section 231:8

231:8 Petition. – Selectmen of a town, upon petition, may lay out any new class IV highway not financed in whole or in part with federal aid highway funds, and class V or VI highway or alter any such existing highway within their town for which there shall be occasion.

Source. RS 49:1. CS 52:1. GS 61:1. GL 67:1. PS 67:2. 1921, 31:1. PL 74:2. RL 90:2. 1945, 188:1, part 5:1. RSA 234:1. 1967, 157:3. 1981, 87:1, eff. April 20, 1981.

Section 231:9

231:9 Notice. – Unless the selectmen are clearly of opinion that such petition ought not to be granted they shall cause notice in writing of the time and place of hearing appointed by them to be given at least 30 days previous to hearing to the first petitioner and to each owner of land over which such highway may pass.

Source. RS 49:2. CS 52:2. GS 61:2. GL 67:2. PS 67:3. PL 74:3. RL 90:4. 1945, 188:1, part 5:2. RSA 234:2. 1981, 87:1. 1989, 28:1, eff. June 3, 1989.

Section 231:10

231:10 Owner of Property; Notice. – Owners shall include tenants for life or years, remaindermen, reversioners, or holders of undischarged mortgages of record whose mortgages are dated not earlier than 20 years prior to date of filing such petition.

I. When the owner resides or lives within the state, notice shall be given to him in person or left at his abode or may be sent to him by certified mail.

II. When the owner does not reside or live within the state, notice may be given to the person, if any, who has the care or possession of the land or may be sent by registered mail to the owner's last known address.

III. If the owner is a person under guardianship or conservatorship notice shall be given to his guardian or conservator. If the owner is under any legal disability a guardian or conservator may be appointed.

IV. When the owner, or his residence, is unknown or uncertain, a copy of such notice, when posted in 2 public places in the city or town in which the land is situate, at least 30 days previous to hearing, shall be deemed sufficient notice to such owner.

Source. RS 49:3, 5, 6. RS 52:4. CS 52:3, 5, 6. GS 61:3-6. GL 67:3-6. PS 67:4-7. PL 74:4-7. RL 90:5-8. 1945, 188:1, part 5:3-7. RSA 234:3-7. 1955, 56:3. 1973, 174:1. 1981, 87:1. 1989, 28:2, eff. June 3, 1989.

Section 231:10-a

231:10-a Expenses Paid by Petitioner. – All expenses in connection with any title search and notice to abutters and landowners required under this subdivision shall be borne by the petitioner requesting the reopening of an existing highway which has been subject to gates and bars.

Source. 1987, 17:1, eff. June 2, 1987.

Section 231:11

231:11 Hearing. – At the time and place so appointed the selectmen shall make a personal examination of the several routes proposed, and of the highways for which such new highway is designed to be a substitute, shall hear all parties interested who may attend and any evidence they may offer, and may adjourn as they see cause.

Source. RS 49:7. CS 52:7. GS 61:7. GL 67:7. PS 67:8. PL 74:8. RL 90:9. 1945, 188:1, part 5:8. RSA 234:8. 1981, 87:1, eff. April 20, 1981.

Section 231:12

231:12 Layout. – They may lay out such highway over any ground they may deem most suitable, and alter any highway as they judge proper, without regard to intermediate limits or particular monuments described in the petition.

Source. RS 49:8. CS 52:8. GS 61:8. GL 67:8. PS 67:9. PL 74:9. RL 90:10. 1945, 188:1, part 5:9. RSA 234:9. 1981, 87:1, eff. April 20, 1981.

Section 231:13

231:13 Joint Action. – The selectmen of 2 adjoining towns, acting jointly and by a vote of the major part of each board, may lay out any new highway, or alter any existing highway within such towns, for the accommodation of the public in the same manner as selectmen are authorized to do in their respective towns; and they shall make return thereof as required in case of laying out by selectmen in their town, and cause the same to be recorded by the clerk of each of the towns.

Source. 1859, 2219:1. GS 61:17. GL 67:21. PS 67:20. PL 74:20. RL 90:21. 1945, 188:1, part 5:10. RSA 234:10. 1981, 87:1, eff. April 20, 1981.

Section 231:14

231:14 Apportionment of Cost. – The cost of such laying out or altering shall be apportioned between the towns by the selectmen acting as aforesaid; and their return shall not take effect until the apportionment is made.

Source. 1859, 2219:3. GS 61:19. GL 67:23. PS 67:21. PL 74:21. RL 90:22. 1945, 188:1, part 5:11. RSA 234:11. 1981, 87:1, eff. April 20, 1981.

Section 231:15

231:15 Assessment of Damages. – The selectmen shall assess the damages sustained by each owner of land or other property taken for such highway.

Source. RS 40:13. CS 52:16. GS 61:15. GL 67:19. PS 67:18. PL 74:18. RL 90:19. 1945, 188:1, part 5:12. RSA 234:12. 1981, 87:1, eff. April 20, 1981.

Section 231:16

231:16 Return. – They shall make a return of the highway or any alteration by them laid out, describing the same and the width thereof, and cause the same to be recorded by the town clerk.

Source. RS 49:12. CS 52:15. GS 61:14. GL 67:18. PS 67:17. PL 74:17. 1937, 97:1. RL 90:18. 1945, 188:1, part 5:13. RSA 234:13. 1971, 526:5. 1981, 87:1, eff. April 20, 1981.

Section 231:17

231:17 Payment or Tender of Damages. – No land or other property taken for a highway or alteration shall be appropriated or used for making the same until the damages assessed therefor are paid or tendered to the owner or his guardian or conservator.

Source. RS 52:1. CS 56:1. GS 64:4. GL 70:4. PS 71:4. PL 78:2. RL 94:2. 1945, 188:1, part 5:14. RSA 234:14. 1981, 87:1, eff. April 20, 1981.

Section 231:18

231:18 To Nonresident. – When the owner does not reside or live within the state, or the resident owner is temporarily residing outside of the state, damages may be paid or tendered to him in person or by check of the town sent by registered mail to his last known address.

Source. 1945, 188:1, part 5:15. 1949, 182:5. RSA 234:15. 1981, 87:1, eff. April 20, 1981.

Section 231:19

231:19 When Owner or Resident Unknown. – When the owner or person to whom damages are due is unknown or the identity of the person who may be entitled to damages or the amount thereof is uncertain, or his residence is unknown or uncertain, damages may be tendered to such owner or person by depositing with the town treasurer a sum of money equal to the damages assessed, and the town treasurer shall pay such sum without interest to such owner or person upon proof that he is the person entitled to such damages, and in case the town treasurer is not satisfied with the evidence that the claimant is the person entitled to such damages he may deposit the money for such damages with the clerk of the superior court for the county in which the land or property is situate, and the court, after due notice, shall determine whether such person is entitled to the damages. In the case of estates not settled or where doubt exists as to the person or persons entitled to damages, or the amount thereof, a deposit with the town treasurer shall be deemed a tender to the owner and the town treasurer shall notify the judge of probate for the county in which such real estate lies.

Source. 1945, 188:1, part 5:16. 1949, 182:6. RSA 234:16. 1981, 87:1, eff. April 20, 1981.

Section 231:20

231:20 In Case of Dispute. – Whenever dispute arises over title to land or other property acquired or over the person entitled to the damages awarded or purchase price, the selectmen may deposit the money for such damages or purchase price with the clerk of the superior court for the county in which such land or other property is situate together with a bill of interpleader in equity proceedings, and such deposit shall constitute sufficient tender. The court, after due notice to all claimants is given, shall determine the issues in dispute, and the clerk shall pay over the sum deposited to such persons as the court shall find are entitled thereto.

Source. 1945, 188:1, part 5:17. RSA 234:17. 1981, 87:1, eff. April 20, 1981.

Section 231:21

231:21 Gates and Bars. – Any highway may be laid out subject to gates and bars across the same. In such case it shall be determined, and the return of the selectmen shall state, by whom the gates and bars shall be maintained. Whenever the public good requires it they may be removed and further damages assessed, upon like proceedings as in the laying out of highways.

Source. 1848, 742:1. 1850, 957:1. CS 52:12, 13. GS 61:12. GL 67:14, 15. PS 67:15. PL 74:15. RL 90:16. 1945, 188:1, part 5:18. RSA 234:18. 1981, 87:1, eff. April 20, 1981.

Section 231:21-a

231:21-a Uniform Provisions Governing Class VI Highways. – All class VI highways, whether such class VI status resulted from a layout pursuant to RSA 231:21, a discontinuance subject to gates and bars pursuant to RSA 231:45, or by the failure of the town to maintain and repair such highway in suitable condition for travel thereon for 5 successive years or more as set forth in RSA 229:5, VII, shall be subject to the following provisions:

I. All such highways shall be deemed subject to gates and bars; provided, however, that any gates or bars maintained by private land owners shall be erected so as not to prevent or interfere with public use of the highway, and shall be capable of being opened and reclosed by highway users. The selectmen may regulate such structures to assure such public use, and may cause to be removed any gates or bars which fall into disrepair or otherwise interfere with public use of the highway.

II. Even though, as set forth in RSA 231:93, class VI highways are not subject to any municipal duty of care or maintenance, the municipality shall have the same regulatory authority over such highways as is the case with class V highways, including but not limited to the authority to regulate their use pursuant to RSA 41:11 and RSA 47:17, VII, VIII and XVIII, to regulate the excavation or disturbance of such highways pursuant to RSA 236:9 through 236:11, to regulate driveways and other access pursuant to RSA 236:13, and to establish weight limits pursuant to RSA 231:191.

Source. 1999, 113:1, eff. Aug. 9, 1999.

Section 231:22

231:22 Previously Discontinued Highway. – Notwithstanding any other provisions of this chapter to the contrary, any owner who has no access to his land by public highway may petition the selectmen to layout, subject to gates and bars, a highway located where any previously discontinued highway was located. Upon receipt of such a petition, the selectmen shall immediately post notice thereof in 2 public places in the town in which the land is situated and shall mail like notices to the owners of the land over which such highway may pass, postage prepaid, at their last known mail addresses. Unless written objection to such layout is filed with the selectmen within 60 days after the posting and mailing of such notice, the highway shall be laid out, subject to gates and bars, in the location in which it previously existed if the selectmen find that the petitioner in fact has no other access to his land by public highway. The selectmen shall assess the damages sustained by each owner of land or other property taken for such highway, which damages shall be paid by the petitioner. They shall take and cause to be recorded by the town clerk a return as required by RSA 231:16. The petitioner and all those

succeeding him in title shall be required to maintain the gates and bars and to maintain the highway so laid out at their own expense. In the event written objection to such layout is filed with the selectmen prior to the expiration of said 60-day period, the petition shall be deemed to be a petition filed for the layout of a new class IV, V or VI highway in accordance with RSA 231:8, and all the provisions of this chapter shall be applicable thereto.

Source. RSA 234:18-a. 1963, 274:1. 1981, 87:1, eff. April 20, 1981.

Section 231:22-a

231:22-a Reclassifying a Class VI Highway. –

I. A class VI highway or portion thereof may be reclassified by vote of the town as a class V highway, or as a class IV highway if located within the compact sections of cities and towns as set forth in RSA 229:5, IV and V.

II. The warrant article for such a reclassification may be inserted either by the selectmen pursuant to RSA 39:2, or by petition pursuant to RSA 39:3. The reclassification shall become effective upon a majority vote of the registered voters present and voting at any annual or special meeting, or at such later time as may be specified by vote of the meeting.

III. Any class VI highway may be made subject to reclassification under this section, regardless of whether such class VI status resulted from a layout pursuant to RSA 231:21, a discontinuance subject to gates and bars pursuant to RSA 231:45, or by the failure of the town to maintain and repair such highway in suitable condition for travel thereon for 5 successive years or more as set forth in RSA 229:5, VII.

IV. A town meeting vote to reclassify a class VI highway under this section may provide that the highway be conditionally reclassified upon compliance with betterment assessments, as provided in RSA 231:28-33, even if such condition was not stated as part of the warrant article. The public hearing required by RSA 231:28 shall be held within 90 days of such a vote, or within such longer period as the vote may specify. The owners of property abutting or served by the highway shall have the same rights and remedies as provided in RSA 231:28-33, including the right to submit, within 10 days following the public hearing, a petition not to conditionally reclassify the highway. The costs assessed against the owners by the selectmen shall not reflect construction standards any higher or more stringent than those reflected in the best town highway giving access to the highway or portion thereof being reclassified. However, this paragraph shall not be deemed to limit the authority of the planning board to impose more stringent construction standards as a condition of approving new development.

V. This section shall not be deemed to limit the authority of the selectmen to layout an existing class VI highway as a class IV or V highway upon petition pursuant to RSA 231:8. This section shall not affect the classification of any highway which has been reclassified by other means prior to June 18, 1990.

Source. 1990, 155:1, eff. June 18, 1990.

Section 231:23

231:23 Conditional Layout. – Whenever a highway will be of special advantage to any individual the selectmen may require him to bear such portion of land damages and expenses of constructing and maintaining it, and the gates and bars across it, if any, or any of the same, as they may deem just; and the highway may be laid out subject to such condition.

Source. 1850, 957:1. 1871, 20:1. GL 67:16; 78:4. PS 67:16. PL 74:16. RL 90:17. 1945, 188:1, part 5:19. RSA 234:19. 1981, 87:1, eff. April 20, 1981.

Section 231:24

231:24 Winter Roads. – The selectmen, upon petition, may, in any case where, in their judgment, the public good requires it, layout a public road exclusively for winter use, such public road to be open only from November 15 until April 1, and they shall assess the damages to the owners of land over which such road may

pass in the form of yearly rentals. Hearings shall be had upon 7 days' notice to landowners. In all other respects such laying out shall be subject to the provisions for laying out a class V highway.

Source. 1897, 88:1. PL 74:22. RL 90:23. 1945, 188:1, part 5:20. RSA 234:20. 1981, 87:1, eff. April 20, 1981.

Section 231:25

231:25 Towns on Connecticut River. – Any town in this state situated on the Connecticut river may, at any legal town meeting, authorize the selectmen of such town to unite with the selectmen or other proper officer of any contiguous town or towns in the state of Vermont, and contract with them for the purchase of any real estate, or the privilege, easement or franchise of any bridge, if in their opinion the public good requires a highway to be laid out over said property, or so near thereto as seriously to affect the value thereof.

Source. 1945, 188:1, part 5:21. RSA 234:21. 1981, 87:1, eff. April 20, 1981.

Section 231:26

231:26 Agreement as to Expenses. – The selectmen of such town may agree as to the proportion of expense to be borne by each town in such purchase, and in the construction and maintenance of a highway over said river, including a bridge and the piers, abutments and approaches thereto, and as to the proportion which each town shall contribute towards the payment of damages to third persons injured in the use of such highways, subject to the approval of the town; and any contract executed between the selectmen of such towns shall be legal and binding when approved by the towns directly interested therein, or if made under the authority of such towns.

Source. 1945, 188:1, part 5:22. RSA 234:22. 1981, 87:1, eff. April 20, 1981.

Section 231:27

231:27 Boundary Lines of Town Highways. – Selectmen may reestablish the boundary lines, limits and locations of any class IV, V or VI highway or any part thereof which shall have become lost, uncertain, or doubtful, and shall have the same powers and shall proceed in the same manner as the commissioner of transportation as provided in RSA 228:35.

Source. 1945, 188:1, part 5:23. 1950, 5:1, part 9:1, par. 2. RSA 234:23. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:28

231:28 Conditional Layout for Existing Private Rights-of-Way or Class VI Highways. – Whenever, pursuant to the provisions of this chapter, the selectmen receive a petition to lay out roads over existing private rights-of-way or to lay out a class V highway over an existing class VI highway and such private right-of-way or class VI highway does not conform to construction standards and requirements currently in effect in the town, the selectmen may conditionally lay out roads upon compliance with betterment assessments as provided in this section and in RSA 231:29-33. Prior to commencement of conditional layout, however, a public hearing shall be held, written notice of which shall be given by the appropriate governing board to all owners of property abutting or served by the private right-of-way or class VI highway, at least 14 days before the hearing, at which hearing details of the proposed construction, reconstruction or repairs, and the estimated costs thereof shall be presented by the selectmen. Conditional layout proceedings may commence 10 days following the public hearing unless within that period a petition not to conditionally lay out said thoroughfare signed by a majority of the owners of property abutting or served by the existing private right-of-way or class VI highway is received by the selectmen. If a highway is so laid out, the selectmen may construct, reconstruct, repair or cause to be constructed, reconstructed or repaired such highways, streets, roads, or traveled ways to conform in every way

with the highway or street construction standards and regulations previously established by the town. The betterment assessments shall be assessed under the provisions of RSA 231:29.

Source. RSA 234:23-a. 1979, 166:1. 1981, 87:1. 1989, 134:1, eff. July 16, 1989.

Section 231:29

231:29 Betterment Assessments Against Abutters and Those Served. – The cost of constructing, reconstructing or repairing such highways, streets, roads or traveled ways shall be assessed by the selectmen against the owners of property abutting or served by such facilities in an amount not exceeding the entire cost of constructing, reconstructing or repairing the same, and the amount so assessed upon each such owner shall be reasonable and proportional to the benefits accruing to the land served. Said assessments may be payable in one year or payment may be prorated over a period not to exceed 10 years, in the discretion of the appropriate governing board. All such assessments thus made shall be valid and binding upon the owners of land so abutting or served by these betterments.

Source. RSA 234:23-b. 1979, 166:1. 1981, 87:1, eff. April 20, 1981.

Section 231:30

231:30 Liens for Assessments. – All assessments made under the provisions of RSA 231:29 shall create a lien upon the lands on account of which they are made, which shall continue following the assessment until fully discharged in accordance with the terms set by each governing board or in compliance with any court judgment. Such assessments shall be subject to interest and such other charges as are applicable to the collection of delinquent taxes.

Source. RSA 234:23-c. 1979, 166:1. 1981, 87:1. 2001, 158:34, eff. July 5, 2001.

Section 231:31

231:31 Collection of Assessments. – Betterment assessments authorized under RSA 231:29 shall be committed to the collector of tax with a warrant under the hands and seal of the appropriate governing board requiring him to collect them; and he shall have the same rights, authority and remedies and be subject to the same liabilities in relation thereto as in the collection of taxes.

Source. RSA 234:23-d. 1979, 166:1. 1981, 87:1, eff. April 20, 1981.

Section 231:32

231:32 Abatement and Appeal of Betterment Assessments. –

I. Any person aggrieved by a betterment assessment made pursuant to RSA 231:29 may, within 2 months of the notice of tax date and not afterwards, apply in writing to the selectmen or assessors for an abatement of the betterment assessment.

II. Upon receipt of an application under paragraph I, the selectmen or assessors shall review the application and shall grant or deny the application in writing within 6 months after the notice of tax date.

III. (a) If the selectmen or assessors neglect or refuse to abate the betterment assessment, any person aggrieved may either:

- (1) Appeal in writing to the board of tax and land appeals, upon payment of a \$65 filing fee; or
- (2) Petition the superior court in the county where the property is located.

(b) The appeal to either the board of tax and land appeals or superior court shall be filed within 8 months of the notice of tax date and not afterwards.

IV. For purposes of this section, "notice of tax date" means the date the taxing jurisdiction mails the

betterment assessment tax bill.

V. Each betterment assessment tax bill shall require a separate abatement request and appeal.

Source. RSA 234:23-e. 1979, 166:1. 1981, 87:1. 2001, 158:35, eff. July 5, 2001.

Section 231:33

231:33 Repair and Maintenance. – After the betterments authorized by RSA 231:28 have been completed by a town, the highway agent or other duly authorized official under the direction of the selectmen shall have charge of all further repair and maintenance of such highways, streets, roads and traveled ways, and such highways shall be maintained, repaired and reconstructed by the town in which they are located without further assessment of the owners of property abutting or served by said facilities.

Source. RSA 234:23-f. 1979, 166:1. 1981, 87:1, eff. April 20, 1981.

Appeals and Layout by Superior Court

Section 231:34

231:34 Appeal. – Any person aggrieved by the decision of selectmen in the laying out or altering of a highway, or in the assessment of damages therefor, may appeal therefrom to the superior court for the county in which such land or other property is situate by petition within 60 days after the filing of the return with the town clerk for recording and not thereafter.

Source. RS 50:9. CS 53:9. 1862, 2621:1. GS 63:10. GL 69:10, 11. PS 68:2. 1879, 57:14, 17. PL 75:2. RL 91:2. 1945, 188:1, part 5:24. RSA 234:24. 1981, 87:1, eff. April 20, 1981.

Section 231:35

231:35 Deposit in Court. – Upon the filing of an appeal on the assessment of damages the selectmen may deposit with the clerk of the superior court in which the appeal is entered a sum of money equal to the damages assessed to the petitioner, and interest shall not accrue thereafter on such sum but shall only accrue on the amount of final judgment in excess thereof.

Source. 1945, 188:1, part 5:25. RSA 234:25. 1981, 87:1, eff. April 20, 1981.

Section 231:36

231:36 Payment by Court. – The clerk of the superior court shall pay over the sum deposited upon demand to the petitioner and the acceptance of such deposit by the petitioner shall not in any manner affect or prejudice his right of appeal or be admitted in evidence at the trial by jury on the issue of damages.

Source. 1945, 188:1, part 5:26. RSA 234:26. 1981, 87:1, eff. April 20, 1981.

Section 231:37

231:37 Judgment Against Petitioner. – If such sum paid to the petitioner shall exceed the amount of final judgment the court shall enter judgment against the petitioner for the amount paid to him in excess of the amount of final judgment.

Source. 1945, 188:1, part 5:27. RSA 234:27. 1981, 87:1, eff. April 20, 1981.

Section 231:38

231:38 Petition for Layout. – Petitions for laying out or altering class IV, V or VI highways may be filed in the office of the clerk of the superior court in the following cases:

- I. When selectmen have neglected or refused to lay out or alter the highway;
- II. When having been laid out by the selectmen, it is discontinued by the town within 2 years thereafter.

Source. RS 50:1. CS 53:1. GS 63:1. GL 67:22; 69:1. PS 68:1. PL 75:1. RL 91:1. 1945, 188:1, part 5:28. RSA 234:28. 1981, 87:1. 1982, 41:15, eff. May 28, 1982.

Section 231:39

231:39 Notice. – Whenever a petition for the laying out or altering of a highway, or appealing from the decision of selectmen, is filed in superior court the clerk shall issue a summons, with a copy of the petition, to be served by the date specified by the court on the summons, and the petitioners shall cause a certified copy of the same to be given to, or left at the places of abode of, one of the selectmen and the town clerk of each town through which such highway may pass, by the service date specified on the summons, and such other notice as the court shall order.

Source. RS 50:2. CS 53:2. GS 63:2. GL 69:2, 10. 1879, 57:14. PS 68:3. PL 75:3. RL 91:3. 1945, 188:1, part 5:29. RSA 234:29. 1981, 87:1, eff. April 20, 1981. 2014, 204:9, eff. July 11, 2014.

Laying Out Rights-of-Way for Removal of Lumber

Section 231:40

231:40 Petition. – Upon petition, when it becomes necessary for the convenient removal of lumber, wood or other material, to pass through the lands of a person other than the owner of the land from which such lumber, wood or other material is to be removed, the selectmen of the town within which said lands are situated, in their discretion, may lay out a right-of-way through the land of any person for the purposes aforesaid, and, upon notice to and hearing of the owner of the lands, shall determine the necessity for and assess the damages occasioned by the laying out of such right-of-way, and such damages shall be paid by the person applying for such right-of-way before the same shall be open for use. Any person aggrieved by the action hereunder of the selectmen shall have the same right of appeal as provided by this chapter.

Source. RSA 234-A:1. 1963, 274:2. 1981, 87:1, eff. April 20, 1981.

Section 231:41

231:41 Use and Discontinuance. – The selectmen may fix the length of time and conditions under which such right-of-way may be used and may order the same closed or discontinued when in their judgment it is necessary.

Source. RSA 234-A:2. 1963, 274:2. 1981, 87:1, eff. April 20, 1981.

Section 231:42

231:42 Notice and Hearing. – The selectmen shall appoint forthwith a time for examining the premises and hearing parties in interest, and give 12 days' notice thereof to one or more of the petitioners. They shall also give like notice to persons owning or having an interest in lands through which the right-of-way to be laid out, altered or discontinued may pass, and when a right-of-way is to be altered or discontinued, a like notice shall be given to persons owning or interested in land abutting such right-of-way, of such time and of the time when they will

consider claims for damage. They shall also cause a like notice to be published in a local newspaper generally circulating in the area not less than 10 days before the time set for the hearing.

Source. RSA 234-A:3. 1963, 274:2. 1981, 87:1, eff. April 20, 1981.

Discontinuance of Class IV, V and VI Highways

Section 231:43

231:43 Power to Discontinue. –

I. Any class IV, V or VI highway, or any portion thereof, in a town may be discontinued by vote of a town; provided, however, that:

(a) Any highway to public waters, or portion of such highway, laid out by a commission appointed by the governor and council, shall not be discontinued except with the consent of the governor and council.

(b) Any class V highway established to provide a property owner or property owners with highway access to their property because of a taking under RSA 230:14 shall not be discontinued except by written consent by such property owner or property owners.

II. The selectmen shall give written notice by verified mail, as defined in RSA 451-C:1, VII, to all owners of property abutting such highway, at least 14 days prior to the vote of the town. In the case of a petitioned warrant article calling for discontinuance of a class VI highway, the petitioners shall bear the cost of notice.

III. No owner of land shall, without the owner's written consent, be deprived of access over such highway, at such owner's own risk.

Source. RS 54:1. CS 58:1. GS 65:1. GL 71:1. PS 72:1. 1903, 14:1. 1925, 19:1. PL 79:1. 1931, 12:1; 121:1. RL 95:1. 1943, 68:1. 1945, 188:1, part 9:1. 1949, 13:1. RSA 238:1. 1981, 87:1. 1991, 36:1. 1995, 77:3, eff. June 8, 1995. 2014, 41:1, eff. July 26, 2014.

Section 231:44

231:44 Notice Required. – When any class IV, V or VI highway, which joins a highway in another town, has been discontinued by vote of the town, the selectmen of the town wherein the highway has been so discontinued shall notify the selectmen of said adjoining town, by registered mail, of the fact of said discontinuance. Said notification shall be made within 15 days after the action of discontinuance has been taken.

Source. RSA 238:1-a. 1955, 107:1. 1981, 87:1, eff. April 20, 1981.

Section 231:45

231:45 Subject to Gates and Bars. – Any class IV, V or VI highway, or any portion thereof, may be discontinued as an open highway and made subject to gates and bars, by vote of the town. Such a discontinued highway shall not have the status of a publicly approved street.

Source. RS 54:1. CS 58:1. GS 65:1. GL 71:1. PS 72:1. 1903, 14:1. 1925, 19:1. PL 79:1. 1931, 12:1. RL 95:1. 1945, 188:1, part 9:2. RSA 238:2. 1969, 332:1. 1981, 87:1, eff. April 20, 1981.

Section 231:45-a

231:45-a Discontinuance of Highways Subject to Legislative Body Approval. –

I. No class IV or V highway shall be discontinued or discontinued subject to gates and bars without the vote of the local legislative body as required by RSA 231:43 or RSA 231:45.

II. No vote or other action of the governing body shall be effective to reclassify a class IV or V highway as a class VI highway, except for the failure to maintain and repair that highway in suitable condition for travel thereon for 5 or more successive years as provided by RSA 229:5, VII.

III. Any municipality which neglects to maintain and repair a class IV or V highway, without the vote of the legislative body, shall be subject to proceedings under RSA 231:90 or RSA 231:82 at any time prior to the lapse of the 5-year period under RSA 229:5, VII.

Source. 1990, 97:1. 1991, 124:1, eff. July 19, 1991.

Section 231:46

231:46 Authority to Reserve Existing Utility Easements. – When any class IV, V or VI highway, or any portion thereof, has been discontinued, any existing sewer, drain, water pipe or other utility easements or any permits or licenses previously established pursuant to RSA 231:159-182 shall be presumed to be reserved and shall remain in effect as an encumbrance upon the underlying land for so long as they remain in active use, unless such easements, permits or licenses are expressly included in the vote to discontinue the highway, or are subsequently discontinued by vote of the city or town.

Source. RSA 238:2-a. 1977, 22:1. 1981, 87:1. 1992, 59:2, eff. June 12, 1992.

Section 231:47

231:47 Consent of Court. – Towns may not discontinue or discontinue as an open highway and make subject to gates and bars any highway concerning which proceedings are pending in court against the town for neglect or refusal to lay out, make or repair such highway, without the consent of the court.

Source. RS 54:2. CS 58:2. GS 65:2. GL 71:2. PS 72:2. PL 79:2. RL 95:2. 1945, 188:1, part 9:3. RSA 238:3. 1981, 87:1, eff. April 20, 1981.

Section 231:48

231:48 Appeal From Discontinuance; Damages. – Any person or other town aggrieved by the vote of a town to discontinue any highway, or discontinue any highway as an open highway and made subject to gates and bars, may appeal therefrom to the superior court for the county in which such highway is situate by petition within 6 months after the town has voted such discontinuance and not thereafter. Whenever any such petition is filed in the superior court the clerk shall issue a summons, with a copy of the petition, to be served by the date specified by the court on the summons, and the petitioner shall cause a certified copy of the same to be given to or left at the places of abode of one of the selectmen and the town clerk of each town in which the highway proposed to be discontinued is located, and give notice to the owners of land abutting on such highway in the same manner as required of selectmen in laying out highways, by the service date specified on the summons, and such other notice as the court shall order. Any person or town so notified may become a party to the proceedings by entering an appearance in such proceedings with the clerk of the superior court; and no person or town so notified shall after being so notified institute any additional appeal from the vote to discontinue such highway. Except as above provided, like proceedings shall be had on such petition as in the case of appeals in the laying out of class IV, V and VI highways, and if the county commissioners report for such discontinuance they shall assess the damages sustained by any person within the town in which the highway has been discontinued.

Source. GS 65:3. GL 71:3. PS 72:3. 1903, 14:2. PL 79:3. RL 95:3. 1945, 188:1, part 9:4. RSA 238:4. 1981, 87:1, eff. April 20, 1981. 2014, 204:10, eff. July 11, 2014.

Section 231:49

231:49 Petition for Assessment of Damages. – Any person who sustains damages by the discontinuance of a highway, or by the discontinuance as an open highway and made subject to gates and bars, by vote of the town, and from which no appeal has been taken, may petition for the assessment of damages to the superior court in

the county in which the highway is situate within 6 months after the town has voted such discontinuance, and not thereafter, and like proceedings shall be had as in the case of appeals in the laying out of class IV, V and VI highways.

Source. RS 54:3. CS 58:3. GS 65:4. GL 71:4. PS 72:4. 1903, 14:3. PL 79:4. RL 95:4. 1975, 188:1, part 9:5. RSA 238:5. 1981, 87:1, eff. April 20, 1981.

Section 231:50

231:50 Towns Not Liable After Discontinuance. – Towns shall be relieved of all obligation to maintain, and all liability for damages incurred in the use of, discontinued highways or highways discontinued as open highways and made subject to gates and bars.

Source. RS 54:1. CS 58:1. GS 65:1. GL 71:1. PS 72:1. 1903, 14:1. 1925, 19:1. PL 79:1. 1931, 12:1. RL 95:1. 1945, 188:1, part 9:6. RSA 238:6. 1981, 87:1, eff. April 20, 1981.

Section 231:51

231:51 Dedicated Ways. – Any street, lane or alley within this state which has been dedicated to public use by being drawn or shown upon a plan of lands platted by the owner, and the sale of lots in accordance with such plan, may be released and discharged from all public servitude by vote of the governing body of a city or town if such street, lane, or alley has not been opened, built, or used for public travel within 20 years from such dedication.

Source. 1913, 121:1. PL 79:5. RL 95:5. 1945, 188:1, part 9:7. RSA 238:7. 1981, 87:1. 1989, 131:1, eff. July 16, 1989.

Section 231:52

231:52 Release by Town. – The mayor and aldermen of a city or the selectmen of a town may release and discharge any way dedicated as aforesaid from all public servitude at any time after such dedication, upon petition by any interested party and notice and hearing thereon, whenever in their opinion such way will not be needed for the accommodation of public travel. All proceedings shall be conducted in the manner provided for the laying out of highways, and any interested party may appeal to the superior court from the decision, as in the case of petitions for laying out highways.

Source. 1913, 121:2. PL 79:6. RL 95:6. 1945, 188:1, part 9:8. RSA 238:8. 1981, 87:1, eff. April 20, 1981.

Special Limited Access Highways

Section 231:53

231:53 Limited Access Highways. – Notwithstanding any other provisions of law, selectmen of towns and mayors and aldermen of cities are hereby authorized to lay out limited access highways.

Source. RSA 236-A:1. 1961, 25:1. 1981, 87:1, eff. April 20, 1981.

Section 231:54

231:54 Definition. – A limited access highway as authorized by RSA 231:53 is defined as a highway especially designed for through traffic and over, from or to which owners or occupants of abutting land or other

persons have no right or easement or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts on such limited access highway or for any other reason.

Source. RSA 236-A:2. 1961, 25:1. 1981, 87:1, eff. April 20, 1981.

Section 231:55

231:55 Layout, Construction. – In laying out the limited access highways hereby authorized, the selectmen of towns and mayors and aldermen of cities shall have all the powers granted by RSA 230:45 to a commission authorized to lay out a limited access facility. Provided, however, that said limited access highways shall be laid out in accordance with the procedure outlined in RSA 231. The selectmen and mayors and aldermen are authorized to regulate, restrict or prohibit access to said highways as to best serve the traffic for which the highways are intended. Said highways or alterations thereof may be constructed with town, city, state or federal funds but shall be maintained as class IV or V highways.

Source. RSA 236-A:3. 1961, 25:1. 1981, 87:1, eff. April 20, 1981.

Section 231:56

231:56 Restrictions. – The provisions of RSA 230:47, 48, 52, 53 and 54 relative to exclusion of commercial enterprises, regulations and penalties, shall, insofar as may be consistent herewith, apply to the limited access highways hereby authorized.

Source. RSA 236-A:4. 1961, 25:1. 1981, 87:1, eff. April 20, 1981.

Repair of Highways by Towns

Section 231:57

231:57 Levy of Highway Taxes. – Each town shall, at each annual meeting, raise and appropriate for the repair of highways and bridges within such town a sum not less than 1/4 of one percent of the valuation of the ratable estate on which other taxes are assessed by the town; and in addition thereto may raise as much more as it may deem necessary; providing, that no town shall be required to raise under the provisions of this subdivision more than \$50 per mile for the repair of highways and bridges regularly maintained within the town.

Source. RS 55:1. CS 59:1. GS 66:1. GL 72:1. PS 73:1. 1893, 29:2. 1899, 29:2. PL 80:1. RL 96:1. 1945, 188:1, part 16:1. RSA 245:1. 1981, 87:1, eff. April 20, 1981.

Section 231:58

231:58 Collection. – All appropriations for the repair of highways in towns shall be committed to the collector of taxes and be collected as other taxes.

Source. RS 55:12. CS 59:13. GS 66:22. GL 72:22. PS 73:5. 1893, 29:2. 1899, 97:1. PL 80:2. RL 96:2. 1945, 188:1, part 16:2. RSA 245:2. 1981, 87:1, eff. April 20, 1981.

Section 231:59

231:59 Expenditure. – The money so raised and collected shall be expended in repairing class IV and class V highways by the agents elected or appointed for the purpose, under the direction of the selectmen.

Source. RS 55:12. CS 59:13. GS 66:22. GL 72:22. PS 73:6. 1899, 29:3. PL 80:3. RL 96:3. 1945, 188:1, part 16:3. RSA 245:3. 1981, 87:1, eff. April 20, 1981.

Section 231:59-a

231:59-a Emergency Lanes. –

I. Notwithstanding RSA 231:59 or any other provision of law, a town may raise and appropriate, and the selectmen may expend, money for the repair of any class VI highway or private way which has been declared an emergency lane under paragraph II. Such repair may include removal of brush, repair of washouts or culverts, or any other work deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles. A capital reserve fund under RSA 35 or a trust fund under RSA 31:19-a may be established for this purpose.

II. No expenditures shall be made under paragraph I unless the selectmen, following a public hearing, declare the relevant class VI highway, private way, or portion thereof, as an emergency lane, and make written findings, recorded in the minutes of the meeting, that the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits to landowners abutting such lane.

III. In the case of a private way, notice shall be mailed to all persons known to have a legal interest in the way, 10 days prior to the hearing, and the emergency lane shall not be declared if permission is denied by any person with a legal right to deny such permission. Neither the appearance nor non-appearance of such persons at the hearing shall prevent such permission from later being denied or withdrawn.

IV. A declaration under this section may be rescinded or disregarded at any time without notice. This section shall not be construed to create any duty or liability on the part of any municipality toward any person or property. Utilization of this section shall be at the sole and unfettered discretion of a town and its officials, and no landowner or any other person shall be entitled to damages by virtue of the creation of emergency lanes, or the failure to create them, or the maintenance of them, or the failure to maintain them, and no person shall be deemed to have any right to rely on such maintenance. This section shall not be deemed to alter the classification or legal status of any highway or private way, or to limit or restrict the authority of towns to regulate the use of class VI highways pursuant to such statutes as RSA 41:11, RSA 236:9--13, and RSA 674:41, or to authorize any person to pass over any private way when permission has been denied. This section shall not be deemed to alter the duties or powers of any party under RSA 227-L concerning forest fires.

Source. 1994, 80:1. 1995, 299:12, eff. Jan. 1, 1996.

Section 231:60

231:60 Insufficiency of Taxes. – If the highway taxes in any town are insufficient for the suitable repair of highways and bridges therein the selectmen may cause them to be put in repair at the expense of the town.

Source. RS 55:11. CS 59:11. GS 66:15. GL 72:15. PS 73:19. 1899, 29:9. PL 80:24. RL 96:24. 1945, 188:1, part 16:4. RSA 245:4. 1981, 87:1, eff. April 20, 1981.

Section 231:61

231:61 Repair by Contract. – Towns may, by vote or bylaw, authorize their selectmen to contract for keeping their highways and bridges, or any part thereof, in repair for a term not exceeding 5 years.

Source. 1858, 2110. GS 66:25. GL 72:25. PS 73:7. PL 80:7. RL 96:7. 1945, 188:1, part 16:5. RSA 245:5. 1981, 87:1, eff. April 20, 1981.

Section 231:62

231:62 Highway Agents. – Unless the town votes to establish a board of public works commissioners under RSA 38-C to perform the duties of highway agents, at the annual meeting, or less often if a town has so provided pursuant to RSA 231:62-a or 231:62-b, each town shall elect by ballot, or by major vote authorize the selectmen to appoint, one or more highway agents, who, under the direction of the selectmen, shall have charge of the construction, maintenance, and repair of all town highways and bridges and the maintenance and repair of all sidewalks within the town, except as provided in the laws pertaining to state aid for highways and bridges and town road and bridge aid, and shall have authority to employ the necessary men and equipment, and purchase timber, planks, and other material for construction and repair of such highways and bridges; and they may remove gravel, rocks, or other materials from one part of the town to another, doing no damage to adjoining land, for the purpose of grading or otherwise repairing the same. A vote authorizing appointment of highway agents shall continue in effect until changed by major vote at an annual or special meeting.

Source. 1893, 29:3. 1895, 111:1. 1913, 14:1. 1915, 171:1. 1917, 49:1. 1923, 3:1. PL 80:9, 16. 1929, 126:1. 1931, 95:1. RL 96:9, 16. 1945, 188:1, part 16:6. RSA 245:6. 1981, 87:1. 1983, 164:1. 1996, 197:3, eff. Aug. 2, 1996.

Section 231:62-a

231:62-a Terms of 2 or 3 Years. –

I. At any annual town meeting under an article in the warrant placed there by petition or by the selectmen, the voters may vote, by ballot, to determine if they are in favor of having a 2 or 3-year term for each town highway agent. If a majority of those voting on the question vote in favor of a longer term, at the next annual meeting after the vote of approval, the town shall choose, by ballot, or the selectmen shall appoint, one or more town agents for the designated term of years.

II. After a 2 or 3-year term for town highway agent has been established, at any annual town meeting held the year before the end of the 2 or 3-year term, under an article in the warrant placed there by petition or by the selectmen, the voters may vote, by ballot, to determine if they are in favor of continuing to have a 2 or 3-year term for each town highway agent. The voters may choose to return to a one-year term as provided in RSA 231:62 or to increase the term from 2 years to 3 years as provided in paragraph I or to reduce the term from 3 years to 2 years as provided in paragraph I.

Source. 1983, 164:2, eff. June 10, 1983.

Section 231:62-b

231:62-b Large Towns. –

I. At any annual town meeting under an article in the warrant placed there by petition or by the selectmen, the voters may vote to determine if they are in favor of having a 2 or 3-year term for each highway agent. If the town has adopted an official ballot, the clerk shall cause the following question to be printed on said ballot: "Are you in favor of increasing the term of a town highway agent from one (2) year(s) to 2 (3) years, beginning with the term of each town highway agent who shall be elected at next year's regular town meeting or appointed by the selectmen elected at said meeting?" Said question shall be printed in the form prescribed by RSA 656:13. If the town has not adopted an official ballot, the clerk shall cause the same question to be printed upon special ballots which shall be used to determine the vote of the town. If a majority of those voting on the question vote in favor of a 2 or 3-year term at the next annual meeting after the vote of approval, the town shall elect or provide for the appointment of one or more highway agents for the longer term.

II. After a 2 or 3-year term for town highway agent has been established, at any annual town meeting held the year before the end of the 2 or 3-year term, under an article in the warrant placed there by petition or by the selectmen, the voters may vote to determine if they are in favor of continuing to have the longer term for each town highway agent. If the town has adopted an official ballot, the clerk shall cause the following question to be printed on said ballot: "Are you in favor of reducing the term of a town highway agent from 2 (3) years to 1 (2) year(s), beginning with the term of each town highway agent who shall be elected at next year's regular town meeting or appointed by the selectmen elected at said meeting?" Said question shall be printed in the form prescribed by RSA 656:13. If the town has not adopted an official ballot, the clerk shall cause the same question to be printed upon special ballots which shall be used to determine the vote of the town. If a majority of those

voting on the question do not vote in favor of continuing the longer term, at the next annual town meeting, the voters shall elect or provide for the appointment of one or more highway agents under RSA 231:62 for shorter terms.

III. The provisions of this section shall apply to any town having a population of 4,500 inhabitants or over.

Source. 1983, 164:2, eff. June 10, 1983.

Section 231:63

231:63 Additional Duties. – Any town may vote to require a highway agent, in addition to his usual duties as highway agent, to have charge, under the direction of the selectmen, of the care and maintenance of any one or more of the following: collection of waste, refuse and garbage; care of public dumps; care of public parks and cemeteries; public beaches; public forests; public playgrounds; shade and ornamental trees.

Source. 1953, 161:1. RSA 245:7. 1981, 87:1, eff. April 20, 1981.

Section 231:64

231:64 Expert Agent. – The town may vote at the annual meeting to instruct its selectmen to appoint an expert highway agent, who, under the direction of the selectmen, shall have the same power and perform the same duties as a highway agent elected by the town.

Source. 1913, 14:1. 1915, 171:1. PL 80:10. RL 96:10. 1945, 188:1, part 16:7. RSA 245:8. 1981, 87:1, eff. April 20, 1981.

Section 231:65

231:65 Oath; Bond; Supervision. – Highway agents and expert highway agents shall be sworn to the faithful discharge of their duty, give bonds to the satisfaction of the selectmen for the faithful performance of the duties of the office, and be responsible to them for the expenditure of money and the discharge of their duties generally. The selectmen may supervise the methods and manner of performance of such agents. If any highway agent shall intentionally or deliberately refuse or neglect to comply with lawful instructions of the selectmen, or shall intentionally or deliberately refuse or neglect to carry out the duties prescribed by law for highway agents after written request by the selectmen, the selectmen may remove such agent from office. The selectmen shall file a copy of any such order of removal, under their hands, with the town clerk.

Source. 1893, 29:3. 1913, 14:1. 1915, 171:1. PL 80:11. RL 96:11. 1945, 188:1, part 16:8. 1947, 170:1. RSA 245:9. 1981, 87:1, eff. April 20, 1981.

Section 231:66

231:66 Compensation; Statements. – The compensation of such agents shall be fixed by the town or selectmen, and they shall render to the selectmen weekly statements of their expenditures, and shall receive money from the treasurer only on the order of the selectmen.

Source. 1893, 29:3. 1913, 14:1. 1915, 171:1. 1917, 49:1. PL 80:12. RL 96:12. 1945, 188:1, part 16:9. RSA 245:10. 1981, 87:1, eff. April 20, 1981.

Section 231:67

231:67 Temporary Absence. – In the event of a temporary absence or disability in the office of highway agent, the selectmen may appoint some competent person for the period of such disability or absence.

Source. 1893, 29:5. PL 80:13. RL 96:13. 1945, 188:1, part 16:10. RSA 245:11. 1979, 410:13. 1981, 87:1, eff. April 20, 1981.

Section 231:68

231:68 Accounts. – Highway agents shall keep accurate accounts, showing in detail all moneys received by them, from whom and when received and all moneys paid out by them, to whom and for what purpose. They shall settle their accounts before January 1 annually, and the same shall be printed in the annual town report in detail.

Source. 1893, 29:6; 70:1. PL 80:14. RL 96:14. 1945, 188:1, part 16:11. RSA 245:12. 1981, 87:1, eff. April 20, 1981.

Section 231:69

231:69 Gravel May Be Taken. – When there shall be occasion for soil, gravel or hardpan to repair the highways maintained by any town, and the same cannot be obtained by agreement with the owner thereof, a lot not exceeding 1/2 an acre may be taken by the selectmen, upon petition for that purpose, for the use of the town, in the same way and manner and with the same right of appeal to the landowner as in the case of land taken by selectmen for a highway.

Source. GS 66:18. GL 72:18. PS 73:22. PL 80:27. RL 96:27. 1945, 188:1, part 16:13. RSA 245:14. 1981, 87:1, eff. April 20, 1981.

Section 231:70

231:70 Obstruction During Repairs. – In repairing highways no uncovered trench or ditch shall be made by the side of the traveled part thereof, next and opposite to a dwelling house, yard or private way leading into any field, land, or inclosure on the highway unless a way is provided over and across such trench or ditch; nor shall the highway be repaired in any other manner to obstruct the passage to such house, yard, or private way unless a way is provided over and across such obstruction.

Source. RS 55:15. CS 59:16. GS 66:19. GL 72:19. PS 73:23. PL 80:28. 1927, 78:1. RL 96:28. 1945, 188:1, part 16:14. RSA 245:15. 1981, 87:1, eff. April 20, 1981.

Section 231:71

231:71 Village Districts. – All village districts, and chartered highway districts, shall remain unimpaired, to the extent that they may raise additional sums to be expended solely on the highways within the district in the manner prescribed by the act creating them.

Source. 1893, 41:1. PL 80:17. RL 96:17. 1945, 188:1, part 16:15. RSA 245:16. 1981, 87:1, eff. April 20, 1981.

Section 231:72

231:72 Contribution by County to Repairs. – The superior court, on petition and notice to the county commissioners, may order any part of the expense of repairing a highway to be paid by the county, when the whole would be burdensome to the town, or when the county convention has recommended such order.

Source. RS 55:18. CS 59:19. GS 66:2. GL 72:2. PS 73:2. PL 80:4. RL 96:4. 1945, 188:1, part 16:16. RSA 245:17. 1981, 87:1, eff. April 20, 1981.

Section 231:73

231:73 Procedure. – The court may order such part of the expense to be paid to the town, or cause the highway to be put in repair in such manner as it thinks proper, and draw its order for such part upon the county treasurer.

Source. RS 55:19. CS 59:20. GS 66:3. GL 72:3. PS 73:3. PL 80:5. RL 96:5. 1945, 188:1, part 16:17. RSA 245:18. 1981, 87:1, eff. April 20, 1981.

Section 231:74

231:74 Contribution by Another Town. – When the expense of rebuilding or repairing a highway would be excessively burdensome to the town in which it is situate, and another town is greatly benefited by the highway, the superior court, upon petition and proceedings thereon as in the case of laying out a highway, may order a portion of the expense to be paid by such other town.

Source. GS 66:4. GL 72:4. PS 73:4. PL 80:6. RL 96:6. 1945, 188:1, part 16:18. RSA 245:19. 1981, 87:1, eff. April 20, 1981.

Section 231:75

231:75 Damages From Grade or Drainage Change; Assessment by Selectmen. – If in repairing a highway by the authority of the town the grade is raised or lowered, or a ditch made at the side thereof, or a new culvert, ditch, or other drainage structure is installed, or alterations are made to any existing culvert, ditch, or drainage structure, whereby damage is occasioned to any estate adjoining or not adjoining said highway, the determination of the amount of damages, if any, due to an aggrieved owner shall be determined as follows:

I. The selectmen or their designee shall, at least 30 days prior to commencement of the work, give notice by certified mail, in the manner set forth in RSA 231:9, to adjoining landowners and any other owners whose land might reasonably be anticipated to be affected, describing the work to be performed, and setting forth a place and time, at least 15 days after the mailing of said notice, but prior to the commencement of the work, at which said owners may be heard by the selectmen; provided however that:

(a) No such notice shall be required in cases where none of the work is proposed to be done outside the limits of the highway right-of-way, and such work consists solely of (i) maintenance grading, or the cleaning or repairing of existing ditches, or (ii) the repairing or replacing of existing culverts or drainage structures without altering their size, depth, or positioning.

(b) In the event of an emergency rendering the highway "insufficient" as defined in RSA 231:90, II, and where exigent repair is deemed imperative by the selectmen, the time limits set forth above need not be strictly observed; however such notice and opportunity for hearing shall be given to the greatest extent which is reasonable and practical under the circumstances, and the selectmen's minutes shall describe the nature of the emergency and the need for exigent repair.

II. The selectmen shall hear any owner desiring to be heard, either at a hearing noticed under paragraph I, or otherwise within 30 days after receiving a hearing request from an aggrieved owner. If an aggrieved owner applies for damages, the selectmen shall view the premises and assess the damages, if any, within 30 days of said hearing or within 30 days after the completion of the work, whichever is later, and shall file a record of their proceedings in the office of the town clerk. In assessing damages, any benefit which the landowner may receive by such repairs may be set off against the owner's claim. A hearing request made under this paragraph shall be made within 6 months following the completion of the work, and not afterward.

III. So long as the procedures set forth in paragraphs I and II are followed, the pendency of proceedings under this section shall not be deemed to require any delay in, or modification of, the proposed work, unless so ordered by the selectmen or by a restraining order issued by the superior court.

Source. 1848, 725:1, 2. CS 52:18, 19. GS 66:20. 1869, 6:1. GL 72:20. PS 73:24. PL 80:32. RL 96:32. 1945, 188:1, part 16:19. RSA 245:20. 1981, 87:1, eff. April 20, 1981. 2013, 16:2, eff. July 8, 2013.

Section 231:76

231:76 Petition to Court; Remedy Exclusive. –

I. If an owner is aggrieved by a decision of the selectmen under RSA 231:75, such owner may appeal to the superior court in accordance with the appeals of highway layout decisions, as set forth in RSA 231:34.

II. The question of the public need for the change of grade or drainage, and the reasonableness of the methods chosen shall be reviewed by the court only for an abuse of discretion, and there shall be no right to a jury trial on that question. The amount of damages, if any, shall be determined by jury, or by trial without jury if jury trial is waived.

III. So long as the notice provisions in RSA 231:75 have been followed, the remedy provided in this subdivision shall be the exclusive remedy to a landowner aggrieved by a change in grade or drainage made by a town in the repair of a town highway. This subdivision shall be deemed an exception to the otherwise-applicable limits on municipal liability arising from repair of public highways, as set forth in RSA 231:92.

Source. 1848, 725:3. CS 52:20. GS 66:21. GL 72:21. PS 73:25. PL 80:33. RL 96:33. 1945, 188:1, part 16:20. RSA 245:21. 1981, 87:1, eff. April 20, 1981. 2013, 16:3, eff. July 8, 2013.

Section 231:77

231:77 Land Not Adjoining Highway. – [Repealed 2013, 16:4, eff. July 8, 2013.]

Section 231:78

231:78 Payment of Damages and Basis of Liability Defined. – Damages assessed for change of grade under the provisions of this subdivision shall be paid by the town in which the change of grade is made; provided, however, that no highway shall be deemed to have been repaired by the authority of the town unless the town participated directly in the repair of the said highway other than financially, or unless the town in some manner exercised control over the manner in which the highway construction or maintenance was performed, or unless town employees, as defined in RSA 235:38, were employed in the said construction or maintenance work involved in the repair or construction of said highway.

Source. 1945, 188:1, part 16:22. RSA 245:23. 1955, 167:1. 1981, 87:1, eff. April 20, 1981.

Section 231:79

231:79 Highways to Summer Cottages; Exemption. – Towns shall be exempt from keeping open and repairing highways to summer cottages from December 10 to April 10.

Source. 1893, 4:1. PL 80:34. RL 96:34. 1945, 188:1, part 16:23. RSA 245:24. 1981, 87:1, eff. April 20, 1981.

Section 231:80

231:80 Notice. – The selectmen shall seasonably post or cause to be posted at the entrances of such highways notices of the closing and opening thereof.

Source. 1893, 4:2. PL 80:35. RL 96:35. 1945, 188:1, part 16:24. RSA 245:25. 1981, 87:1, eff. April 20, 1981.

Section 231:81

231:81 Keeping Open Highways to Summer Cottages. –

I. For the purposes of RSA 231:79-81, a highway to summer cottages may be designated:

(a) By the selectmen, upon petition, pursuant to RSA 231:8-12, to lay out a new highway or alter an existing highway; or

(b) By a majority vote of the town to designate an existing class V highway as a highway to summer cottages.

II. A highway which has been designated a highway to summer cottages may be opened, maintained and repaired the entire year:

(a) By the selectmen, upon petition, pursuant to the procedures of RSA 231:8-12; or

(b) By majority vote of the town.

III. The designation of a highway to summer cottages shall not be deemed altered by any change of use of land served by said highway, in the absence of action pursuant to paragraph II.

Source. 1893, 4:3. PL 80:36. RL 96:36. 1945, 188:1, part 16:25. RSA 245:26. 1981, 87:1. 1989, 299:1, eff. July 28, 1989.

Neglect of Highways

Section 231:82-89

231:82 to 231:89 Repealed. – [Repealed 1991, 385:10, I, eff. Jan. 1, 1992.]

Liability of Municipalities

Section 231:90

231:90 Duty of Town After Notice of Insufficiency. –

I. Whenever any class IV or class V highway or bridge or sidewalk thereon in any municipality shall be insufficient, any person may give written notice of such insufficiency to one of the selectmen or highway agents of the town, or the mayor or street commissioners of the city, and a copy of said notice to the town or city clerk. The notice shall be signed and shall set forth in general terms of the location of such highway, bridge, or sidewalk and the nature of such insufficiency.

II. For purposes of this subdivision, a highway or sidewalk shall be considered "insufficient" only if:

(a) It is not passable in any safe manner by those persons or vehicles permitted on such sidewalk or highway by state law or by any more stringent local ordinance or regulation; or

(b) There exists a safety hazard which is not reasonably discoverable or reasonably avoidable by a person who is traveling upon such highway at posted speeds or upon such sidewalk, in obedience to all posted regulations, and in a manner which is reasonable and prudent as determined by the condition and state or repair of the highway or sidewalk, including any warning signs, and prevailing visibility and weather conditions.

III. A highway or sidewalk shall not, in the absence of impassability or hidden hazard as set forth in paragraph II, be considered "insufficient" merely by reason of the municipality's failure to construct, maintain or repair it to the same standard as some other highway or sidewalk, or to a level of service commensurate with its current level of public use.

Source. 1893, 59:2, PL 82:8. RL 98:8. 1945, 188:1, part 18:9. RSA 247:9. 1981, 87:1. 1991, 385:3, eff. Jan. 1, 1992.

Section 231:91

231:91 Municipality to Act; Liability. –

I. Upon receipt of such notice of insufficiency, and unless the highway agents or street commissioners determine in good faith that no such insufficiency exists, the municipality shall immediately cause proper danger signals to be placed to warn persons by day or night of such insufficiency, and shall, within 72 hours thereafter, develop a plan for repairing such highway, bridge, or sidewalk and shall implement such plan in good faith and with reasonable dispatch until the highway, bridge, or sidewalk is no longer insufficient, as defined by RSA 231:90, II.

II. If the municipality fails to act as set forth in paragraph I, it shall be liable in damages for all personal injury

or property damage proximately caused by the insufficiency identified in the notice, subject to the liability limits under RSA 507-B:4.

Source. 1893, 59:2, PL 82:9. RL 98:9. 1945, 188:1, part 18:10. RSA 247:10. 1981, 87:1. 1991, 385:4, eff. Jan. 1, 1992.

Section 231:92

231:92 Liability of Municipalities; Standard of Care. –

I. A municipality shall not be held liable for damages in an action to recover for personal injury or property damage arising out of its construction, maintenance, or repair of public highways and sidewalks constructed thereupon unless such injury or damage was caused by an insufficiency, as defined by RSA 231:90, and:

(a) The municipality received a written notice of such insufficiency as set forth in RSA 231:90, but failed to act as provided by RSA 231:91; or

(b) The selectmen, mayor or other chief executive official of the municipality, the town or city clerk, any on-duty police or fire personnel, or municipal officers responsible for maintenance and repair of highways, bridges, or sidewalks thereon had actual notice or knowledge of such insufficiency, by means other than written notice pursuant to RSA 231:90, and were grossly negligent or exercised bad faith in responding or failing to respond to such actual knowledge; or

(c) The condition constituting the insufficiency was created by an intentional act of a municipal officer or employee acting in the scope of his official duty while in the course of his employment, acting with gross negligence, or with reckless disregard of the hazard.

II. Any action to recover damages for bodily injury, personal injury or property damage arising out of municipal construction, repair or maintenance of its public highways or sidewalks constructed on such highways shall be dismissed unless the complaint describes with particularity the means by which the municipality received actual notice of the alleged insufficiency, or the intentional act which created the alleged insufficiency.

III. The acceptance or layout of a private road as a public highway shall not be construed to confer upon the municipality any notice of, or liability for, insufficiencies or defects which arose or were created prior to such layout or acceptance.

IV. The setting of construction, repair, or maintenance standards or levels of service for highways and sidewalks by municipal officials with responsibility therefor, whether accomplished formally or informally, shall be deemed a discretionary, policy function for which the municipality shall not be held liable in the absence of malice or bad faith.

Source. RS 57:1. CS 61:1, 7. GS 69:1, 2. GL 75:1, 2. PS 76:1. 1893, 59:1. 1915, 48:1. 1921, 107:1. 1925, 52:2, 4. PL 89:1. 1935, 118:1. RL 105:1. 1945, 188:1, part 18:17. RSA 247:17. 1981, 87:1. 1991, 385:5, eff. Jan. 1, 1992.

Section 231:92-a

231:92-a Snow, Ice and Other Weather Hazards. – Notwithstanding RSA 231:90-92, a municipality or school district shall not be held liable for damages arising from insufficiencies or hazards on public highways, bridges, or sidewalks, even if it has actual notice or knowledge of them, when such hazards are caused solely by snow, ice, or other inclement weather, and the municipality's or school district's failure or delay in removing or mitigating such hazards is the result of its implementation, absent gross negligence or reckless disregard of the hazard, of a winter or inclement weather maintenance policy or set of priorities adopted in good faith by the officials responsible for such policy; and all municipal or school district employees and officials shall be presumed to be acting pursuant to such a policy or set of priorities, in the absence of proof to the contrary.

Source. 1991, 385:6. 1998, 249:2, eff. Jan. 1, 1999.

Section 231:93

231:93 When Municipalities Not Liable. – Municipalities shall not be deemed to have any duty of care whatsoever with respect to the construction, maintenance or repair of class I, III, III-a or VI highways, or state maintained portions of class II highways. Upon any highway or other way with respect to which a municipality is found to have a duty of care of any kind, its liability shall be limited as set forth in this subdivision.

Source. RS 105:4. 1945, 188:1, part 18:18. RSA 247:18. 1981, 87:1. 1991, 385:7. 1992, 265:14, eff. July 1, 1992.

Section 231:94

231:94 Sufficiency of Warning. – Sufficient warning of dangerous embankments shall be held to have been given whenever the railing, post, or other warning signs or structures conform to the standards prescribed by the commissioner of transportation and have been approved by him in the manner hereinafter provided.

Source. 1925, 52:2. PL 89:2. 1935, 118:2. RL 105:2. 1945, 188:1, part 18:19. RSA 247:19. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:95

231:95 Approval of Railings. – The department of transportation shall examine all railings, posts, or other warning signs or structures erected by a town upon any highway, upon the written request of such town, and if the same are approved as standard, a record of such request, of the examination and approval, and of the locations shall be made and kept in the office of the department. A copy of such records shall be filed forthwith in the office of the town clerk. When certified by the commissioner of transportation, a copy shall be received by all courts as evidence of the sufficiency of such railings, posts, or other warning signs or structures for a period of 3 years after such record has been made.

Source. 1925, 52:3. PL 89:3. 1935, 118:3. RL 105:3. 1945, 188:1, part 18:20. 1950, 5:1, part 9:1, par. 2. RSA 247:20. 1981, 87:1. 1985, 402:6, I(a)(3), (b)(3).

Section 231:96-104

231:96 to 231:104 Repealed. – [Repealed 1991, 385:10, II, eff. Jan. 1, 1992.]

Section 231:105

231:105 Liability of 2 or More Towns. – If 2 or more towns are chargeable with the expense of repairing and maintaining a highway they shall be liable for such damages and all costs and expenses of suits for the recovery thereof, in the proportion in which they are required to contribute towards its repair and maintenance; and the claimant may begin and prosecute proceedings for the recovery of such damages against all the towns jointly, or against the town in which the highway is situated.

Source. 1883, 49:1. PS 76:11. PL 89:13. RL 105:13. 1945, 188:1, part 18:29. RSA 247:29. 1981, 87:1, eff. April 20, 1981.

Section 231:106

231:106 Notice; Appearance. – In case the proceedings are begun against the town in which the highway is situated only, the selectmen thereof shall cause true copies of all statements, petitions, writs and other papers served upon them or their town to be given to, or left at the usual place of abode of, one of the selectmen and the clerk of each of the other towns liable to contribute as aforesaid, within 10 days after such service; and such other towns may appear and be heard in all the proceedings as if they were parties to the record, and the record may be amended so as to include them.

Source. 1883, 49:3, 4. PS 76:12. PL 89:14. RL 105:14. 1945, 188:1, part 18:30. RSA 247:30. 1981, 87:1, eff. April 20, 1981.

Section 231:107

231:107 Settlement by One Town. – Any such town may settle with the claimant its proportion of the damages claimed; and the settlement shall be a full discharge of its proportional share of the damages and costs as against both it and the other towns; but the same shall not affect the claimant's rights against the other towns or either of them, or be put in evidence in any suit commenced by him against them, except in proceedings relating to the adjustment of contributions between the towns, when final judgment is to be entered up.

Source. 1883, 49:3. PS 76:13. PL 89:15. RL 105:15. 1945, 188:1, part 18:31. RSA 247:31. 1981, 87:1, eff. April 20, 1981.

Section 231:108

231:108 Apportionment. – Whenever final judgment is to be entered up in any such action the court, upon notice to all the towns interested, shall determine the amount to be paid by each to either of the others to adjust all matters of damage, cost and expense according to the provisions of the preceding sections, and make orders and issue executions accordingly.

Source. 1883, 49:5. PS 76:14. PL 89:16. RL 105:16. 1945, 188:1, part 18:32. RSA 247:32. 1981, 87:1, eff. April 20, 1981.

Section 231:109

231:109 Liability of Persons for Damages on Bridges, Culverts, and Embankments. – Any person or corporation, except municipal corporations, through whose negligence or carelessness any obstruction, defect, insufficiency, or want of repair is caused upon any highway, shall be liable to any person injured by reason thereof, and the damages may be recovered in an action on the case; provided that this subdivision shall not enlarge the common law liability of public officers.

Source. 1945, 188:1, part 18:33. RSA 247:33. 1981, 87:1, eff. April 20, 1981.

Section 231:110

231:110 Venue. – All actions for damages brought under the provisions of this subdivision shall be brought in the superior court of the county where the injuries were received.

Source. 1878, 35:4. GL 75:14. PS 76:16. PL 89:18. RL 105:18. 1945, 188:1, part 18:34. RSA 247:34. 1981, 87:1, eff. April 20, 1981.

Sidewalks

Section 231:111

231:111 Construction of Sidewalks. – The mayor and aldermen of any city, upon petition, may construct sidewalks therein, with or without edgestones, and covered with any appropriate material, and for that purpose may widen and straighten any highway as in other cases, except that the notice of proceedings shall state that the construction of a sidewalk is contemplated.

Source. 1875, 36:1. GL 78:1. PS 79:1. PL 95:1. RL 111:1. 1945, 188:1, part 22:1. RSA 252:1. 1981, 87:1, eff. April 20, 1981.

Section 231:112

231:112 Assessing Abutters. – In constructing such sidewalks such board may assess upon the owners of the property abutting on such street a portion not exceeding 1/2 of the expense of constructing the same, and the amount so assessed upon each of such owners shall be reasonable, and proportional to the benefits accruing to the land upon which such assessment is laid; said assessments may be payable in one year or prorated over a period not to exceed 10 years, in the discretion of the board; and all assessments thus made shall be valid and binding upon the owners of such land, and shall be a lien thereon for one year after the same are made and notice given to the persons assessed, and said lands may be sold for non-payment thereof as in the case of non-payment of taxes on resident lands. The landowner shall have the same right of appeal, with the same procedure, as in other highway cases.

Source. 1895, 72:1. PL 95:2. RL 111:2. 1945, 188:1, part 22:2. RSA 252:2. 1963, 109:1. 1981, 87:1, eff. April 20, 1981.

Section 231:113

231:113 Repair and Maintenance. – The highway agent, under the direction of the mayor and aldermen of a city or the selectmen of a town shall have charge of the repair of all sidewalks therein constructed under the provisions of this subdivision, and such sidewalks shall be maintained, repaired and reconstructed by the city or town in which they are located without further assessment to the abutting owner.

Source. 1945, 188:1, part 22:3. RSA 252:3. 1981, 87:1, eff. April 20, 1981.

Public Parking Facilities

Section 231:114

231:114 Findings and Declaration of Necessity. – It is hereby found and declared:

I. That the free circulation of traffic of all kinds through the streets of the municipalities of this state is necessary for the rapid and effective fighting of fires, disposition of police forces, and transit of other emergency vehicles in said municipalities for the health, safety, morals and general welfare of the public, whether residing in or traveling to, through or from said municipalities in the course of lawful pursuits as well as for the sound economic development of such municipalities;

II. That in recent years the parking of motor vehicles of all kinds on the streets of said municipalities has so substantially impeded such free circulation of traffic as to constitute at the present time a public nuisance endangering the health, safety, morals and welfare of the general public, as well as endangering the economic life of said municipalities;

III. That such traffic congestion cannot be adequately abated except by provisions for sufficient off-street parking facilities; and that the enactment of laws to so provide off-street parking facilities is therefore a necessity in the public interest.

Source. RSA 252-A:1. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:115

231:115 Definitions. – Terms used in this subdivision shall have the meanings set forth below, unless a different meaning is clearly apparent from the language or context, or is otherwise inconsistent with the manifest intention of this subdivision:

I. "Public parking facilities" shall mean any lots, garages, parking terminals and other structures of one or more levels, facilities and accommodations for the parking of motor vehicles off the street or highway and open to public use with or without charge and all facilities appurtenant thereto including ancillary waiting rooms, lockers, space for concessions, stores, and offices, terminal facilities for trucks and buses, facilities for the servicing of motor vehicles and for the sale of gasoline, oil and other accessories; and said term shall include structures over or under other structures which other structures may be owned by or leased to a person or corporation and used in whole or part for other than municipal purposes; and said term shall also include streets and ways constructed for access to or egress from such public parking facilities.

II. "Cost of construction" shall mean and include the purchase price of any public parking facility, the cost of construction, the cost of all labor, materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction administrative expense and such other expenses as may be necessary or incident to the financing herein authorized.

III. "Operating expenses" shall mean and include any costs related to the maintenance, operation and repair of public parking facilities and shall include, without limiting the generality of the foregoing, ordinary and usual expenses of maintenance and repair, engineering expenses relating to operation, maintenance and repair, insurance premiums after completion of construction, administrative and legal expenses after such completion and the reasonable cost of policing public parking facilities.

IV. "Municipality" or "municipalities" shall include any city or town in the state.

V. "Legislative body" shall mean the town meeting in towns and the mayor and aldermen in cities.

VI. "Governing board" shall mean the selectmen in towns and the mayor and aldermen in cities.

Source. RSA 252-A:2. 1969, 493:1. 1971, 512:10. 1981, 87:1. 1993, 169:2, eff. July 23, 1993.

Section 231:116

231:116 Plan. –

I. When the legislative body of any municipality finds that the public health, safety, morals and general welfare so requires, it may undertake to study the question of providing public parking facilities. For the purpose of such study said legislative body may appoint or authorize its governing board to appoint an investigative and planning board or may contract with private planners or developers which investigative and planning board or private party shall study the parking needs and conditions in said municipality and shall propose a plan for providing one or more public parking facilities; and said legislative body may appropriate such sums of money as are reasonably necessary therefor.

II. The plan referred to in paragraph I of this section, in addition to providing a detailed proposal for the construction of one or more public parking facilities shall show that there is a need for public parking facilities, that the facilities proposed therein are proposed with respect to that need, and shall include an estimate of construction costs and operating expenses and the method of financing and paying the same. Any such plan shall provide that construction costs or operating expenses shall be raised by assessments as provided in RSA 231:120 and the plan shall so indicate and shall determine the boundaries of any prescribed area within which special benefit assessments shall be levied, which area may but need not be coterminous with the municipality. No such plan shall be adopted unless it provides that at least 50 percent of the construction costs and operating expenses shall be raised by assessments upon the owners or lessees of leasehold interests whose lands receive special benefits therefrom and such plan shall also provide that no more than 25 percent of such construction costs and operating expenses shall be raised from general revenues and no more than 25 percent of such construction costs and operating expenses shall be raised from motor vehicle permit fees as provided in RSA 261:154.

III. The legislative body of a municipality may adopt the proposed plan with or without amendment and proceed with the construction of the public parking facilities. Nothing herein shall be construed to prevent the municipality from thereafter changing or amending the plan upon a finding by the legislative body that the public interest requires such change or amendment.

Source. RSA 252-A:3. 1969, 493:1. 1981, 87:1, eff. April 20, 1981; 146:5, XIII, eff. Jan. 1, 1982; 146:7, V, eff. May 22, 1981.

Section 231:117

231:117 Construction and Operation. – Pursuant to a plan adopted under RSA 231:116 a municipality is empowered, subject to the fiscal and other pertinent requirements of law:

I. To construct or contract for the construction of public parking facilities and shall have the right to acquire or agree to acquire when completed in the name and on behalf of the municipality, public parking facilities being constructed or to be constructed as part of a structure which when completed may include facilities to be used for other than municipal purposes and to participate or agree to participate in the construction of such public parking facilities and to make payments on account of such construction; provided, however, that no such acquisition or agreement to acquire or participation or agreement to participate in such construction shall be permitted except with respect to public parking facilities to be constructed on land or air rights owned by or under lease to the municipality for a period of not less than 40 years from the date on which such facilities are to be constructed or acquired. Subject as aforesaid, municipality is empowered to equip, maintain and operate such facilities;

II. To establish and collect reasonable off-street parking fees; to control, manage and operate such other facilities as are contained in any building or upon any property in or upon which public parking facilities are provided;

III. To adopt rules and regulations governing the operation of public parking facilities;

IV. To lease the operation of public parking facilities to any individual, firm or corporation as the public interest may warrant.

Source. RSA 252-A:4. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:118

231:118 Eminent Domain. – If the legislative body of a municipality which has adopted a plan as described shall determine to acquire pursuant to said plan any real property or interest therein, including air rights, necessary for or incidental to the construction, maintenance or operation of public parking facilities, it may proceed to take such real property or interest therein by an exercise of the power of eminent domain in the same manner as provided in this chapter, or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise thereof.

Source. RSA 252-A:5. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:119

231:119 Borrowing Power. – Municipalities may finance the construction of public parking facilities by issuing bonds or notes, which bonds or notes shall conform to and be issued in accordance with the provisions of RSA 33 insofar as the same may be applicable. All such bonds or notes shall be issued for public parking facilities pursuant to a plan as provided in this subdivision which provides that an amount equal to at least 50 percent of the principal of such bonds or notes are to be assessed as provided in this subdivision, raised by motor vehicle permit fees as provided in RSA 261:154, or funded from the revenues of the parking system, or any combination thereof, shall at no time be included in the net indebtedness of the municipality for the purpose of ascertaining its borrowing capacity.

Source. RSA 252-A:6. 1969, 493:1. 1981, 87:1, eff. April 20, 1981; 146:5, XIV, eff. Jan. 1, 1982; 146:7, V, eff. May 22, 1981.

Section 231:120

231:120 Levying Assessments for Public Parking Facilities. –

I. The assessors of any municipality which has constructed public parking facilities, upon direction from the legislative body and in accordance with the plan adopted, shall assess in the manner provided in paragraph II of this section upon the owners or lessees of leasehold interests, whose lands receive special benefits therefrom, their just share of the cost of construction of the same. All assessments thus made shall be valid and binding upon the owners or lessees of such land. The funds collected from assessments shall be used solely for the construction of public parking facilities or for the redemption of bonds or notes issued by the municipality to obtain funds for the construction of public parking facilities, including funds paid to a housing authority for the construction of public parking facilities.

II. The plan may provide that assessments shall be made:

(a) At one time and assessments so made may be prorated over a period not exceeding the number of years which the plan shall provide to defray the construction costs of the public parking facilities; or

(b) From year to year upon the owners or lessees of leasehold interests at the time such assessment is made, their just proportion of the construction costs which shall become due in that year, including the amount of principal and interest due during the year on any bonds or notes issued to provide funds to pay such construction costs.

Source. RSA 252-A:7. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:121

231:121 Basis of Assessment. – Assessments shall be levied according to a formula which shall be set forth in the plan and which shall be reasonable and proportional to the benefits conferred upon the land or leasehold interest upon which such assessment is laid. Such formula may, but need not necessarily, be based on the number of off-street parking spaces required to be furnished by owners of land under any lawful zoning ordinances or bylaw in effect or which may be adopted by the municipality. If the formula based on a zoning ordinance requirement of off-street parking is used, the plan may provide for credit to those owners or lessees who have erected or constructed private parking structures, but need not provide credit for private parking lots.

Source. RSA 252-A:8. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:122

231:122 Assessment for Operating Expenses. – In order to defray the costs of the operation and maintenance of such public facilities, the assessors may assess upon the owners and lessees whose land is benefited by such public parking facilities their just share of the annual operating expenses of the same. The assessors may establish a scale of assessments and prescribe the manner in which and the time at which such assessments are to be paid and to change such scale from time to time as may be deemed advisable.

Source. RSA 252-A:9. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:123

231:123 Special Account. – The funds received from the collection of assessments provided in RSA 231:122 shall be deposited by the treasurer of the municipality in a special account which in any fiscal year shall be used only to pay the operating expenses of the public parking facilities. Any surplus in such account at the end of the fiscal year may be used for the enlargement or replacement of the public parking facilities but shall not be used for any other purpose than those above specified.

Source. RSA 252-A:10. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:124

231:124 Lien for Assessment or Rentals. – All assessments under the provisions of RSA 231:120 and 122 shall create a lien upon the lands on account of which they are made, which shall continue until one year from October 1 following the assessment, and, in case an appeal has been taken and the assessment has been sustained in whole or in part upon such appeal, until the expiration of one year from such decision, whichever is later. Such assessments shall be subject to the interest and such other charges as are applicable to delinquent taxes. In the event that the assessments are payable over a period of years, then the assessment shall be prorated on an annual basis and the lien on said lands shall attach annually.

Source. RSA 252-A:11. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:125

231:125 Collection of Assessments. – Assessments provided in RSA 231:120 and 122 shall be committed to the collector of taxes, with a warrant under the hands and seal of the assessors requiring him to collect them; and he shall have the same rights and remedies and be subject to the same liabilities in relation thereto as in the collection of taxes.

Source. RSA 252-A:12. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:126

231:126 Abatement of Assessments. – For good cause shown, the assessors may abate any such assessment made by them or by their predecessors.

Source. RSA 252-A:13. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:127

231:127 Petition to Court. – If the assessors neglect or refuse to abate any such assessments, any person aggrieved may apply by petition to the superior court for relief at any time within 90 days after notice of the assessment, and not afterwards; and the court shall make such order thereon as justice may require.

Source. RSA 252-A:14. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:128

231:128 Correction of Assessments. – If any error is made in any such assessment it may be corrected by the assessors by making an abatement and a new assessment, or either, as the case may require; and the same lien, rights, liabilities and remedies shall attach to the new assessment as to the original.

Source. RSA 252-A:15. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Section 231:129

231:129 Optional Referendum; Two-Thirds Vote of Legislative Body. –

I. Referendum. If the legislative body of a municipality affected by this subdivision desires to place the question of approving a plan formulated pursuant to this subdivision on a referendum, they may do so at any regular municipal election or at a special election called for the purpose. Should a referendum be held, the following question shall be submitted "Shall the legislative body of the city of () be instructed to approve the plan submitted to it concerning the construction of parking facilities?" The legislative body shall be bound by the outcome of the referendum.

II. Two-Thirds Vote. If the legislative body should decide not to place the question of approving a plan

formulated pursuant to this subdivision on a referendum, a 2/3 vote of the entire membership of the legislative body shall be necessary in order to approve such plan.

Source. RSA 252-A:16. 1969, 493:1. 1981, 87:1, eff. April 20, 1981.

Parking Meters

Section 231:130

231:130 Power to Install. – The city council of any city shall have the power to authorize the installation of parking meters on any street or public parking area and the power to establish reasonable charges for parking to be paid through such meters and the powers to make any incidental use of such meters for advertising as may be desirable, provided such use does not interfere with the regulation and control of traffic. Towns likewise may at any legal meeting vote to authorize the installation of parking meters and establish reasonable charges for parking to be paid through such meters and shall have the power to make any incidental use of such meters for advertising as may be desirable, provided such use does not interfere with the regulation and control of traffic.

Source. 1947, 74:1. 1951, 172:1. RSA 249:1. 1981, 87:1, eff. April 20, 1981.

Section 231:130-a

231:130-a Notification of Unpaid Fines. –

I. The legislative body of any municipality may adopt the provisions of this section. Each municipality which does so shall:

(a) Maintain a record in the office of the town or city clerk which shall contain a listing of all residents of such municipality who have outstanding parking violations incurred in municipalities which have adopted the provisions of this section.

(b) Notify the town or city clerk of any other municipality which has adopted the provisions of this section of any outstanding parking violations incurred by residents of such municipality within the limits of the notifying municipality.

(c) Notify the town or city clerk of any municipality which has adopted the provisions of this section of the payment of any outstanding parking violations incurred by residents of such municipality within the limits of the notifying municipality. Such action shall be taken within 10 days of the payment of the outstanding violation.

II. The town or city clerk of each municipality which has adopted the provisions of this section shall update and keep readily available the records required by RSA 231:130-a, I(a), in order that such records may be consulted at such time as residents of such municipalities apply for permits for the registration of motor vehicles pursuant to RSA 261:148.

III. The town or city clerk may provide the notifications permitted by subparagraphs I(b) and I(c) to electronic vehicle registration integrators operating under an agreement with the department of safety pursuant to RSA 261:74-s.

Source. 1987, 253:2, eff. July 17, 1987. 2011, 198:2, eff. June 15, 2011.

Section 231:131

231:131 Revenue. – The revenue derived from the use of such meters shall be expended to finance the purchase, maintenance and policing of such meters or to maintain and improve streets and highways, or to acquire, construct, improve, maintain and manage public parking areas and public transportation systems, or for any combination of the foregoing purposes, but for no purpose not expressly authorized in this section.

Source. 1947, 74:2. RSA 249:2. 1981, 87:1. 1993, 14:1, eff. May 25, 1993.

Section 231:132

231:132 Exeter Police Commission. – The police commission of the town of Exeter shall have the same powers as are granted to city councils of cities under the provisions of RSA 231:130. The provisions of RSA 231:130 requiring authorization of the installation of parking meters and of the fixing of reasonable charges by vote at a legal town meeting shall not apply to the town of Exeter. The provisions of RSA 231:131 shall apply to the town of Exeter.

Source. 1947, 74:3. RSA 249:3. 1981, 87:1, eff. April 20, 1981.

Section 231:132-a

231:132-a Parking Enforcement Provisions. – Notwithstanding any other provision of law, a municipality which installs parking meters pursuant to RSA 231:130, or which establishes other parking restrictions pursuant to RSA 41:11 or 47:17, or which seeks to enforce the stopping, standing and parking restrictions set forth in RSA 265:68-74, may utilize the following provisions in the enforcement of such parking restrictions and parking charges established through parking meters:

I. All violations of such parking restrictions and charges shall be deemed the responsibility of the registered owner of the vehicle. Such registration may be proven as set forth in RSA 261:60. Such registered owner shall be conclusively presumed to be in control of the vehicle at the time of the parking violation, and no evidence of actual control or culpability need be proved as an element of the offense. It shall be an affirmative defense that at the time of the infraction the vehicle was beyond the control of the registered owner as a result of a violation of RSA 262:12, 637:3 or 637:9 or a similar statute in another jurisdiction.

II. Municipalities may establish, by ordinance, systems for the administrative enforcement of parking violations and collection of penalties, to be utilized prior to the service of a formal summons and complaint. Such a system may be administered by a police department or other municipal agency. Such a system may include opportunities for persons who do not wish to contest parking violations to pay such penalties by mail. Such a system may also provide for a schedule of enhanced penalties the longer such penalties remain unpaid; provided, however, that the penalty for any separate parking offense shall in no case exceed the maximum penalty for a violation as set forth in RSA 651:2.

III. A written notice of violation containing a description of the parking offense and any applicable schedule of penalties, affixed to the vehicle at the time of the offense, shall be deemed adequate service of process on the vehicle owner for purposes of any administrative enforcement system established under paragraph II.

IV. If the administrative enforcement system established under paragraph II is unsuccessful at resolving alleged parking violations, or in the case of municipalities which have not established such a system, a summons may be issued as in the case of other violations of RSA title XXI, including the use of the procedure for plea by mail set forth in RSA 502-A:19-b. Notwithstanding any other provision of law, a complaint and summons for a parking offense may be served upon the defendant by postpaid certified mail, return receipt requested. Return receipt showing that the defendant has received the complaint and summons shall constitute an essential part of the service. If service cannot be effected by certified mail, then the court may direct that service on the defendant be completed as in other violation complaints.

Source. 1993, 339:1, eff. Aug. 30, 1993.

Street Names and Markers

Section 231:133

231:133 Names; Changes; Signs. –

I. In all towns, cities, and those village districts which maintain public highways, every highway and street under the control of the town, city, or village district shall have a name which shall be given it by the governing body. Said name shall be legibly marked on a suitable signboard or other marker and placed in at least 2 conspicuous places on said street. The governing body may change the name of any such street or highway at any time when in its judgment there is occasion for so doing. The governing body may change the name of a private street or highway when the name change is necessary to conform to the requirements of the enhanced

911 telecommunications system. In towns and village districts the governing body may at its discretion provide for public hearing and submit such names for approval at any meeting of the legislative body, and voters may submit a petitioned warrant article for such a name change under the procedure of RSA 39:3.

II. The naming of any new street or highway shall form a part of the return of the layout of the street or highway, or of the acceptance of any dedicated way. The municipality shall not be bound by any name previously assigned to the street or highway by any private owner, developer, or dedicator. No name for a highway or street shall be selected which is already in use, or which is confusingly similar to any such existing name, or which otherwise might delay the locating of any address in an emergency.

III. Whenever a name is assigned to any new street or highway, or a change is made in the name of any street or highway, the governing body shall make a return of the same to the town, city, or village district clerk, who shall make a record of the new name or name change, and shall forward a copy of such record to the commissioner of transportation.

Source. 1911, 79:1. PL 93:5. RL 109:5. 1945, 188:1, part 21:1. RSA 251:1. 1981, 87:1. 1991, 53:1. 2005, 113:1, eff. Aug. 14, 2005.

Section 231:133-a

231:133-a Address Numbers on Streets and Highways. – The governing body may adopt a system for assigning or altering address numbers of buildings and other property along any public or private way in the municipality. Prior to the actual assignation or alteration of numbers along any way or portion of any way the governing body or planning board shall hold a public hearing for which 10 days' notice has been given by posting in 2 public places in the municipality, by publication in a newspaper in circulation in the municipality, and by first class mail to all owners of property being numbered or renumbered, as indicated by town records. No public hearing shall be required where the property owner or owners voluntarily consent to their property being numbered or renumbered, as indicated by town records. Each municipality addressing numbers on streets and highways pursuant to this section is encouraged to notify the bureau of emergency communications of the changes in accordance with RSA 106-H:10.

Source. 1991, 53:2. 1997, 92:2, eff. Jan. 1, 1998.

Section 231:134

231:134 Corners and Angles. – The corners and angles of all streets shall be marked by a durable marker of stone, metal or other material, of such size and construction that it can be readily found.

Source. 1911, 79:2. PL 93:6. RL 109:6. 1945, 188:1, part 21:2. RSA 251:2. 1981, 87:1, eff. April 20, 1981.

Section 231:135

231:135 Lost Bounds; Exceptions. – All streets affected by this subdivision, the bounds of which have been lost, shall be resurveyed so that the provisions of this subdivision may be carried out. Principal streets which have curbs and corners of stone or other similar material, or permanent, durable sidewalks on both sides thereof, shall not be subject to the provisions of this section; but all streets hereafter laid out shall be constructed in accordance with this subdivision.

Source. 1911, 79:3. PL 93:7. RL 109:7. 1945, 188:1, part 21:3. RSA 251:3. 1981, 87:1. 1991, 53:3, eff. July 5, 1991.

Section 231:136

231:136 Where in Force. – RSA 231:134 and RSA 231:135 shall be in force in cities and in such towns as shall, at any regular meeting by a majority vote, adopt the same.

Source. 1911, 79:4. PL 93:8. RL 109:8. 1945, 188:1, part 21:4. RSA 251:4. 1981, 87:1. 1991, 53:4, eff. July 5, 1991.

Names of Highways

Section 231:137

231:137 Naming. – [Repealed 1991, 53:5, I, eff. July 5, 1991.]

Section 231:138

231:138 Limitation. – [Repealed 1991, 53:5, II, eff. July 5, 1991.]

Trees and Roadside Growth

Section 231:139

231:139 Tree Wardens. –

I. A city or town may provide for the appointment of a tree warden or wardens. A tree warden shall be a person known to be interested in planting, pruning, and preserving shade and ornamental trees and shrubs in public ways, village commons, parks, cemeteries, and other public grounds. A tree warden shall be qualified to perform the duties specified as demonstrated through adequate education, experience, or both, in arboriculture, ornamental horticulture, forestry, landscape maintenance, or other related fields. The city or town appointing a tree warden shall advise the division of forests and lands of such appointment and the division shall maintain a roster of tree wardens which shall be available to the public upon request.

II. As determined by the city or town, the duties of a tree warden shall be to help care for, maintain, protect, and perpetuate shade and ornamental community trees and shrubs in town public ways, village commons, parks, cemeteries, and other public grounds, and to advise the governing body from time to time as may be necessary to help accomplish that purpose. The town tree warden shall cooperate and work with other town agencies and officials in carrying out the intent of this chapter.

Source. 1901, 98:1. 1925, 89:1. PL 93:22. RL 109:22. 1945, 188:1, part 23:1. RSA 253:1. 1961, 223:3. 1981, 87:1, eff. April 20, 1981. 2012, 24:1, eff. May 2, 2012.

Section 231:140

231:140 Control of Trees. – Towns shall have control of all shade or ornamental trees and shrubs situated within the limits of town public ways, village commons, parks, cemeteries, and other public grounds which have been or may be acquired by gift or purchase, or planting by or with the advice of the tree warden, or by condemnation by the tree warden.

Source. 1901, 98:2. 1903, 119:1. 1925, 89:1. PL 93:23. RL 109:23. 1945, 188:1, part 23:2. RSA 253:2. 1981, 87:1, eff. April 20, 1981. 2012, 24:1, eff. May 2, 2012.

Section 231:141

231:141 Acquisition of Trees. – It shall be the duty of the tree warden to examine the trees growing within the limits of town public ways, village commons, parks, cemeteries, and other public grounds, and to designate from time to time such as may be reasonably necessary for the purpose of shade or ornamentation and to acquire them in the name of the municipality as hereinafter provided, if it can be done, either by gift or by purchase if at a fair price and funds either public or private are available. Failing in this, he or she may take said trees,

including the right to maintain the same as shade trees, for the use of the town or city by appraising the fair value of the same and by causing to be served upon the owner thereof a notice of such taking, which notice shall state the number of each variety of tree so taken, the location of the same as near as practicable, and the value thereof as fixed by him or her, or by a committee selected for the purpose, and also by filing a copy of such notice as attested by him or her with the town clerk. If the owner shall be satisfied with the value stated in such notice, the tree warden shall cause the same to be paid to him or her forthwith. If the owner shall be dissatisfied, he or she may, within 30 days after said notice has been served upon him or her, but not afterwards, apply to the selectmen to assess his or her damages. Such proceedings shall thereupon be had, including the right of appeal, as are provided in the case of assessment of damages in laying out of highways by selectmen; and thereupon such damages, if any, may be awarded as shall be legally and justly due to the landowner.

Source. 1901, 98:3. 1909, 93:1. 1925, 89:1. PL 93:24. RL 109:24. 1945, 188:1, part 23:3. RSA 253:3. 1981, 87:1, eff. April 20, 1981. 2012, 24:2, eff. May 2, 2012.

Section 231:142

231:142 Records of Trees Acquired. – A record shall be kept of the trees so acquired which may be marked for identification in an appropriate manner as shall be determined by the city or town. Such record may include the approximate location, name of abutting landowner, variety and approximate diameter, and date of acquisition. The tree warden or his or her authorized agent shall represent the interest of the public at any hearing whenever a public service corporation shall desire to cut or remove any shade or ornamental tree in accordance with RSA 231:172, or may have caused damage to such trees.

Source. 1895, 85:2, 3. 1901, 98:2. 1903, 119:1. 1925, 89:1. PL 93:25. RL 109:25. 1945, 188:1, part 23:4. RSA 253:4. 1981, 87:1, eff. April 20, 1981. 2012, 24:3, eff. May 2, 2012.

Section 231:143

231:143 Appropriation. – Such sums of money as the town may appropriate, or as are available, may be used to carry out the provisions of RSA 231:139-142.

Source. 1909, 93:1. 1925, 89:1. PL 93:26. RL 109:26. 1945, 188:1, part 23:5. RSA 253:5. 1981, 87:1, eff. April 20, 1981.

Section 231:144

231:144 Removal of Trees. – Whoever desires the cutting and removal in whole or in part of any public shade or ornamental tree owned by the city or town may apply to the tree warden, who shall give a public hearing, upon the application, at some suitable time and place, after publishing and posting notices of the hearing in 2 or more public places in town and also upon the tree or trees which it is desired to cut and remove; provided, that the tree warden may, if he or she deems it expedient, grant permission for such cutting or removal, without a hearing, if the tree in question is on a public way outside of the residential part of the town limits, such residential part to be determined by the tree warden. No tree within such residential limit shall be cut by the tree warden, except to trim it, or removed by the tree warden, without such hearing. The decision of the tree warden shall be subject to review as provided for by the governing body.

Source. 1901, 98:5. PL 93:27. RL 109:27. 1945, 188:1, part 23:6. RSA 253:6. 1963, 153:1. 1981, 87:1, eff. April 20, 1981. 2012, 24:4, eff. May 2, 2012.

Section 231:145

231:145 Removal of Certain Hazardous Trees. – Notwithstanding the provisions of other sections of this subdivision and subject to the provisions of RSA 231:157 and RSA 231:158, the commissioner of transportation

on class I and III highways, and state maintained portions of class II highways, and the governing bodies of cities and towns and the county commissioners for unorganized places on class IV, V, and VI highways and town maintained portions of class II highways may declare any tree, either alive or dead, situated within the limits of highways, roads, or streets to be a public nuisance by reason of danger to the traveling public, spread of tree disease, or the reliability of equipment installed at or upon utility facilities authorized under RSA 231:160 or RSA 231:160-a. After such declaration by such authority and notice to the abutting landowner on whose property such tree is located the said authority shall within a reasonable time remove the same without compensation or cost to the abutter. However, no such declaration and notice shall be required when the delay entailed by such declaration and notice would pose an imminent threat to safety or property, including electric transmission and distribution lines. Nothing in this subdivision shall be construed to relieve the public utility companies of their accepted responsibility of tree trimming and tree removal for the protection of their lines, or for the construction of new lines, or to alter the provisions of RSA 231:150-182 in any manner. The state and municipal authorities may require of the public utilities owning lines which pass through or near a tree or trees which are condemned for removal as a public nuisance to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.

Source. RSA 253:6-a. 1959, 135:1. 1981, 87:1. 1985, 402:6, I(b)(3). 1991, 134:1, eff. July 19, 1991. 2009, 267:2, eff. Sept. 14, 2009. 2012, 24:5, eff. May 2, 2012. 2015, 89:1, eff. Aug. 4, 2015.

Section 231:146

231:146 Notice. – Notice to the abutting landowner of a tree declared a public nuisance shall be given by delivery at his place of residence or by sending by registered mail to his last known address and it shall clearly state the intention of removal of such tree. He may appeal to the superior court as to the validity of such declaration within 30 days of delivery or mailing of said notice, and shall be entitled to a speedy hearing. The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the declaration complained of in whole or in part, as the case may be; but in case such declaration is wholly or partly vacated the court may also, at its discretion, remand the matter to the said department, city, county, or town for such further proceedings, not inconsistent with the decree, as justice may require. Following expiration of the aforesaid 30-day period of appeal, or following waiver of said right of appeal, the abutting landowner is relieved of any liability or responsibility in connection with the tree or trees declared a public nuisance and similarly is relieved of any liability or responsibility in connection with any stump or stumps left remaining.

Source. RSA 253:6-b. 1959, 135:1. 1981, 87:1, eff. April 20, 1981.

Section 231:147

231:147 Injury or Defacement of Trees. – It shall be unlawful to cut, destroy, injure, deface, or break any public shade or ornamental tree; or to affix to any such tree a play bill, picture, announcement, notice, advertisement, political or otherwise, or other device or thing, or to paint or mark such tree, except for the purpose of protecting it and under a written permit from the tree warden.

Source. 1901, 98:6. PL 93:28. 1933, 8:1. RL 109:28. 1945, 188:1, part 23:7. RSA 253:7. 1981, 87:1, eff. April 20, 1981. 2012, 24:6, eff. May 2, 2012.

Section 231:148

231:148 Trees Donated. – Whenever any party, at a proper time of the year, shall present to a municipality well grown nursery trees, the tree wardens may set out such trees in the highways, cemeteries, commons, schoolhouse yards and other public places, as indicated by the donor, and protect the same at the expense of the town to the extent that funds are available for such purpose.

Source. 1897, 44:1. PL 93:29. RL 109:29. 1945, 188:1, part 23:8. RSA 253:8. 1981, 87:1, eff. April 20, 1981. 2012, 24:7, eff. May 2, 2012.

Section 231:149

231:149 Public Ownership. – Any young shade or ornamental tree planted within the limits of a public highway by the tree wardens or by any other person or persons, with the approval of the governing body, or any young seedling tree or sprout left within the limits of the highway as specified in RSA 231:150 and designated by the tree warden to be preserved for its future value as a shade tree, shall become the property of the municipality; provided, that the abutting landowner, having been notified of the intention of the municipality to take and preserve such young tree, shall make no written objection to the tree warden within 30 days from the date of such notification.

Source. 1901, 98:7. 1915, 138:1. 1917, 62:1. PL 93:30. RL 109:30. 1945, 188:1, part 23:9. RSA 253:9. 1981, 87:1, eff. April 20, 1981. 2012, 24:8, eff. May 2, 2012.

Section 231:150

231:150 Clearing Highways. – Governing bodies of cities and towns, and county commissioners for unorganized places shall annually, and at other times when advisable, cause to be cut and disposed of, from within the limits of town maintained highways, all trees and bushes that may cause damage or pose a safety hazard to such highways or to the traveling public; provided however that no tree which has a circumference of 15 inches or more at a point 4 feet from the ground shall be removed in the absence of notice to the abutter in the same manner as provided in RSA 231:145 and RSA 231:146, except when the delay entailed by such notice would pose an imminent threat to safety or property. Shade and fruit trees that have been set out or marked by the abutting landowners or by the town tree wardens, and young trees standing at a proper distance from the highway and from each other, shall be preserved, as well as banks and hedges of bushes that serve as a protection of the highway, or that add to the beauty of the roadside.

Source. 1913, 111:2. 1915, 138:1. 1917, 62:1. PL 93:31. RL 109:31, 1945, 188:1, part 23:10. RSA 253:10. 1981, 87:1. 1991, 134:2, eff. July 19, 1991. 2012, 24:9, eff. May 2, 2012.

Section 231:151

231:151 Improvements by Abutter. – A municipality may contract with any owner of land abutting a public highway to cut, trim, and improve the roadside growth along said owner's property, and for all such work properly done in carrying out the provisions of RSA 231:150 and approved by the tree wardens, may allow and cause to be paid to such owner such sums as in their judgment, with the advice of the tree wardens, justly represent the value to the town of the improved condition of the roadside.

Source. 1915, 138:1. 1917, 62:1. PL 93:32. RL 109:32. 1945, 188:1, part 23:11. RSA 253:11. 1981, 87:1, eff. April 20, 1981. 2012, 24:10, eff. May 2, 2012.

Section 231:152

231:152 Burning Brush. – Whenever any trees or brush cut along the highway are disposed of by burning, the cut trees or brush shall be removed a safe distance from any adjoining woodland or from any tree or hedge designated or desirable for preservation, and such burning shall be done with the permission of the forest fire warden. All trees or brush thus cut from within the limits of the highway shall be disposed of within 30 days from the cutting thereof.

Source. 1901, 98:7. 1913, 111:2. 1915, 138:1. 1917, 62:1. PL 93:33. RL 109:33. 1945, 188:1, part 23:12. RSA 253:12. 1981, 87:1, eff. April 20, 1981.

Section 231:153

231:153 Disposal of Brush. – If any cut brush has been left within the limits of any public highway for a longer period than 30 days the director, division of forests and lands, department of natural and cultural resources, may complete the removal or disposal of such brush and assess the costs thereof against the party authorizing or causing such nuisance. If the said costs are not paid within a reasonable time they may be recovered in an action brought by the attorney general upon complaint of the director.

Source. 1917, 62:1. PL 93:34. RL 109:34. 1945, 188:1, part 23:13. RSA 253:13. 1961, 223:3. 1981, 87:1, eff. April 20, 1981. 2017, 156:14, I, eff. July 1, 2017.

Section 231:154

231:154 Taking Tree Rights. – When any highway shall be laid out damages may be assessed to the abutting owners to provide for the maintenance or planting, from time to time, within the limits of such highway, of such shade and ornamental trees as may be necessary for the preservation and improvement of such highway. Damages may be assessed to abutting owners on any existing highway upon petition therefor, and such proceedings had as in the laying out of highways by selectmen to provide for the maintenance and planting from time to time, of such trees within the limits of such highways as may be necessary for the preservation and improvement of the same. When such damage shall be assessed and paid there shall be, in addition to the right of travel over such highway, a public easement to protect, preserve and renew the growth thereon for the purposes aforesaid.

Source. 1915, 138:1. 1917, 62:1. PL 93:35. RL 109:35. 1945, 188:1, part 23:14. RSA 253:14. 1981, 87:1, eff. April 20, 1981.

Section 231:155

231:155 State Supervision. – On all class I and III highways, and state maintained portions of class II highways, the commissioner of transportation shall have under his supervision the planting, acquisition, maintenance and removal of all trees and vegetation and the same powers relative thereto as conferred by this subdivision or any other law upon the cities and towns on highways under their jurisdiction. The commissioner shall make such rules and regulations for the purposes hereof as shall, in his judgment, seem for the best interests of the state.

Source. 1913, 111:2. 1915, 138:1. 1917, 62:1. PL 93:36. RL 109:36. 1945, 188:1, part 23:15. 1950, 5:1, part 9:1, par. 2. RSA 253:15. 1959, 135:2. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:156

231:156 Penalty. – Any person who violates any provision of this subdivision or any rule or regulation thereunder made by the commissioner of transportation shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. Any person shall be liable for all damage occasioned thereby.

Source. 1901, 98:8. PL 93:37. RL 109:37. 1945, 188:1, part 23:16. 1950, 5:1, part 9:1, par. 2. RSA 253:16. 1973, 530:34. 1981, 87:1. 1985, 402:6, I(b)(3).

Scenic Roads

Section 231:157

231:157 Scenic Roads; Designation. – Any road in a town, other than a class I or class II highway, may be designated as a scenic road in the following manner. Upon petition of 10 persons who are either voters of the town or who own land which abuts a road mentioned in the petition (even though not voters of the town), the voters of such town at any annual or special meeting may designate such road as a scenic road. Such petitioners shall be responsible for providing the town clerk with a list of known property owners whose land abuts any of the roads mentioned in the petition. The town clerk shall notify by regular mail within 10 days of the filing all abutters along the road that lies within the town that a scenic road petition has been filed for and that an article to designate such road as a scenic road will appear in the warrant at the next town meeting. The voters at a regular town meeting may rescind in like manner their designation of a scenic road upon petition as provided above. Notice to the abutting landowners shall also be given as provided above. Each town shall maintain and make available to the public a list of all roads or highways or portions thereof within the town which have been designated as scenic roads. Such list shall be kept current by updating not less than annually and shall contain sufficient information to permit ready identification of the location and extent of each scenic road or portion thereof, by reference to a town map or otherwise.

Source. RSA 253:17. 1971, 455:1. 1973, 586:1. 1981, 87:1. 1992, 160:3, eff. July 5, 1992.

Section 231:158

231:158 Effect of Designation as Scenic Roads. –

I. As used in this subdivision, "tree" means any woody plant which has a circumference of 15 inches or more at a point 4 feet from the ground.

II. Upon a road being designated as a scenic road as provided in RSA 231:157, any repair, maintenance, reconstruction, or paving work done with respect thereto by the state or municipality, or any action taken by any utility or other person acting to erect, install or maintain poles, conduits, cables, wires, pipes or other structures pursuant to RSA 231:159-189 shall not involve the cutting, damage or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or any other official municipal body designated by the meeting to implement the provisions of this subdivision, after a public hearing duly advertised as to time, date, place and purpose, 2 times in a newspaper of general circulation in the area, the last publication to occur at least 7 days prior to such hearing, provided, however, that a road agent or his designee may, without such hearing, but only with the written permission of the selectmen, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property, and provided, further, that a public utility when involved in the emergency restoration of service, may without such hearing or permission of the selectmen, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the selectmen of the nature of the emergency and the work performed, in such manner as the selectmen may require.

III. Designation of a road as scenic shall not affect the eligibility of the town to receive construction, maintenance or reconstruction aid pursuant to the provisions of RSA 235 for such road.

IV. Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property, except to the extent that trees have been acquired by the municipality as shade or ornamental trees pursuant to RSA 231:139-156, and except that RSA 472:6 limits the removal or alteration of boundary markers including stone walls.

V. A town may, as part of a scenic road designation under RSA 231:157 or as an amendment to such designation adopted in the same manner, impose provisions with respect to such road which are different from or in addition to those set forth in this section. Such provisions may include, but are not limited to, decisional criteria for the granting of consent by the planning board or other designated municipal body under paragraph II, or protections for trees smaller than those described in paragraph I, designated for the purpose of establishing regenerative growth along the scenic road.

VI. Any person who violates this section or any local provision adopted under this section shall be guilty of a violation and shall be liable for all damages resulting therefrom.

Source. RSA 253:18. 1971, 455:1. 1973, 586:2. 1981, 87:1. 1983, 122:2. 1991, 134:3, 4. 1992, 160:2, eff. July 5, 1992.

Lines of Telegraph and Other Companies in Highways

Section 231:159

231:159 Applicability of Subdivision. – The provisions of this subdivision apply to all cities and towns now or hereafter incorporated, except such provisions thereof as may have been or are hereafter specifically amended or repealed in the act of incorporation.

Source. 1949, 287:1. RSA 254:1. 1981, 87:1, eff. April 20, 1981.

Section 231:160

231:160 Authority to Erect. – Telegraph, television, telephone, electric light and electric power poles and structures and underground conduits and cables, with their respective attachments and appurtenances may be erected, installed and maintained in any public highways and the necessary and proper wires and cables may be supported on such poles and structures or carried across or placed under any such highway by any person, copartnership or corporation as provided in this subdivision and not otherwise.

Source. 1881, 54:1. 1889, 4:1. PS 81:1. PL 97:1. 1935, 100:1. RL 113:1. 1945, 188:1, part 24:1. 1951, 184:1. RSA 254:2. 1981, 87:1, eff. April 20, 1981.

Section 231:160-a

231:160-a Exception for Existing Locations. – Any poles, structures, conduits, cables or wires, the location of which have already been approved by the local land use board as part of a subdivision, site plan, or other development approval, shall, if such location becomes a public highway, be deemed legally permitted or licensed without further proceedings under this subdivision; provided, that copies of the appropriate utilities' easements, work plans, or other data showing locations of such structures, are submitted to the municipality for recording purposes.

Source. 1989, 90:1, eff. June 30, 1989.

Section 231:161

231:161 Procedure. – Any such person, copartnership or corporation desiring to erect or install any such poles, structures, conduits, cables or wires in, under or across any such highway, shall secure a permit or license therefor in accordance with the following procedure:

I. Jurisdiction.

(a) Town Maintained Highways. Petitions for such permits or licenses concerning town maintained highways shall be addressed to the selectmen of the town in which such highway is located; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

(b) City Maintained Highways. Petitions for such permits or licenses concerning city maintained highways shall be addressed to the board of mayor and aldermen or board of mayor and council of the city in which such highway is located and they shall exercise the powers and duties prescribed in this subdivision for selectmen; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

(c) State Maintained Highways. Petitions for such permits or licenses concerning all class I and class III highways and state maintained portions of class II highways shall be addressed to the commissioner of transportation who shall have exclusive jurisdiction of the disposition of such petitions to the same effect as is provided for selectmen in other cases, and also shall have like jurisdiction for changing the terms of any such license or for assessing damages as provided herein. The commissioner shall also have the same authority as conferred upon the selectmen by RSA 231:163 to revoke or change the terms and conditions of any such license.

The commissioner is hereby authorized to delegate all or any part of the powers conferred upon him by the provisions of this section to such agent or agents as he may duly appoint in writing; he shall cause such appointments to be recorded in the office of the secretary of state, who shall keep a record thereof.

(d) The word "selectmen" as used in the following paragraphs of this section shall be construed to include all those having jurisdiction over the issuance of permits or licenses under paragraph I hereof.

II. Permits. The petitioner may petition such selectmen to grant a permit for such poles, structures, conduits, cables or wires. If the public good requires, the selectmen shall grant a permit for erecting or installing and maintaining such poles, structures, conduits, cables or wires. Such permit shall designate and define in a general way the location of the poles, structures, conduits, cables or wires described in the petition therefor. Such permit shall be effective for such term as they may determine, but not exceeding one year from the date thereof, and may, upon petition, be extended for a further term not exceeding one year. A permit shall not be granted to replace an existing utility pole on any public highway unless such replacement pole is erected at least 20 feet from the surfaced edge or the edge of public easement therein, provided, however, that for good cause shown the selectmen may waive the 20-foot requirement.

III. Effect of Permit. Except as otherwise provided herein, the holder of such permit shall during the term thereof be entitled to have and exercise all the rights, privileges and immunities and shall be subject to all the duties and liabilities granted or imposed hereby upon the holder of a license hereunder.

IV. Licenses. The petitioner may petition such selectmen to grant a license for such poles, structures, conduits, cables or wires. If the public good requires, the selectmen shall grant a license for erecting and installing or maintaining the poles, structures, conduits, cables or wires described in the petition.

V. Provision of Licenses. The selectmen in such license shall designate and define the maximum and minimum length of poles, the maximum and minimum height of structures, the approximate location of such poles and structures and the minimum distance of wires above and of conduits and cables below the surface of the highway, and in their discretion the approximate distance of such poles from the edge of the traveled roadway or of the sidewalk, and may include reasonable requirements concerning the placement of reflectors thereon. Such designation and definition of location may be by reference to a map or plan filed with or attached to the petition or license.

VI. Effect of License. All licenses granted under the provisions hereof shall be retroactive to the date the petition therefor is filed. The word "license" as hereinafter used herein, except in RSA 231:164 shall be construed to include the word "permit". The holder of such a license, hereinafter referred to as licensee, shall thereupon and thereafter be entitled to exercise the same and to erect or install and maintain any such poles, structures, conduits, cables, and wires in approximately the location designated by such license and to place upon such poles and structures the necessary and proper guys, cross-arms, fixtures, transformers and other attachments and appurtenances which are required in the reasonable and proper operation of the business carried on by such licensee, together with as many wires and cables of proper size and description as such poles and structures are reasonably capable of supporting during their continuance in service; and to place in such underground conduits such number of ducts, wires and cables as they are designed to accommodate, and to supply and install in connection with such underground conduits and cables the necessary and proper manholes, drains, transformers and other accessories which may reasonably be required.

Source. 1881, 54:3, 4. PS 81:2. 1903, 81:1. PL 97:2. 1935, 100:1. 1937, 102:1. RL 113:2. 1943, 126:1. 1945, 188:1, part 24:2. RSA 254:3. 1959, 223:1, 2. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:162

231:162 Confirming Locations. – Similar proceedings may be had for locating and licensing poles and structures and underground conduits and cables already constructed with or without license, or for changing the location of any such property constructed with or without license; but nothing contained in this section or this subdivision shall affect the validity of locations heretofore granted.

Source. 1935, 100:1. RL 113:3. 1945, 188:1, part 24:3. RSA 254:4. 1981, 87:1, eff. April 20, 1981.

Section 231:163

231:163 Changes. – Any such licensee or any person whose rights or interests are affected by any such license may petition the selectmen for changes in the terms thereof; and after notice to the parties and hearing, the selectmen may make such alterations therein as the public good requires. The selectmen, after notice to any such licensee and hearing, may from time to time revoke or change the terms and conditions of any such license, whenever the public good requires.

Source. 1881, 54:4. PS 81:3. PL 97:3. 1935, 100:1. RL 113:4. 1945, 188:1, part 24:4. RSA 254:5. 1981, 87:1, eff. April 20, 1981.

Section 231:164

231:164 Return and Record. – The selectmen or the board of mayor and aldermen or other board having authority to locate poles and wires in cities, or the commissioner of transportation, within 6 months after any petition authorized by this subdivision has been presented for action, shall make a return of their proceedings and their decision thereon; provided, however, that if a permit is granted upon petition therefor, return and decision upon the petition for license presented in connection with such petition for permit shall be made on or before the expiration of such permit. They shall cause the petition for license and their return to be recorded by the clerk of the city or town in which the poles, structures, conduits, cables or wires are located.

Source. PS 81:8. PL 97:8. 1935, 100:1. 1937, 102:2. RL 113:5. 1943, 126:2. 1945, 188:1, part 24:5. RSA 254:6. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:165

231:165 Services and Fees. –

- I. If the proprietors of the line are the petitioners, they shall pay the town clerk for his services and fees.
- II. If a landowner is the petitioner he shall advance the payment for such services and fees, and if his petition is sustained he may recover the same from the proprietors of the line.
- III. The town clerk shall be entitled to a fee of \$10, which shall be remitted when the license is recorded.

Source. PS 81:8. PL 97:9. 1935, 100:1. RL 113:6. 1945, 188:1, part 24:6. RSA 254:7. 1981, 87:1; 360:1. 1991, 252:1, eff. Aug. 9, 1991.

Section 231:166

231:166 Petition to Court. – If the selectmen or the board of mayor and aldermen or other board having authority to locate poles and wires in cities, or the commissioner of transportation, shall neglect or refuse to decide and make return of their proceedings upon any petition authorized hereby within the times limited by RSA 231:164, or if any party whose interests are affected by their decision on any such petition or in granting a license, changing the terms thereof, or revoking the same, is dissatisfied therewith, the petitioner or party so dissatisfied may apply to the superior court for relief within 60 days after the expiration of the times limited by RSA 231:164 or after such decision; and like proceedings shall thereupon be had as in the case of appeals from the laying out of highways by selectmen.

Source. 1881, 54:7. PS 81:9. 1897, 16:1. PL 97:10. 1935, 100:1. 1937, 102:3. RL 113:7. 1945, 188:1, part 24:7. RSA 254:8. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:167

231:167 Damages. – If any person shall be damaged in his estate by the erection of any such poles or other structures, or by the installation of any such underground conduits or cables or by installing or placing any wire, cable, guy, cross-arm, fixtures, transformers, manhole, drain, or other apparatus in or under the highway by authority of any such license, he may apply to the selectmen to assess his damages. Such proceedings shall

thereupon be had as are provided in the case of assessment of damages in laying out highways by the selectmen, and such damages, if any, may be awarded as shall be legally and justly due.

Source. 1881, 54:6. PS 81:6. 1897, 81:1. PL 97:6. 1935, 100:1. RL 113:8. 1945, 188:1, part 24:8. RSA 254:9. 1981, 87:1, eff. April 20, 1981.

Section 231:168

231:168 Interference With Travel. – The location of poles and structures and of underground conduits and cables by the selectmen shall be made so far as reasonably possible so that the same and the attachments and appurtenances thereto will not interfere with the safe, free and convenient use for public travel of the highway or of any private way leading therefrom to adjoining premises or with the use of such premises or of any other similar property of another licensee. The location of any such pole or structure or underground conduit or cable, when designated by the selectmen pursuant to the provisions of this subdivision shall be conclusive as to the right of the licensee to construct and maintain the same in the place located without liability to others except as is expressly provided in RSA 231:175 and 231:176. In no event shall any town or city or any official or employee thereof or of the department of transportation be under liability by reason of the death of or damages sustained by any person or to any property occasioned by or resulting from the location, construction, or maintenance of any pole, structure, conduit, cable, wire, or other apparatus in any highway, pursuant to the provisions of this subdivision.

Source. 1877, 50:1. GL 80:1. 1881, 54:2, 5. PS 81:4. PL 97:4. 1935, 100:1. RL 113:10. 1945, 188:1, part 24:9. RSA 254:10. 1959, 223:3. 1981, 87:1. 1985, 402:6, I(a)(3).

Section 231:169

231:169 Joint Licenses. – Joint licenses for erecting or installing and maintaining any jointly owned poles, structures, conduits, cables and wires may be granted under the provisions hereof to 2 or more petitioners.

Source. 1935, 100:1. 1937, 102:5. RL 113:11. 1945, 188:1, part 24:10. RSA 254:11. 1981, 87:1, eff. April 20, 1981.

Section 231:170

231:170 Transfer of License. – In connection with the transfer of all or any interest in any poles, structures, conduits, cables, or wires, the transferor may by appropriate assignment transfer his or its license to maintain the same and the transferee shall be entitled to have and exercise such license to the extent necessary for his or its use of the transferred property, upon recording such assignment with the clerk of the town in which said property is situated.

Source. 1937, 102:6. RL 113:12. 1945, 188:1, part 24:11. RSA 254:12. 1981, 87:1, eff. April 20, 1981.

Section 231:171

231:171 Renewal and Replacement. – Any pole or structure or underground conduit or cable installed under license as provided herein may be renewed or replaced as occasion requires in approximately the location originally designated therefor; and any variation in location which is reasonably necessary in making such renewal or replacement in the usual or customary manner, shall not affect the rights of the licensee as defined herein.

Source. 1935, 100:1. RL 113:13. 1945, 188:1, part 24:12. RSA 254:13. 1981, 87:1, eff. April 20, 1981.

Section 231:172

231:172 Cutting Trees. –

I. No licensee shall have the right to cut, prune, or remove any shade or ornamental tree, for the purpose of erecting or maintaining poles or structures or installing wires or other attachments or appurtenances thereto, without obtaining the consent of the owner of the land on which such tree grows. The receipt of a license to erect and maintain such equipment pursuant to RSA 231:160 and RSA 231:160-a includes consent to cut, prune, or remove shade or ornamental trees growing on land located within the public right-of-way, or which may fall upon the right-of-way, that pose a danger to the reliability of equipment installed at or upon licensed utility facilities. Nothing in this section shall affect the right of the landowner to the cordwood or timber that results from the activities of a licensee under this subdivision.

II. A licensee shall provide notice in writing at least 45 days in advance of any non-emergency cutting, pruning, or removal of shade or ornamental trees that is scheduled to take place on a landowner's property. The notice shall, at the option of the licensee, be given in person, or sent separately by ordinary mail, and not included in or as a part of a utility bill or other regular communication, to owners of affected land using the name and address that appears on municipal tax records for the property, or sent separately by electronic mail, and not included in or a part of a utility bill or other regular communication, if the landowner has established regular electronic mail communication with the licensee.

(a) The notice shall provide the name and contact information of a representative of the licensee who may be contacted to schedule personal consultation regarding the activities.

(b) For the purposes of this section, the owner shall be deemed to have consented to the activities if he or she fails to affirmatively request personal consultation within 45 days of the mailing of such notice.

(c) If, after personal consultation with the licensee, the owner refuses to consent to the activities, the selectmen, upon petition, after notice to the owner and licensee, and hearing, shall determine whether the cutting, pruning, or removal is necessary and, if determined to be necessary, assess the damage to the owner.

III. Upon highways which have been designated scenic roads pursuant to RSA 231:157 and RSA 231:158, cutting, pruning, or removal shall be further restricted as set forth in those sections or any local provisions adopted thereunder.

IV. Nothing in this section shall be construed to require notice to or consent from the owner of land in the event that the owner, or a predecessor of the owner, has granted an easement which provides legal authority for the utility to remove, cut, prune, or trim trees or vegetation on the owner's land.

Source. 1877, 50:2. GL 80:2. PS 81:5. PL 97:5. 1935, 100:1. RL 113:14. 1945, 188:1, part 24:13. RSA 254:14. 1981, 87:1. 1991, 134:5, eff. July 19, 1991. 2009, 267:1, eff. Sept. 14, 2009. 2015, 89:2, eff. Aug. 4, 2015.

Section 231:173

231:173 Unlicensed. – If any such pole, or structure, or underground conduit or cable, or any attachment or appurtenance thereto, is willfully placed or maintained in any highway without valid license therefor, it shall be removed upon demand by the authority having jurisdiction to issue licenses pursuant to this subdivision at the place where such pole, or structure, or underground conduit or cable, or any attachment or appurtenance thereto is located.

Source. PS 81:10. PL 97:11. 1935, 100:1. RL 113:15. 1945, 188:1, part 24:14. RSA 254:15. 1959, 223:4. 1981, 87:1, eff. April 20, 1981.

Section 231:174

231:174 No Prescriptive Right. – No enjoyment by a person, copartnership, or corporation for any length of time of the privilege of having or maintaining wires and their supports and appurtenances in, upon, over, or attached to any building or land of other persons, shall create an easement or raise any presumption of a grant thereof.

Source. 1881, 54:2. PS 81:9. PL 97:12. 1935, 100:1. RL 113:16. 1945, 188:1, part 24:15. RSA 254:16. 1981, 87:1, eff. April 20, 1981.

Section 231:175

231:175 To Indemnify Town. – The proprietors of every line of wire strung in a highway shall indemnify the town against all damages, costs and expenses to which it may be subjected by reason of any insufficiency or defect in the highway occasioned by the presence of the wires and their supports therein.

Source. PS 81:16. PL 97:15. 1935, 100:1. RL 113:17. 1945, 188:1, part 24:16. RSA 254:17. 1981, 87:1, eff. April 20, 1981.

Section 231:176

231:176 To Party Injured. – Any party receiving injury in his person or estate from any pole, or structure, or underground conduit or cable, or any attachment or appurtenance thereto within the highway limits may maintain an action for damages against the proprietor of the object causing such injury if such injury has been caused by the location of the object so as to interfere with the safe, free and convenient use of the highway, or by the negligent construction, operation or maintenance of such object; provided, however, that where a pole is unlicensed, the burden of proving that the object causing injury did not interfere with the safe, free and convenient use of the highway, or that such object was not negligently constructed, operated or maintained shall be upon the proprietor of such object. The provisions of this section shall not apply to actions for damages based upon injuries occurring prior to October 10, 1959.

Source. PS 81:16. PL 97:16. 1935, 100:1. RL 113:18. 1945, 188:1, part 24:17. RSA 254:18. 1959, 223:5. 1981, 87:1, eff. April 20, 1981.

Section 231:177

231:177 Removal of Wires and Poles by the State or Town After Notice. – Poles used by telephone, telegraph or other public utilities including railroads and street railways may be removed after 10 days' notice in writing of the intention to remove the same has been given by the commissioner of transportation or the highway agent of any city or town.

Source. 1945, 188:1, part 24:18. RSA 254:19. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:178

231:178 Service of Notice. – Such notice may be served by any agent of the department of transportation or by the highway agent of any city or town on such utility or any agent or officer thereof.

Source. 1945, 188:1, part 24:19. RSA 254:20. 1981, 87:1. 1985, 402:6, I(a)(3).

Section 231:179

231:179 Notice; Contents; Record. – The notice of removal of any such pole shall designate the location in the highway to which the same shall be removed, and such notice, together with affidavit or acceptance of service thereof, shall be recorded in the office of the clerk of the city or town in which such pole is located. The notice shall take effect when the same, with such affidavit or acceptance of service endorsed thereon, shall be thus recorded, and the 10 days shall run from the date of such record.

Source. 1945, 188:1, part 24:20. RSA 254:21. 1981, 87:1, eff. April 20, 1981.

Section 231:180

231:180 Defining Location. – The location defined in such notice of any pole so removed, together with the wires thereon, shall be of the same validity as if made under a permit by the commissioner of transportation in case of state maintained highways or selectmen or mayor and aldermen in case of other highways.

Source. 1945, 188:1, part 24:21. RSA 254:22. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:181

231:181 Time of Removal. – All such poles shall be removed within the time designated, and, if not removed by the date stated in such notice, may be forthwith removed by the agency giving notice at the expense of the owner.

Source. 1945, 188:1, part 24:22. RSA 254:23. 1981, 87:1, eff. April 20, 1981.

Section 231:182

231:182 Temporary Removal. – Whenever it shall be necessary for any lawful purpose temporarily to displace, remove, or sever any wire, pole, or structure lawfully maintained in any highway and the proprietor thereof shall neglect or refuse to take such action within 24 hours after request therefor, the person desiring such action may apply to the selectmen for an order requiring such action to be taken by such proprietor. Thereupon the selectmen shall appoint a hearing to be held within 6 days after such petition has been presented to them and shall give such proprietor at least 3 days' notice thereof. After hearing, the selectmen may by order require the proprietor to take the action requested, if in their judgment said action is reasonably necessary, and fix the time within which it shall be completed and specify whether the petitioner shall pay all or any part of the expense thereof; and it shall be the duty of such proprietor to comply with such order within the time stated therein and he shall thereupon be entitled to reimbursement from the petitioner in accordance with said order, within 6 days after demand therefor by the proprietor stating the amount. Such proprietor shall be entitled to recover from the petitioner in an action of debt the petitioner's part of the expense determined in said order. In case such proprietor shall fail to comply with such order, he shall forfeit to the petitioner a sum equivalent to \$10 for each day while such default continues.

Source. 1870, 10:1. GL 80:3. PS 81:14. PL 97:13. 1935, 100:1. RL 113:19. 1945, 188:1, part 24:23. RSA 254:24. 1981, 87:1, eff. April 20, 1981.

Use of Highways by Aqueduct and Gas Companies

Section 231:183

231:183 Applicability of Subdivision. – The provisions of this subdivision shall apply to all cities and towns now or hereafter incorporated, except such provisions thereof as may have been or are hereafter specifically amended or repealed in the act of incorporation.

Source. 1949, 287:1. RSA 255:1. 1981, 87:1, eff. April 20, 1981.

Section 231:184

231:184 Excavation in Highway. – No person or corporation shall dig up any highway or public ground for the purpose of laying water or gas pipes, or other pipes or structures therein, or of repairing the same, without first obtaining the consent of the commissioner of transportation or his division engineer when the excavation is in any state-maintained highway and in all other cases the consent of the selectmen or highway agent of the town or the mayor and aldermen or street commissioner of the city; except, in cases of emergency where the public health or safety is endangered, such action may be taken as provided in RSA 236:9.

Source. 1854, 1527:1. GS 141:1. 1868, 1:40. GL 155:1. PS 82:1. PL 98:1. RL 114:1. 1945, 188:1, part 25:1. RSA 255:2. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:185

231:185 Restoring Highway. – Every person and every corporation who shall dig up any highway or public ground for such purpose shall restore the highway or ground to as good condition as it was in before so doing, without unnecessary delay, and shall take all necessary precautions to protect the public from injury by their acts.

Source. 1854, 1527:1. GS 141:1. 1868, 1:40. GL 155:1. PS 82:2. PL 98:2. RL 114:2. 1945, 188:1, part 25:2. RSA 255:3. 1981, 87:1, eff. April 20, 1981.

Section 231:186

231:186 Liability for Damages. – They shall be liable for all damages occasioned to the town or city, or to any person, by an act so done or by any negligence connected therewith.

Source. 1854, 1527:1. GS 141:1. 1868, 1:40. GL 155:1. PS 82:2. PL 98:3. RL 114:3. 1945, 188:1, part 25:3. RSA 255:4. 1981, 87:1, eff. April 20, 1981.

Section 231:187

231:187 Petition for Easement. – Selectmen, upon petition of any aqueduct or gaslight corporation or company, or of any person who supplies water or gas to people for hire, may lay out for the petitioner an easement to place and maintain pipes and other structures for conveying water or gas in any unaccepted street or private way in the town if they find that the public good requires it.

Source. 1877, 55:1, 2. GL 155:2, 3. PS 82:3. PL 98:4. RL 114:4. 1945, 188:1, part 25:4. RSA 255:5. 1981, 87:1, eff. April 20, 1981.

Section 231:188

231:188 Procedure. – They shall proceed upon such petition the same as in the laying out of a highway; and the owner of the land in which the easement is taken shall have like remedy by appeal.

Source. 1877, 55:2, 3. GL 155:3, 4. PS 82:4. PL 98:5. RL 114:5. 1945, 188:1, part 25:5. RSA 255:6. 1981, 87:1, eff. April 20, 1981.

Section 231:189

231:189 Malicious Injury to Aqueducts or Pipes; Penalty. – Any person who shall wantonly and maliciously injure any aqueduct, or the pipes, logs or other property of any gaslight company, aqueduct company or person, shall be liable to pay treble damages to such company or person in an action on the case, and shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1854, 1527:2. GS 141:2. 1868, 1:41. GL 155:5. PS 82:5. PL 98:6. RL 114:6. 1945, 188:1, part 25:6. RSA 255:7. 1973, 529:45. 1981, 87:1, eff. April 20, 1981.

Maximum Weight Limits on Class IV, V, and VI Roads

Section 231:190

231:190 Statement of Purpose. – The general court finds that important sectors of commerce of this state depend, in part, on the efficient vehicle transport of unprocessed natural resources, manufactured goods and other commercial products across class IV, V, and VI municipal roads. The condition of such roads may at times necessitate that certain limits, seasonal or otherwise, as authorized in RSA 41:11, be placed upon the weight of vehicles that can safely pass across such roads, so as to avoid causing damage which may result in hazards to public safety or excessive municipal expense. The general court urges municipalities to exercise this authority in ways that do not unreasonably infringe on the efficient movement of unprocessed natural resources, manufactured goods and other commercial products essential to a healthy state economy.

Source. 1995, 104:1, eff. July 15, 1995.

Section 231:191

231:191 Maximum Weight Limits. –

I. The governing body of a municipality may establish maximum weight limits, seasonal or otherwise, which are more restrictive than limits set forth in RSA 266:17-26, for any class IV, V, or VI highway or portion of such highway, when the highway agent determines that such highway requires postings to prevent unreasonable damage or extraordinary municipal maintenance expense. Such posting shall be in accordance with currently acceptable practices and technology.

II. Maximum weight limits shall be posted, in the same manner as bridges are posted pursuant to RSA 234:39 and 266:18-c, at all entrances to the restricted highway or portion of such highway from other public highways. Such signage shall be legible, posted in a conspicuous location, and be of weather resistant materials.

III. It shall be unlawful for any person to drive a vehicle in violation of such maximum weight limits without written permission provided in an expeditious manner from the selectmen or highway agent in a town, or the mayor and aldermen or street commissioner of a city. The names of the officials authorized to grant written permission shall be posted prominently in the town office or city hall. Officials authorized to grant written permission may impose reasonable conditions and may establish reasonable regulations for bonding and restoring the highway.

IV. A person who violates such maximum weight limits shall be required to restore such highways if the municipality has reason to believe that the highway damage or disturbance is attributable to vehicles or activities under such person's control or responsibility. Upon request, the municipality shall provide such person with the municipality's reasons, including any inspection reports.

V. No vehicle or commercial enterprise serviced by such vehicle shall be exempt from such maximum weight limits because of prior highway use or existing use of abutting land; provided, however, that any owner of land or a commercial enterprise served by such highway, who demonstrates that such limits would entail practical difficulty or unnecessary hardship, and who complies with all conditions and regulations concerning bonding and restoration, shall be granted an exemption unless the exemption would be detrimental to public safety. For the purposes of this paragraph, "unnecessary hardship" shall include any weight restriction which results in significant interference with a commercial enterprise or land use which existed prior to the posting of the weight restriction.

VI. Any person who violates any provision of this section or the rules or regulations made under authority under this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person; and in addition, shall be liable for the cost of restoration of the highway to a condition satisfactory to the person empowered to give such written permission.

VII. The governing body of a municipality which establishes maximum weight limits more restrictive than the limits set forth in RSA 266:17-26, for any class IV, V, or VI highway or portion of such highway, seasonal or otherwise, which restricts a commercial or industrial company operated or located in that municipality, shall hold a hearing if requested by the impacted business. The hearing shall be held within 15 working days of receipt of a certified letter by the local governing body from the impacted business requesting a hearing, otherwise enforcement of the maximum weight limits established by that municipality shall be suspended for the remainder of the year or until such hearing is held.

Source. 1995, 104:1. 2000, 110:1, 2, eff. July 7, 2000.

