

CHAPTER 56
HB 560 – FINAL VERSION

2013 SESSION

13-0810
08/10

HOUSE BILL **560**

AN ACT repealing the board of trust company incorporation.

SPONSORS: Rep. Butler, Carr 7

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill repeals the board of trust company incorporation and gives the duties to the banking commissioner.

This bill is a request of the banking department.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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HB 560 – FINAL VERSION

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT repealing the board of trust company incorporation.

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

1 56:1 Branch Offices. Amend RSA 384-B:2, III to read as follows:

2 III. Written applications for branch offices shall be submitted by the bank, in the first
3 instance, to the commissioner and shall be verified under oath and made upon forms which may be
4 prescribed by the commissioner for the purpose with all the information required by such form fully
5 set forth thereon, including the types of service to be offered at such branch office. Each application
6 shall be accompanied by a fee of \$1,500 in the case of a new branch and one single fee of \$1,500 for
7 the composite of all branches. The department shall investigate and examine each application. A
8 notice stating the date before which objections may be filed shall then be published by the petitioner
9 in such form as the commissioner may order. Any interested person or corporation may, within the
10 time specified, file with the ~~board~~ **commissioner** a statement of objection to the granting of such
11 application. The commissioner may, upon request of any interested person or corporation, or at the
12 commissioner's own discretion, order a public hearing, or may approve said application without a
13 hearing. If a public hearing is to be held, the petitioners shall cause to be published such notices as
14 the commissioner may order. Said hearing shall be held at the time and place fixed by the
15 commissioner. The commissioner shall keep a permanent verbatim record of all such evidence. The
16 commissioner may prescribe reasonable procedural rules to govern the proceedings. There shall be
17 no refund allowed on any application fee once it has been filed. In addition to the application fee,
18 each applicant for a branch office shall be obligated to pay the reasonable cost of processing, hearing
19 and deciding each such application, as assessed by the commissioner, which cost may be collected by
20 the commissioner in an action of debt unless paid within 30 days after demand. Sums collected
21 under this section shall be payable to the state treasurer as restricted revenue and credited to the
22 appropriation for the bank commissioner.

23 56:2 Exceptions. Amend RSA 384-B:2-e to read as follows:

24 384-B:2-e Exceptions. Notwithstanding any provision to the contrary in RSA 384-B:2, I, III, IV
25 and V and RSA 384-B:2-c, II, a bank which is well-capitalized under applicable federal rules and
26 regulations and has a composite CAMEL rating of at least 2 as a result of its most recent
27 examination by either its federal regulatory authority or the bank commissioner, may open a new
28 branch if the bank does not exceed 30 percent of the dollar volume of the total deposits, time and
29 savings, and demand of all banks, national banks, and federal savings banks and loan associations in
30 the state as determined by the ~~board~~ **commissioner** as provided in RSA 384-B:2, I, by giving

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1 written notice to the bank commissioner at least 30 days in advance of the opening of the new branch
2 and by paying the fee required by RSA 384-B:2, III.

3 56:3 Bank Holding Company Affiliates. Amend RSA 384-B:3 to read as follows:

4 384-B:3 Bank Holding Company Affiliates. No bank holding company shall directly or indirectly
5 acquire ownership or control of any voting stock of any bank or national bank, if upon such
6 acquisition (1) the bank holding company would have more than 12 affiliates in this state; or (2) the
7 dollar volume of the total deposits, time, savings, and demand in this state of the bank holding
8 company and all its affiliates would exceed 30 percent of the dollar volume of total deposits, time,
9 savings, and demand in this state of all banks, national banks, and federal savings and loan
10 associations in this state as determined by the ~~board~~ **commissioner** on the basis of the most recent
11 annual deposit reports of the Federal Deposit Insurance Corporation and available at the time of
12 acquisition.

13 56:4 Penalty for Violation. Amend RSA 384-B:4 to read as follows:

14 384-B:4 Penalty for Violation. Whoever willfully violates any provision of this chapter or the
15 conditions upon which any application was granted by the ~~board~~ **commissioner**, shall forfeit to the
16 state \$100 a day for every day or part thereof during which such willful violation continues. Any
17 such violation shall be forthwith reported by the commissioner to the attorney general, and the
18 forfeiture may be recovered by an information or other appropriate proceeding brought in the
19 superior court in the name of the commissioner.

20 56:5 Injunction. Amend RSA 384-B:5 to read as follows:

21 384-B:5 Injunction. Upon an information or other proceeding the court may issue an injunction
22 restraining such bank holding company or bank or its or their officers, directors, agents, and
23 employees from further action in violation of any provision of this chapter or the conditions upon
24 which any application was granted by the ~~board~~ **commissioner** during the pendency of such
25 proceeding, or permanently, and may make such other order as justice may require.

26 56:6 Waiver of Deposit Limitation. Amend RSA 384-B:8 to read as follows:

27 384-B:8 Waiver of Deposit Limitation. In any transaction involving the merger, consolidation or
28 acquisition of any bank, banks, or bank holding company, whenever one or more of such banks or
29 bank holding companies is in such condition that the Federal Deposit Insurance Corporation or any
30 other federal agency having supervisory authority over banks or bank holding companies in
31 New Hampshire could take action which would result in a merger, acquisition, consolidation or other
32 similar structural change, and in the absence of such federal action such a change would be
33 prevented by the provisions of RSA 384-B:2 or RSA 384-B:3, the ~~board~~ **commissioner** may waive
34 the 30 percent dollar volume of total deposit limitation in RSA 384-B:2 and RSA 384-B:3. Any such
35 waiver shall be binding upon the ~~board~~ **commissioner** in any proceeding involving the merger,
36 consolidation or acquisition of such bank, banks, or bank holding company.

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1 56:7 Savings Banks; Dividends. Amend RSA 386:10, II to read as follows:

2 II.(a) Notwithstanding any other provision of law to the contrary, the [~~board of trust~~
3 ~~company incorporation~~] **commissioner** may adopt rules pursuant to RSA 541-A permitting any
4 mutual savings bank to convert to stock form in the same manner, to the same extent and with
5 comparable limitations as federal savings and loan associations operating within this state are
6 permitted under rules of the Office of Thrift Supervision. However, no conversion under this
7 paragraph shall be permitted which includes as part of the conversion transaction the issuance of
8 securities of any bank or holding company other than securities of the converting savings bank or the
9 securities of a holding company organized by the converting savings bank in order to acquire its
10 capital stock, unless in addition to procedures required by the rules adopted under this paragraph, it
11 is ratified by the depositors of the mutual savings bank seeking to convert. Ratification by depositors
12 shall not be required if:

13 (1) The conversion is part of a reorganization into a mutual holding company
14 pursuant to RSA 386-B; *or*

15 (2) The conversion is required by federal or state regulatory authorities[~~;~~ ~~or~~

16 (3) ~~The conversion has been commenced by the filing with the board of trust~~
17 ~~company incorporation of an application to convert prior to the effective date of this paragraph].~~

18 (b) For purposes of effectuating the depositor ratification procedures required by this
19 paragraph, the [~~board of trust company incorporation~~] **commissioner** is directed to adopt depositor
20 voting procedures, applying to the same extent and with comparable limitations as federal savings
21 and loan associations operating within this state are permitted under rules of the Office of Thrift
22 Supervision, or any successor thereto. The rules adopted pursuant to this paragraph shall contain a
23 provision allowing for the inclusion of comments on the conversion by individual incorporators and
24 groups of incorporators with the voting materials submitted to the depositors. Such inclusion shall be
25 at the expense of the converting bank.

26 56:8 Petition. Amend RSA 386-A:4, I to read as follows:

27 I. A petition requesting approval of the proposed incorporation shall be filed with the bank
28 commissioner. The petition shall be upon such form as may be prescribed by the bank commissioner
29 and shall contain all the information required by such form, signed and verified under oath by the
30 incorporators, to which shall be annexed a signed duplicate of the articles of agreement. An
31 examination fee of \$1,500 shall be paid when the petition is filed. Sums collected under this section
32 shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the
33 bank commissioner. The bank commissioner shall examine **and investigate** each petition [~~and if he~~
34 ~~finds that it is duly completed, he shall forthwith refer the petition to the board of trust company~~
35 ~~incorporation. The bank commissioner shall then make such investigation of each petition]~~ as he *or*
36 *she* considers expedient[~~for the purpose of more fully informing the board]. [Said board] **The**~~

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1 **commissioner** may, upon request of any interested person or corporation or at ~~[its]~~ **his or her** own
2 discretion, order a public hearing, or may approve said petition without a hearing. The petitioners
3 shall cause to be published such notices relating to the petition as the ~~[board]~~ **commissioner** may
4 order.

5 56:9 Notice. Amend RSA 386-A:5 to read as follows:

6 386-A:5 Notice. If a public hearing upon the petition is ordered by the ~~[board]~~ **commissioner**
7 under the provisions of RSA 386-A:4, notice of such hearing shall be caused to be published by the
8 petitioners at least once a week for 3 successive weeks, in one or more newspapers designated by the
9 commissioner. The notice shall be in such form as may be prescribed by the commissioner, setting
10 forth the place, date, and hour of the hearing, the names, addresses and occupations of the
11 incorporators, and the name of the proposed corporation, and such other information as the form
12 may require. One of the newspapers shall be a newspaper generally circulating in the city or town
13 where such bank is to be located. The first publication of such notice shall be within 30 days after
14 the ~~[petition has been referred to the board by the commissioner]~~ **public hearing has been**
15 **ordered**. The petitioners shall also cause a copy of such notice to be mailed to every bank, trust
16 company, or other corporation, described in RSA 384:1, located in the city or town where such bank
17 is to be located, at least 14 days before such hearing date. The petitioners shall furnish the ~~[board]~~
18 **commissioner** with written proof of the publication and service of the notice under this section, on
19 or before the commencement of the hearing.

20 56:10 Considerations. Amend the introductory paragraph of RSA 386-A:6 to read as follows:

21 Before acting on any petition, the ~~[board]~~ **commissioner** shall consider such evidence as may be
22 presented by the petitioners and all other interested persons, firms and corporations, including
23 members of the general public and shall keep a permanent record of such evidence. The petitioners
24 shall submit to the ~~[board]~~ **commissioner** full information as to the identity and background of each
25 person, firm, or corporation who has subscribed to 3 percent or more of the initial capital of the
26 proposed bank, including information on whether such person, firm, or corporation held an equity
27 interest of 3 percent or more in or served as a director or officer of a bank which has failed. In
28 making ~~[its]~~ **his or her** decision on each petition, the ~~[board]~~ **commissioner** shall not take favorable
29 action unless ~~[it]~~ **he or she** determines that the following are adequate:

30 56:11 Decision. Amend RSA 386-A:7 to read as follows:

31 386-A:7 Decision. The ~~[board]~~ **commissioner** shall ~~[then decide the question whether the~~
32 ~~petition shall be granted or denied]~~ **grant or deny the petition** and ~~[it]~~ shall make a record of ~~[its]~~
33 **his or her** decision. If the ~~[decision is adverse to the petitioners]~~ **petition is denied**, no further
34 proceedings shall be had, but a new petition may be filed after one year from the date of the decision.
35 If the petition is granted, the petitioners shall proceed as hereinafter provided in this chapter. The
36 ~~[board]~~ **commissioner** may impose reasonable conditions, consistent with reasonable banking

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1 standards, to the commencement of business under any such grant.

2 56:12 Rejection of Proposals for Conversions. Amend RSA 386-A:7-a, I(b) to read as follows:

3 (b) The substantial alteration of a plan of conversion submitted for consideration [~~by the~~
4 ~~board of trust company incorporation pursuant to RSA 386:10, II, or~~] to the bank commissioner
5 pursuant to RSA 394-A:10.

6 56:13 Approval. Amend RSA 386-A:14 to read as follows:

7 386-A:14 Approval of. Such certificate shall be submitted to the [~~board of trust company~~
8 ~~incorporation~~] **commissioner**, who shall examine [~~the certificate~~] **it**, and who may require such
9 amendment thereof or such additional information as [~~they~~] **he or she** may consider necessary. If
10 [~~they find~~] **the commissioner finds** that the public convenience and advantage will be served by the
11 establishment of such corporation, that the proposed management of such corporation will be of
12 satisfactory character, knowledge and experience in the field of banking, and that the proceedings in
13 other respects conform to the provisions of this chapter, [~~they~~] **he or she** shall so certify and endorse
14 [~~their~~] **his or her** approval upon the certificate.

15 56:14 Certificate of Incorporation. Amend RSA 386-A:16 to read as follows:

16 386-A:16 Certificate of Incorporation. The secretary of state shall thereupon issue a certificate
17 of incorporation in the following form:

18 THE STATE OF NEW HAMPSHIRE

19 Be it known, that whereas (the names of the subscribers to the articles of agreement) have
20 associated themselves with the intention of forming a corporation under the name of (the name of
21 corporation), for the purpose (the purpose declared in the agreement of association), with capital
22 debentures, capital funds, special deposit or capital stock of (the amount fixed in the agreement of
23 association) and have complied with the provisions of the statutes of this state in such case made
24 and provided, as appears from the certificate of a majority of the trustees or directors of said
25 corporation, duly approved by the [~~board of trust company incorporation~~] **bank commissioner** and
26 recorded in this office: Now, therefore, I (the name of the secretary), secretary of state, do hereby
27 certify that said (the names of the subscribers to the agreement of association), their associates and
28 successors, are legally organized and established as, and are hereby made, an existing corporation
29 under the name of (name of corporation), with the powers, rights and privileges, and subject to the
30 limitations, duties and restrictions, which by law appertain thereto.

31 Witness my official signature hereunto subscribed, and the seal of the state hereunto affixed, this
32 day of in the year (the date of the filing of the articles of agreement).

33 The secretary of state shall sign the certificate of incorporation and cause the seal of the state to be
34 thereto affixed; and such certificates shall have the force and effect of a special charter.

35 56:15 When Incorporated; Beginning Business. Amend RSA 386-A:18 to read as follows:

36 386-A:18 When Incorporated; Beginning Business. Within 90 days after a favorable decision

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1 pursuant to RSA 386-A:7 petitioner shall file with the secretary of state the certificate required
2 pursuant to RSA 386-A:13. The existence of such corporation shall begin upon the filing of the
3 certificate of the trustees or directors in the office of the secretary of state. Any corporation
4 organized under this chapter shall begin business within 2 years from the date of its incorporation;
5 otherwise its charter shall be void, unless the [~~board of trust company incorporation~~] **commissioner**
6 for good cause shown, shall grant one or more extensions of not more than one year each.

7 56:16 Commencement of Business. Amend RSA 386-A:19 to read as follows:

8 386-A:19 Commencement of Business. Such corporation shall not begin the transaction of
9 business until it has furnished proof of its ability to satisfy any conditions imposed by the [~~board~~]
10 **commissioner** under RSA 386-A:7 and until the initial amount of **required** capital [~~established by~~
11 ~~the board~~], represented by the issuance of capital debentures (in the case of a mutual savings bank)
12 or by the issuance of special deposit or capital stock (in the case of a guaranty savings bank), shall
13 have been actually paid in cash. Upon proof thereof to the bank commissioner, he **or she** shall issue
14 to the corporation a certificate of authority to commence business. It shall be unlawful for any such
15 corporation to commence business prior to the issuance of such certificate.

16 56:17 Minimum Capital Requirements. Amend RSA 386-A:21 to read as follows:

17 386-A:21 Minimum Capital Requirements. The initial capital required to organize a savings
18 bank shall be not less than \$250,000 in cash, or such greater sum as may be required by the [~~board~~]
19 **commissioner**, except that the initial capital required to organize a savings bank for the sole
20 purpose of acting as an interim or phantom bank in the anticipation of a merger transaction, shall be
21 such sum as may be required by the [~~board~~] **commissioner**. Such initial capital shall be fixed by the
22 [~~board~~] **commissioner** and shall be subdivided into capital stock and an initial surplus. All amounts
23 advanced for such purpose shall be evidenced by transferable capital debentures, in the case of a
24 mutual savings bank, and by capital stock in the case of a guaranty savings bank. The commissioner
25 may require any such bank to increase its capital funds or regulate the amount of its deposits, from
26 time to time, as may be necessary, to comply with reasonable banking standards, not inconsistent
27 with law.

28 56:18 Amendment of Articles of Agreement or Charter. Amend RSA 386-A:26 to read as follows:

29 386-A:26 Amendment of Articles of Agreement or Charter. Any mutual savings bank or
30 guaranty savings bank, whether organized under the provisions of this chapter or created by special
31 act of the legislature, may, in accordance with the procedures prescribed in this subdivision and
32 subject to the approval of the [~~board of trust company incorporation~~] **commissioner**, amend its
33 articles of agreement or legislative charter; provided, however, that no such amendment shall
34 contain (1) any provision which could not then be lawfully included in original articles of agreement
35 filed under this chapter, or (2) any provision which is inconsistent with the general statutes of this
36 state relating to savings banks.

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1 56:19 Petition. Amend the introductory paragraph of RSA 386-A:28 to read as follows:
2 Such savings bank shall thereupon file with the [~~board of trust company incorporation~~]
3 **commissioner** a petition for approval of the proposed amendment, setting forth:

4 56:20 Approval of Petition; Filing with the Secretary of State. Amend RSA 386-A:29 to read as
5 follows:

6 386-A:29 Approval of Petition; Filing With Secretary of State.

7 I. The [~~board of trust company incorporation~~] **commissioner** may, upon the request of any
8 interested person or corporation or upon [~~its~~] **his or her** own motion, order a public hearing, or may
9 act upon the petition without a hearing. If a public hearing is to be held, the petitioning institution
10 shall cause to be published such notices as the [~~board~~] **commissioner** may order.

11 II. If the [~~board of trust company incorporation~~] **commissioner** finds that the proposed
12 amendment satisfies the requirements of RSA 386-A:26 and was adopted in accordance with
13 RSA 386-A:27, and that the public convenience and advantage and the interest of the petitioning
14 institution, its members, stockholders and depositors will be promoted by the proposed amendment,
15 [~~it~~] **the commissioner** shall so certify, and shall endorse [~~its~~] **his or her** approval on one of the
16 certified copies of the amended articles of agreement or amended charter. The petitioning savings
17 bank shall thereupon file the same in the office of the secretary of state, accompanied by a fee equal
18 to the fee charged by the secretary of state to business corporations under RSA 293-A. The secretary
19 of state shall thereupon cause said amended articles of agreement or amended charter, with the
20 endorsement thereon, to be recorded, and shall issue a certificate of amended incorporation, and
21 thereafter such savings bank shall have all the powers and privileges provided for by said amended
22 articles of agreement or amended charter. The fee for recording with the secretary of state any
23 amended articles of agreement or amended charter, which does not embody any increase of the
24 authorized capital debentures, capital stock or special deposits, shall be \$35.

25 56:21 Mutual Savings Banks; Chartering of Subsidiary Guaranty Savings Bank. Amend RSA
26 386-B:9, IV to read as follows:

27 IV. If the [~~board of trust company incorporation~~] **commissioner** grants the petition under
28 RSA 386-A:7, [~~it~~] **the commissioner** shall condition [~~its~~] **his or her** approval upon the transfer by
29 the reorganizing mutual savings bank to the guaranty savings bank (in organization), before such
30 transferee shall commence business, of assets having a value in excess of the amount of the
31 transferred liabilities, as determined by the bank commissioner, such that the guaranty savings
32 bank will at the time of such transfer meet all applicable net worth and capital adequacy
33 requirements prescribed by federal statutes or regulations or state statutes or rules.

34 56:22 National Bank May Convert Into State Bank. Amend RSA 389:3 to read as follows:

35 389:3 National Bank May Convert Into State Bank. A national bank located in this state which
36 follows the procedure prescribed by the laws of the United States to convert into a state bank, shall

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1 be granted a certificate of incorporation in this state if the [~~board of trust company incorporation~~]
2 **commissioner** finds that the bank meets the standards as to location of office, capital structure and
3 business experience of officers and directors for the incorporation of a state bank.

4 56:23 Application for State Charter. Amend the introductory paragraph of RSA 389:4 to read as
5 follows:

6 The converting national bank may apply for such certificate of incorporation by filing with the [~~board~~
7 ~~of trust company incorporation~~] **commissioner** an application signed under oath by its president
8 and cashier and by a majority of its entire board of directors setting forth:

9 56:24 Approval of Application. Amend RSA 389:5 to read as follows:

10 389:5 Approval of Application. The [~~board of trust company incorporation~~] **commissioner** upon
11 being satisfied that such application conforms to law shall indorse [~~its~~] **his or her** approval thereon
12 and thereupon said application shall be filed in the office of the secretary of state, who, upon
13 payment of a fee equal to the fee charged by the secretary of state to business corporations under
14 RSA 293-A, shall cause the same, with the approval indorsed thereon, to be recorded and shall issue
15 a certificate of incorporation as prescribed in RSA 392:18.

16 56:25 Reserves. Amend RSA 390:6 to read as follows:

17 390:6 Reserves. Every such corporation shall at all times maintain as a reserve an amount
18 equal to at least 12 percent of the aggregate amount of its demand deposits plus an amount equal to
19 at least 5 percent of the aggregate amount of its time and savings deposits. Not less than 100
20 percent of the reserves on demand deposits shall consist of cash and due from banks, and/or federal
21 funds advanced from one business day until the next. The form of the reserve for time and savings
22 deposits may be in any of the following: cash and due from banks, and/or federal funds advanced
23 from one business day until the next, and/or obligations of the United States of America, the
24 maturity of which shall not exceed 5 years, and/or the obligations of agencies of the United States at
25 par value, the maturity of which shall not exceed 5 years, and/or the obligations of any federal
26 government sponsored enterprises (as are designated by written ruling of the bank commissioner) at
27 par value the maturity of which shall not exceed 5 years. The [~~board of trust company incorporation~~
28 ~~created under RSA 392~~] **commissioner** may vary the amount of reserve required, provided,
29 however, that [~~said board~~] **the commissioner** shall not increase the amount of reserves required for
30 any bank to an amount in excess of that which is required by the Federal Reserve System of similar
31 banks located in this state which are members of the Federal Reserve System. No new loan or
32 investment shall be made by such corporation when its reserve is not in accordance with the
33 requirements of this section. The required reserve must be maintained on a daily basis. The method
34 of computation and the reserve computation period for determining compliance with this section
35 shall be established by the commissioner. Any deficiency in the reserve established pursuant to this
36 section may be subject to a penalty of up to \$100 per day.

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1 56:26 Definitions. Amend RSA 392:1-a, I to read as follows:

2 I. “Confidential information,” with respect to a trust company, includes the names of
3 stockholders, members, or other owners; ownership information; capital contributions; addresses;
4 business affiliations; findings of the commissioner [~~or the board of trust company incorporation~~]
5 through any examination or investigation of the commissioner [~~or the board of trust company~~
6 ~~incorporation~~]; any information required to be reported or filed with the commissioner [~~or the board~~],
7 any information that qualifies as any person’s “nonpublic personal financial information” under
8 Chapter V of the Gramm-Leach-Bliley Act of 1999 and the regulations implementing it; any
9 information or agreement relating to any merger, consolidation, or transfer; any agreements or
10 information relating to any relationship with a contracting trustee; and any other nonpublic
11 information that, in the judgment of the commissioner, could be useful in connection with an act of
12 bribery, extortion, identity theft, or terrorism.

13 56:27 Petition. Amend RSA 392:5, I to read as follows:

14 I. A petition setting forth said organizational instrument or its terms, signed by the
15 organizers and requesting that the [~~board of trust company incorporation~~] **commissioner** grant a
16 charter shall be filed with the [~~bank~~] commissioner in the form prescribed by the commissioner. The
17 commissioner shall designate in such form the questions, requests for information and certifications
18 applicable only to deposit taking or lending institutions that need not be responded to by organizers
19 of a nondepository trust company. An examination fee of \$5,000 shall be paid when the petition is
20 filed. Sums collected under this section shall be payable to the state treasurer as restricted revenue
21 and credited to the appropriation for the bank commissioner.

22 56:28 Investigations. Amend RSA 392:5-a to read as follows:

23 392:5-a Investigations. For the purpose of any investigation under this chapter, [~~the board or~~]
24 the commissioner shall have the power to subpoena witnesses and administer oaths in any
25 adjudicative proceedings, and to compel, by subpoena duces tecum, the production of all books,
26 records, files, and other documents and materials relevant to [~~its~~] **his or her** investigation.

27 56:29 Hearing. Amend RSA 392:6-a to read as follows:

28 392:6-a Hearing. The [~~board~~] **commissioner** may order within [~~its~~] **his or her** discretion a
29 public hearing on the petition. The [~~board~~] **commissioner** may approve or deny the petition with or
30 without a public hearing. Any required public hearing shall be held at the time and place fixed by
31 the [~~board~~] **commissioner** and a notice shall be published in accordance with the provisions of RSA
32 392:6. The [~~board~~] **commissioner** may prescribe reasonable procedural rules to govern the
33 proceedings, including rules for maintaining the confidentiality of the portions of the petition, the
34 commissioner’s investigation, and the proceedings of the [~~board~~] **commissioner** that include
35 confidential information or are determined by [~~the board or~~] the commissioner or otherwise
36 determined by law to be confidential or to exempt a certain class of petitions from any public hearing

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1 requirement. The ~~board~~ **commissioner** shall keep a permanent verbatim record of all such
2 evidence.

3 56:30 Decision. Amend RSA 392:8 to read as follows:

4 392:8 Decision.

5 I. In deciding whether or not to grant the petition, the ~~board~~ **commissioner** shall consider
6 the factors set forth in RSA 392:5, II. Upon reaching its decision, the ~~board~~ **commissioner** shall
7 make a record thereof. If the petition is denied, it shall be dismissed and no new petition concerning
8 the same company may be filed within one year thereafter.

9 II. If in any case the ~~board~~ **commissioner** shall be of the opinion that the petition does not
10 satisfy the factors in RSA 392:5, II by the exercise proposed by the trust company of all the powers
11 and privileges which are included in the petition, but that the same would be satisfied by the
12 exercise of a part thereof, ~~it~~ **he or she** shall so notify the petitioners; and in such case the
13 petitioners may have leave to withdraw, and may at once file another petition setting forth new
14 organizational documents, upon which the same procedure shall be had as upon the original petition.

15 56:31 Approval. Amend RSA 392:16 to read as follows:

16 392:16 Approval of. Such certificate shall be submitted to the commissioner, who shall examine
17 the same, and who may require such amendment thereof or such additional information as he or she
18 may consider necessary. If he or she finds that the certificate is consistent with the decision ~~of the~~
19 ~~board~~ pursuant to RSA 392:8 and that the proceedings in other respects conform to the provisions of
20 this chapter, he or she shall so certify and indorse his or her approval upon said certificate and the
21 organizational instrument.

22 56:32 Certificate of Organization. Amend RSA 392:18 to read as follows:

23 392:18 Certificate of Organization. The secretary shall thereupon issue a certificate of
24 organization in the following form:

STATE OF NEW HAMPSHIRE

25
26 Be it known, that whereas (the names of the organizers of the trust company) have associated
27 themselves with the intention of forming a trust company under the name of (the name of the trust
28 company), for the purpose (the purpose declared in the organizational instrument,), with capital of
29 (the amount fixed in the organizational instrument), and have complied with the provisions of the
30 statutes of this state as duly approved by the ~~board of trust company incorporation~~ **bank**
31 **commissioner** and recorded in this office: Now, therefore, I (the name of the secretary), secretary of
32 state, do hereby certify that said (the names of the organizers of the trust company), and their
33 successors, are legally organized and established as, and are hereby made, an existing trust company
34 under the name of (name of trust company), with the powers, rights and privileges, and subject to
35 the limitations, duties, and restrictions, which by law appertain thereto.

36 Witness my official signature hereunto subscribed, and the seal of the state hereunto affixed, this

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1 _____ day of _____ in the year _____ (the date of the filing of the organizational
2 instrument).

3 The secretary of state shall sign the certificate of organization and cause the seal of the state to be
4 thereto affixed, and such certificate shall have the force and effect of a special charter.

5 56:33 When Organized; Beginning Business. Amend RSA 392:20 to read as follows:

6 392:20 When Organized; Beginning Business. The existence of such trust company shall begin
7 upon the filing of the organizational instrument with the secretary of state. Any trust company
8 organized under this chapter shall begin business within 2 years from the date of its organization;
9 otherwise its charter shall be void, unless the [~~board of trust company incorporation~~] **commissioner**,
10 for good cause shown, shall grant one extension for not more than one year.

11 56:34 Minimum Capital Requirements; Investment of Capital. Amend RSA 392:25, I to read as
12 follows:

13 I. The initial capital required to organize a trust company shall be not less than \$500,000.
14 The [~~board of trust company incorporation~~] **commissioner** may require, in the exercise of [~~its~~] **his or**
15 **her** discretion based on safety and soundness factors, as set forth in paragraph IV, additional capital
16 at such levels as [~~it~~] **he or she** determines is necessary to protect against the risks inherent in the
17 business of the trust company. Once organized, a nondepository trust company shall maintain a
18 minimum level of capital required by the commissioner to operate in a safe and sound manner based
19 upon his or her examination of the company, provided that the level of capital shall not be less than
20 \$500,000.

21 56:35 Minimum Capital Requirements; Investment of Capital. Amend the introductory
22 paragraph of RSA 392:25, IV to read as follows:

23 IV. The safety and soundness factors to be considered by [~~the board or~~] the commissioner in
24 the exercise of [~~their~~] **his or her** discretion include:

25 56:36 Petition. Amend RSA 392:27 to read as follows:

26 392:27 Petition. Any trust company organized under this chapter or chartered prior to the
27 passage thereof may file with [~~said board of incorporation~~] **the commissioner** a petition setting
28 forth an amendment to its organizational instrument, within the provisions of this chapter, and
29 praying for approval of the amended organizational instrument based on the considerations set forth
30 in RSA 392:5, II.

31 56:37 Procedure; Effect. Amend RSA 392:28 to read as follows:

32 392:28 Procedure; Effect. If the decision is favorable to the petition a copy of the said amended
33 organizational instrument, certified by the clerk or secretary of the trust company, with the approval
34 of [~~said board~~] **the commissioner** indorsed thereon, shall be filed in the office of the secretary of
35 state, accompanied by a fee equal to the fee charged by the secretary of state to business corporations
36 under RSA 293-A if the trust company is a corporation, or the fee charged to limited liability

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1 companies under RSA 304-C if the trust company is a limited liability company, and thereupon the
2 secretary of state shall cause the same, with the endorsement thereon, to be recorded as provided in
3 RSA 392:17, and shall issue a certificate of such amended organizational instrument, which shall
4 conform as nearly as may be to the form prescribed in RSA 392:18 and shall have the same force and
5 effect, and thereafter such trust company shall have all the powers and privileges provided for by
6 such amended certificate or charter and shall be subject to all the provisions of this chapter.

7 56:38 Redemption of Shares or Interests. Amend RSA 392:38-a to read as follows:

8 392:38-a Redemption of Shares or Interests. Notwithstanding the provisions of RSA 392:38, any
9 such trust company which then has more than 500 holders of the shares or interests of its own
10 capital stock shall be entitled, with the express written approval of the bank commissioner, to
11 redeem any and all of such shares or interests from holders thereof who own in the aggregate 10
12 shares or less of such stock. Such redemption shall be pursuant to a tender offer, the form of which
13 shall have been approved by the bank commissioner, and all shares or interests so redeemed shall be
14 retired within 60 days of the expiration of the tender offer, thereby reducing the authorized capital
15 stock of the trust company. Within said 60 day period the trust company shall file with the [~~board of~~
16 ~~trust company incorporation~~] **commissioner**, as required under RSA 392:27, an appropriate
17 amendment reciting the change in outstanding shares or interests.

18 56:39 Definitions; Exemption From Certain Laws. Amend RSA 392:43 to read as follows:

19 392:43 Voluntary Dissolution of Nondepository Trust Company. A trust company organized as a
20 nondepository institution under the provisions of RSA 392 or under the provisions of RSA 392-A may
21 voluntarily dissolve in the manner provided in this chapter. Such dissolution may be accomplished
22 by the liquidation of the trust company or by reorganizing the trust company into a domestic or
23 foreign corporation, limited liability company, limited partnership, or limited liability partnership
24 that does not have banking or trust powers, and in both instances surrendering its trust company
25 charter to the [~~board of trust company incorporation~~] **commissioner**. A trust company that
26 reorganizes into any other entity pursuant to this section shall not engage in any activity that is
27 authorized only for a bank or a trust company.

28 56:40 Voluntary Dissolution by Liquidation. Amend RSA 392:44 to read as follows:

29 392:44 Voluntary Dissolution by Liquidation. A nondepository trust company, organized under
30 the provisions of RSA 392 or under the provisions of RSA 392-A, which voluntarily dissolves by
31 means of liquidation, shall do so by complying with the procedures for a voluntary dissolution set
32 forth in the provisions of state law applicable to domestic business corporations, if organized as a
33 banking corporation, or by complying with the procedures for a voluntary dissolution of a domestic
34 limited liability company, limited partnership, or limited liability partnership, as applicable, if the
35 dissolving trust company was organized as such other type of banking entity, provided, however, that
36 any filing required to be made with the secretary of state shall be made instead with the [~~board of~~

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1 ~~trust company incorporation]~~ **commissioner**.

2 56:41 Voluntary Dissolution by Reorganization. Amend RSA 392:45 to read as follows:

3 392:45 Voluntary Dissolution by Reorganization. A nondepository trust company organized
4 under the provisions of RSA 392 or under the provisions of RSA 392-A which voluntarily dissolves by
5 means of a reorganization into a domestic or foreign corporation, limited liability company, limited
6 partnership, or limited liability partnership which is not authorized to engage in banking or trust
7 activities shall do so by compliance with the procedures for a reorganization into such type of
8 business entity as set forth in the provisions of domestic and foreign law applicable to such business
9 entities, provided, however, that any filing required to be made with the secretary of state shall be
10 made instead with the ~~[board of trust company incorporation]~~ **commissioner**.

11 56:42 Approval of Voluntary Dissolution; Filing Fee. Amend RSA 392:46 to read as follows:

12 392:46 Approval of Voluntary Dissolution; Filing Fee.

13 I. A nondepository trust company seeking to dissolve its charter shall file an application for
14 dissolution with the ~~[board of trust company incorporation]~~ **commissioner** accompanied by a filing
15 fee of \$1500 payable to the bank commissioner. The bank commissioner shall examine the
16 application for completeness and compliance with the requirements of this section, the domestic
17 business entity laws applicable to the requested type of liquidation or reorganization, and its rules.
18 The application shall include a comprehensive plan of dissolution setting forth the disposition of all
19 assets and liabilities, in reasonable detail to effect the liquidation or reorganization. Among other
20 things, the plan of dissolution shall provide for the discharge or assumption of all of the
21 nondepository trust company's known or unknown claims and liabilities and the transfer of all of its
22 responsibilities as a trustee to a successor trustee or trustees. Additionally, the filing shall include
23 such other certifications, affidavits, documents or information with respect to the dissolution as the
24 ~~[board]~~ **commissioner** may require to understand how such assets and liabilities will be disposed of,
25 the timetable for effecting disposition of such assets and liabilities, and the applicant's proposal for
26 dealing with any claims that are asserted after the dissolution has been completed. The bank
27 commissioner may conduct a special examination of the applicant for purposes of evaluating the
28 application. Cost of the special examination shall be paid by the applicant.

29 II. If the bank commissioner finds that the application for dissolution is incomplete, the
30 bank commissioner shall return it for completion not later than 60 days after it is filed. If the
31 application is found to be complete by the bank commissioner, he or she shall ~~[so notify the board in~~
32 ~~writing and shall report any information he or she has obtained from an examination of the~~
33 ~~applicant to the board. Not later than 30 days thereafter, the board shall hold a hearing for]~~
34 **examine the plan of dissolution for** the purpose of determining whether the plan of dissolution
35 disposes of the assets and liabilities in a lawful manner, is fair and equitable to all interested
36 persons, has no adverse effect on the business of banking in the state and in general carries out the

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1 purposes and intentions of RSA 392:43-45. ~~[Not later than 30 days thereafter, the board shall either~~
2 ~~approve or not approve the application. If the board approves the application, then]~~ ***If the***
3 ***commissioner concludes that these considerations are satisfied, he or she shall approve the***
4 ***application.*** The applicant may ***then*** proceed with the dissolution under the plan, subject to such
5 conditions that the ~~[board]~~ ***commissioner*** may prescribe. If the applicant subsequently determines
6 that the plan of dissolution must be amended to complete the dissolution, it shall file an amended
7 plan with the ~~[board]~~ ***commissioner*** and obtain ~~[its]~~ ***his or her*** approval to proceed under the
8 amended plan. If the ~~[board]~~ ***commissioner*** does not approve the application or amended plan, if
9 any, the applicant may appeal the decision pursuant to RSA 541.

10 III. Upon completion of all actions required under the plan of dissolution and conditions, if
11 any, prescribed by the ~~[board of incorporation]~~ ***commissioner***, necessary to liquidate the trust
12 company or to effect the reorganization, the applicant shall submit a written report of its actions to
13 the ~~[board of incorporation]~~ ***commissioner*** and the applicant's board of directors shall certify, under
14 oath, that it is true and correct. Following receipt of the report, the bank commissioner may examine
15 the trust company to determine whether the commissioner is satisfied that all required actions have
16 been taken to liquidate or reorganize the trust company in accordance with the plan of dissolution
17 and any conditions prescribed ~~[by the board]~~. Not later than 60 days after the filing of the report, the
18 ~~[board of incorporation shall examine the report and the bank commissioner's findings, and, if it is~~
19 ~~satisfied]~~ ***commissioner, if he or she is so satisfied,*** shall so notify the applicant in writing that
20 the dissolution has been completed and is final. Thereupon, the applicant shall surrender its charter
21 to the ~~[board]~~ ***commissioner***, and the ~~[board]~~ ***commissioner*** shall issue a certificate of dissolution
22 to be filed with the secretary of state pursuant to RSA 392:47. If the ~~[board]~~ ***commissioner*** is not
23 satisfied that all required actions have been taken, ~~[it]~~ ***he or she*** shall notify the applicant in writing
24 what additional actions shall be taken to be eligible for a certificate of dissolution. The ~~[board]~~
25 ***commissioner*** shall establish a deadline for the submission of evidence that the additional actions
26 have been taken. The ~~[board]~~ ***commissioner*** may extend the deadline for good cause shown. If the
27 applicant fails to file a supplemental report showing that the additional actions have been taken
28 before the deadline, or submits a report that is found not to be satisfactory by the ~~[board of~~
29 ~~incorporation]~~ ***commissioner***, the ~~[board]~~ ***commissioner*** shall notify the applicant in writing that
30 its application is not approved, and the applicant may appeal the decision pursuant to RSA 541.

31 IV. The ~~[board]~~ ***commissioner*** may adopt rules, pursuant to RSA 541-A, relative to the
32 procedures and requirements for a dissolution pursuant to RSA 392:43-47.

33 56:43 Procedure; Effect; Recording Fee. Amend RSA 392:47 to read as follows:

34 392:47 Procedure; Effect; Recording Fee. When the ~~[board of trust company incorporation]~~
35 ***commissioner*** approves a voluntary dissolution application, the applicant shall file the certificate of
36 dissolution in the office of the secretary of state, accompanied by a fee of \$35. In the case of a

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1 reorganization, the applicant shall also file the documents required by the secretary of state for
2 domestic business entities to complete a statutory reorganization of the type approved by the ~~[board]~~
3 **commissioner**, including the organizational instruments for the reorganized entity. The secretary
4 of state shall record the certificate and other documents, if any, and issue a certificate evidencing
5 such liquidation or reorganization, as applicable. When the secretary of state has issued a certificate
6 evidencing the liquidation or reorganization, as applicable, the dissolving banking corporation,
7 limited liability company, limited liability partnership or limited partnership shall be deemed to
8 have been voluntarily dissolved or reorganized, as applicable, with the same effect as if such
9 voluntary dissolution or reorganization had been effected by a domestic business corporation, limited
10 liability company, limited partnership, or limited liability partnership, by making the filings
11 required of such domestic business entities under the provisions of state law applicable to such
12 domestic business entities.

13 56:44 Organization. Amend RSA 392-A:2, IV to read as follows:

14 IV. Any New Hampshire financial institution may reorganize into a merchant bank by
15 submitting an application to reorganize with the ~~[board of trust company incorporation]~~
16 **commissioner** and complying with the organization requirements of RSA 392, as applicable. The
17 application of the New Hampshire financial institution shall be signed by a majority of the members
18 of the board of directors. The reorganization shall be approved by a 2/3 majority of the members of
19 the board of directors and a 2/3 majority of each class of shareholders. If the reorganization is
20 approved by the ~~[board of trust company incorporation]~~ **commissioner**, notice of the reorganization
21 shall be filed with the office of the secretary of state at the same time the charter of the merchant
22 bank is filed pursuant to RSA 392:17. The certificate of incorporation issued by the secretary of state
23 pursuant to RSA 392:18 shall make reference to the reorganization authorized by this chapter.

24 56:45 Capital; Other Funds. Amend RSA 392-A:3 to read as follows:

25 392-A:3 Capital; Other Funds. A merchant bank shall maintain capital at a level which is
26 commensurate with the risk undertaken in connection with its loans, investments, and other
27 activities, as determined annually by its board of directors, if it is a corporation, or its equivalent
28 governing body if it is any other type of business entity, but in no event shall its capital be less than
29 6 percent of its assets. The initial capital of a merchant bank shall consist of common stock in the
30 amount of at least \$2,500,000 paid in the form of cash or its equivalent. The balance of any capital
31 required by the ~~[board of trust company incorporation]~~ **commissioner** may consist of preferred stock
32 or other equity capital, subordinated notes, or debentures, as approved by ~~[said board]~~ **the**
33 **commissioner**. Notwithstanding the foregoing, the capital structure of a New Hampshire financial
34 institution that reorganizes into a merchant bank may continue in the same form and amount as
35 existed at the time of reorganization, provided that the capital is at least \$2,500,000. A merchant
36 bank may borrow funds to engage in the merchant banking business only from accredited investors.

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1 Following the organization or reorganization of a merchant bank, if the bank commissioner finds
2 that the capital is inadequate based on the risk profile of its investments, the bank commissioner
3 may require that the capital be increased by an amount necessary to protect the safety and
4 soundness of the merchant bank. A merchant bank may voluntarily dissolve, either by liquidation or
5 reorganization into another type of business entity, in accordance with the provisions of RSA 392.

6 56:46 New Section; Board of Trust Company Incorporation. Amend RSA 383 by inserting after
7 section 24 the following new section:

8 383:25 Board of Trust Company Incorporation Decisions. Each decision or act of the board of
9 trust company incorporation shall maintain the same force and effect as when such decision was
10 issued or act was taken, except to the extent otherwise provided under this title. Any charter
11 granted or amended by the board of trust company incorporation, with all rights, obligations, and
12 interests vested or accrued thereunder shall remain in effect according to its terms, and shall
13 continue to be subject to and governed by the provisions of this title.

14 56:47 Banking Commissioner; Definition. Amend RSA 383:1 to read as follows:

15 383:1 Commissioner and Deputy.

16 **I.** There shall be a bank commissioner who shall be appointed by the governor with the
17 advice and consent of the council, and whose term shall be for 6 years. There shall be a deputy bank
18 commissioner who shall be recommended by the bank commissioner and appointed by the governor
19 with the advice and consent of the council, and whose term shall be 6 years. The deputy may
20 exercise the powers and perform the duties of the commissioner during the commissioner's absence
21 whenever and to the extent that he or she may be so authorized by the commissioner. In case of the
22 temporary disability of the commissioner, or of a vacancy in the office, the deputy shall have the
23 powers and perform the duties of the commissioner until another commissioner is appointed and
24 qualified.

25 **II.** *The term "commissioner," as used in this title, means the bank commissioner*
26 *unless the context clearly indicates otherwise.*

27 56:48 Repeal. The following are repealed:

28 I. RSA 384-B:1, VII-a, relative to the definition of "board."

29 II. RSA 392:1, relative to the board for the incorporation of trust companies.

30 56:49 Effective Date. This act shall take effect 30 days after its passage.

31 Approved: June 4, 2013

32 Effective Date: July 4, 2013