

CHAPTER 270
SB 124-FN – FINAL VERSION

03/14/13 0875s
8May2013... 1501h
5June2013... 1863h
06/23/13 2178EBA

2013 SESSION

13-0509
08/10

SENATE BILL ***124-FN***

AN ACT establishing an integrated land development permit.

SPONSORS: Sen. Odell, Dist 8; Sen. Hosmer, Dist 7; Sen. Watters, Dist 4; Sen. Carson, Dist 14; Sen. Reagan, Dist 17; Sen. Rausch, Dist 19; Sen. Stiles, Dist 24; Sen. Fuller Clark, Dist 21; Sen. Woodburn, Dist 1; Sen. Boutin, Dist 16; Sen. Bradley, Dist 3; Sen. Pierce, Dist 5; Rep. Grenier, Sull 7; Rep. Sad, Ches 1; Rep. Gottling, Sull 2; Rep. Renzullo, Hills 37

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill establishes a permit process for applicants seeking one or more land development permits from the department of environmental services.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT establishing an integrated land development permit.

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

1 270:1 New Chapter; Integrated Land Development Permit. Amend RSA by inserting after
2 chapter 488 the following new chapter:

3 CHAPTER 489

4 INTEGRATED LAND DEVELOPMENT PERMIT

5 489:1 Purpose. This chapter is intended to:

6 I. Establish an integrated land development permit option that may be sought, at the
7 discretion of the applicant, as an alternative to seeking one or more individual land development
8 permits or approvals issued by the department of environmental services.

9 II. Provide a coordinated approach and holistic perspective in regulating land development
10 activities to protect the quality and functions of New Hampshire's natural environment.

11 III. Establish an alternative project review and permitting process to improve
12 communication and coordination between multiple organizations and entities involved in the
13 permitting of proposed projects.

14 IV. Establish a structured pre-application process to provide enhanced guidance earlier in
15 the project design process to facilitate compliance and improved environmental performance.

16 V. Encourage and facilitate implementation of environmentally superior projects.

17 VI. Recognize that the degree of relatedness of the affected programs presents a unique
18 opportunity to achieve efficiencies and savings that are not possible to achieve by similar means
19 within the other programs administered by the department.

20 489:2 Definitions. In this chapter:

21 I. "Abutter" means any person who owns land immediately contiguous to the subject
22 property or who owns flowage rights on such land. The term does not include the owner of any land
23 that is separated by a public road or public waterway from the subject property or, in the absence of
24 a public road or waterway, is more than ¼-mile from the limits of the proposed work. If any land
25 that is immediately contiguous to the subject property is owned in whole or in part by the person
26 who is proposing the work or is necessary to meet any frontage requirement, the term includes the
27 person owning the next contiguous property.

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1 II. “Affected programs” means the following programs implemented by the department:

2 (a) The terrain alteration program established under RSA 485-A:17 and rules adopted
3 pursuant thereto;

4 (b) The subdivision and individual sewage disposal systems program established under
5 RSA 485-A:29 through RSA 485-A:44 and rules adopted pursuant thereto;

6 (c) The wetlands program established under RSA 482-A and rules adopted pursuant
7 thereto; and

8 (d) The shoreland water quality protection program established under RSA 483-B and
9 rules adopted pursuant thereto.

10 III. “Applicant” means the person who initiates the application process for an integrated
11 land development permit. If the applicant is not the owner of the property on which the project is
12 proposed to occur, the applicant shall be authorized in writing by the property owner to undertake
13 all actions and representations required under this chapter.

14 IV. “Department” means the department of environmental services.

15 V. “Integrated land development permit” means a single permit issued by the department in
16 lieu of issuing separate permits or approvals under one or more of the affected programs.

17 VI. “Permittee” means a person who obtains an integrated land development permit under
18 this chapter.

19 VII. “Subject property” means the property on which a project is proposed or, after issuance
20 of a permit, is undertaken.

21 489:3 Authorization.

22 I. There is hereby established an integrated land development permit, for which application
23 may be made as an alternative to applying for separate, individual permits or approvals under the
24 affected programs.

25 II. Municipalities may review materials, engage in discussions with the department, conduct
26 independent site visits with the consent of the property owner and the applicant, if other than the
27 property owner, and provide written comment to the department during any or all phases of the
28 integrated land development permit process. Municipalities may attend site visits, attend meetings
29 or participate in discussions between the applicant and the department in accordance with the
30 following:

31 (a) Municipalities may participate in meetings or other discussions between the
32 department and the applicant during the conceptual and pre-application phases of the integrated
33 land development permit process under RSA 489:5 and RSA 489:6 with the consent of the applicant.

34 (b) Municipalities may participate in site visits conducted by state or federal regulatory
35 agencies during the conceptual and pre-application phases of the integrated land development
36 permit process under RSA 489:5 and RSA 489:6 with the consent of the property owner and the

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1 applicant, if other than the property owner.

2 (c) If the department concludes that it would promote the efficient and timely
3 consideration of a final application under RSA 489:7, the department may invite the municipality in
4 which the subject property is located to participate in meetings or other discussions between the
5 department and the applicant or attend site visits conducted by state or federal regulatory agencies.

6 (d) To the extent practicable, site visits by municipalities for the purposes of commenting
7 on a permit application or permit issued under this chapter shall be coordinated with entry upon the
8 property by state or federal regulatory agencies under RSA 489:3, VI.

9 III. If administrative requirements or procedures contained in this chapter, or adopted by
10 rule to execute this chapter, conflict with administrative requirements or procedures of any other
11 statute or rule implemented by the department, the provisions under this chapter shall apply.

12 IV. The time limits prescribed in this chapter, or adopted by rule to execute this chapter,
13 shall supersede any time limits provided in any other applicable provision of law.

14 V. Electronic communications and electronic document management may be employed to
15 facilitate correspondence, application, notification, and coordination under this chapter.

16 VI. Submission of materials for the pre-application technical review under RSA 489:6, II or
17 for final application under RSA 489:7 shall constitute express authorization by the property owner
18 and the applicant, if other than the property owner, for the department and other participating
19 regulatory agencies, through their respective agents or employees, to enter upon the subject property
20 for purposes of evaluating site conditions and the application made under this chapter at reasonable
21 times and with reasonable notice except under exigent circumstances.

22 489:4 Applicability.

23 I. Any person who wishes to conduct an activity requiring a permit or other approval from
24 the department under 2 or more of the affected programs may choose to apply for an integrated land
25 development permit from the department in lieu of all individual program permits or approvals
26 otherwise required under the affected programs, subject to the following conditions and limitations:

27 (a) All permits or approvals otherwise required under the applicable affected programs
28 shall be included in the application for an integrated land development permit and in any permit
29 issued based on the application.

30 (b) No person shall be eligible under this chapter if the person is the subject of a state
31 administrative, civil, or criminal enforcement action for violating this chapter or any of the affected
32 programs at the time of initiating the application process.

33 (c) No person shall be eligible under this chapter if the person was the subject of a state
34 administrative, civil, or criminal enforcement action for violating this chapter or any of the affected
35 programs within the 5 years prior to initiating the application process, unless the action was
36 withdrawn or overturned on appeal.

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1 (d) No property shall be eligible under this chapter if the property is or has been the
2 subject of an administrative enforcement action for violations of this chapter or any of the affected
3 programs, unless the violations have been remediated or will be remediated as part of the proposed
4 project and any outstanding fees, fines, and penalties assessed against the same person who owns
5 the property at the time of the application have been paid in full.

6 (e) No property shall be eligible under this chapter without the prior consent of the
7 attorney general if the property is, at the time of initiating the application process, or has been,
8 within the 5 years prior to initiating the application process, the subject of a civil or criminal
9 enforcement action for violations of this chapter or any of the affected programs. This subparagraph
10 shall not apply to any action that was withdrawn or overturned on appeal.

11 (f) This chapter shall not apply if any of the work that is part of the project, other than
12 preliminary site evaluation activities such as surveys or test pits not requiring a permit from the
13 department, has been initiated or completed prior to the application process being initiated.

14 (g) This chapter shall not apply to permits for shoreline structures unless they are part
15 of a larger project.

16 (h) This chapter shall not apply to emergency authorizations.

17 II. For projects that would otherwise require only a single permit from the department
18 under the affected programs, the applicant may request a waiver of the requirement for 2 or more
19 permits provided the project incorporates low-impact or minimum-impact design practices and the
20 applicant demonstrates that the proposed project will achieve a superior overall environmental
21 outcome in accordance with the requirements and procedures specified in RSA 489:9.

22 489:5 Conceptual Preliminary Discussions. Any person interested in pursuing an integrated
23 land development permit may consult with the department regarding the applicable procedures and
24 requirements. Applicants may request and participate in conceptual pre-application discussions
25 with the department prior to initiating the formal pre-application technical review process under
26 RSA 489:6. Such conceptual pre-application discussions shall not replace the formal pre-application
27 technical review process.

28 489:6 Pre-Application Technical Review.

29 I. An applicant shall initiate the integrated land development permit process by conducting
30 certain activities, as specified by the department in rules adopted under this chapter, in preparation
31 for pre-application technical review by the department. These activities shall include the following:

32 (a) Inquiry or consultation with the department of resources and economic
33 development's natural heritage bureau and the fish and game department;

34 (b) Notification of and provision of materials on the proposed project to the governing
35 body, the planning department, the planning board, and conservation commission of the
36 municipality or municipalities in which the proposed project is located;

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1 (c) Notification of and provision of materials on the proposed project to the local river
2 management advisory committee, when the project is in the corridor of a designated river or river
3 segment under RSA 483;

4 (d) Notification of and consultation with federal regulatory entities, when applicable;

5 (e) Notification of, and, when requested, provision of materials on the proposed project to
6 the New Hampshire division of historic resources;

7 (f) Assessment of site characteristics and location, as defined by the department in rules
8 adopted under this chapter; and

9 (g) Other assessments, inquiries, notifications, and consultations as defined by the
10 department in rules adopted under this chapter.

11 II. After conducting the activities required under paragraph I, the applicant shall submit to
12 the department such materials as the department requires under rules adopted pursuant to
13 RSA 541-A. The department may require the applicant to pay up to 30 percent of the expected final
14 application fee under RSA 489:7, I to cover departmental costs associated with the pre-application
15 technical review. Any payment made shall be applied towards the final application fee. Such
16 payment shall not be refundable or transferable to another project should a final permit application
17 not be submitted.

18 III. The applicant shall participate in a pre-application technical review with the
19 department.

20 IV. As part of the pre-application technical review, the department shall review preliminary
21 design plans, supporting information, and advisory input from state or federal entities notified or
22 consulted pursuant to paragraph I and comments received from other persons notified pursuant to
23 paragraph I to identify critical issues regarding site development and design, any requested waivers,
24 and any mitigation that may be needed, and review the final permit application requirements with
25 the applicant.

26 V. The department may invite any state or federal entities notified under paragraph I to
27 participate in pre-application technical review discussions. Other persons or entities may be
28 included at the request of the applicant.

29 VI. The pre-application technical review process shall not establish any presumption as to
30 whether the department will approve the final application.

31 489:7 Submission and Review of Final Application.

32 I. Following the pre-application technical review, the applicant shall submit a complete
33 application, as defined by the department in rules, together with the application fee, which shall be
34 equal to the total of the permit fees specified in statute and in rules for each of the individual
35 permits or approvals being replaced by the integrated land development permit, to the department.

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1 The proposed activities shall not be undertaken unless and until the applicant receives a permit
2 from the department.

3 II. Within 14 days of receipt of the application, the department shall notify the applicant
4 whether the application is complete or not. Incomplete applications shall not be accepted and shall
5 be returned, along with the fee, to the applicant to be made complete and resubmitted to the
6 department.

7 III. Concurrent with the submission of the final application to the department, the applicant
8 shall:

9 (a) Provide a complete copy of the final application and all supporting materials, by
10 certified mail or other delivery method that provides proof of receipt, to the municipality, or if
11 applicable, municipalities in which the project is located and, when applicable, the local river
12 management advisory committee or committees.

13 (b) Notify all abutters by certified mail or other delivery method that provides proof of
14 receipt regarding the application. If any question arises as to whether all abutters were notified, the
15 burden shall be on the applicant to show that notification was made.

16 IV. The department shall apply the technical criteria established in the affected programs.

17 V. The department may waive, in accordance with RSA 489:9, any technical criteria
18 established by statute or rule under the affected programs, if such waiver is necessary to achieve a
19 superior overall environmental outcome, or achieve an equivalent overall environmental outcome at
20 reduced cost.

21 VI. Within 45 days of receiving a complete application, the department shall:

22 (a) Approve the application and issue a permit, which shall include such conditions as
23 the department deems necessary to comply with this chapter or rules adopted under this chapter;

24 (b) Deny the application and issue written findings in support of the denial;

25 (c) Identify the need for and schedule a public hearing on the proposed project, and
26 within 30 days of the public hearing approve or deny the application in accordance with
27 subparagraph (a) or (b); or

28 (d) Extend the time for rendering a decision on the application for good cause and with
29 the written agreement of the applicant.

30 VII. If the department fails to act within the applicable time frame established in this
31 section, the applicant may ask the department to issue the permit by submitting a written request.
32 If the applicant has previously agreed to accept communications from the department by electronic
33 means, a request submitted electronically by the applicant shall constitute a written request.

34 (a) Within 14 days of the date of receipt of a written request from the applicant to issue
35 the permit, the department shall:

36 (1) Approve the application, in whole or in part, and issue a permit; or

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1 (2) Deny the application and issue written findings in support of the denial.

2 (b) If the department does not issue either a permit or a written denial within the 14-day
3 period, the applicant shall be deemed to have a permit by default and may proceed with the project
4 as presented in the application. The authorization provided by this subparagraph shall not relieve
5 the applicant of complying with all requirements applicable to the project, including but not limited
6 to requirements established in or under this chapter and any chapter relating to the applicable
7 affected programs.

8 (c) Upon receipt of a written request from an applicant, the department shall issue
9 written confirmation that the applicant has a permit by default pursuant to subparagraph (b), which
10 authorizes the applicant to proceed with the project as presented in the application and requires the
11 work to comply with all requirements applicable to the project, including but not limited to
12 requirements established in or under this chapter and any chapter relating to the applicable affected
13 programs.

14 VIII. Undertaking any activity authorized by a permit issued pursuant to VI(a), VII(a), or
15 VII(c) shall constitute express authorization by the property owner and the permittee, if other than
16 the property owner, for the department and other participating regulatory agencies, through their
17 respective agents or employees, to enter upon the subject property for purposes of determining
18 compliance with the permit and other applicable requirements at reasonable times and with
19 reasonable notice except under exigent circumstances.

20 489:8 Rulemaking. The commissioner of the department shall adopt rules under RSA 541-A
21 relative to:

22 I. Requirements and procedures for the pre-application process and technical review,
23 including requirements for notification of and coordination with municipalities, other state and
24 federal agencies, local river management advisory committees, and other entities.

25 II. Application requirements and procedures for processing a final application for an
26 integrated land development permit, including requirements for notification of and coordination with
27 municipalities, other state and federal agencies, local river management advisory committees, and
28 other entities.

29 III. Applicability of technical criteria of the affected program.

30 IV. Time extensions and duration of a permit, and procedures and requirements for
31 amending a permit issued pursuant to this chapter.

32 V. Procedures and requirements for projects requiring a public hearing.

33 VI. Terms and conditions for permits issued under this chapter to ensure compliance with
34 this chapter and affected programs.

35 489:9 Waivers.

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1 I. No waiver from any affected program’s requirement in rule or statute shall be granted unless
2 the applicant requesting the waiver demonstrates that:

3 (a) There will be no substantial loss of wetland functions and values;

4 (b) Water quality will be protected to the maximum extent practicable and in compliance
5 with the anti-degradation requirements of the federal Clean Water Act and departmental rules; and

6 (c) A superior overall environmental outcome will be achieved or an equivalent overall
7 environmental outcome at reduced cost.

8 II. The demonstration required by paragraph I shall be made based on project design,
9 mitigation, submission of modeling results, engineering calculations, relevant scientific studies, or
10 such other documentation the applicant believes supports the requested waiver.

11 III. No waiver shall be granted if doing so results in a violation of any state statute or
12 regulation outside those governing the affected programs, unless the statute or regulation expressly
13 provides that the provisions may be waived.

14 IV. No waiver shall be granted if doing so results in a violation of any federal requirement,
15 unless the federal requirement expressly provides that its provisions may be waived and the federal
16 agency charged with enforcing the requirement agrees with the waiver.

17 V. Municipalities may adopt an innovative land use control ordinance pursuant to
18 RSA 674:21, authorizing the planning board to allow a project that does not fully conform to the local
19 zoning ordinance to proceed as approved by the department under this chapter, provided the
20 planning board makes a finding that such a project meets the criteria of paragraph I.

21 489:10 Appeals.

22 I. Any person aggrieved by a decision made under RSA 489:7, V, VI(a) or (b), or VII, and any
23 person subject to an order of the department under RSA 489:11 who wishes to appeal shall, within
24 30 days of the decision, file a notice of appeal with the appeals clerk for a hearing before a joint
25 water-wetland council described in paragraph II. At the time the notice of the appeal is filed, the
26 person shall send a copy of the appeal to the commissioner. If the appeal is of a decision to issue a
27 permit, the person shall also send a copy of the appeal to the permittee. The notice of appeal shall
28 clearly state that it is being filed pursuant to this paragraph.

29 II. Upon receipt of a notice of appeal filed pursuant to paragraph I, the appeals clerk shall
30 notify the chairperson of the water council established under RSA 21-O:7 and the chairperson of the
31 wetlands council established under RSA 21-O:5-a. The chairperson shall each designate 4 members
32 of their respective councils to sit with a hearing officer appointed under RSA 21-M:3, VIII as a joint
33 council for purposes of the appeal. The interests represented by members of the joint council shall be
34 as diverse as possible based on the council members available to be designated after any recusals are
35 considered.

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1 III. The appeal shall set forth fully every ground upon which it is claimed that the decision
2 complained of is unlawful or unreasonable. Only those grounds set forth in the appeal shall be
3 considered by the joint council.

4 IV. The joint council shall conduct an adjudicative proceedings as provided in RSA 21-M:3,
5 IX and X, RSA 21-O:14, RSA 541-A, and rules to be adopted by both of the councils for appeals to be
6 heard by the joint council. Until both of the councils have adopted the same rules, the rules of the
7 wetlands council shall apply to any appeal. The burden of proof shall be on the party seeking to set
8 aside the department's decision to show that the decision is unlawful or unreasonable. All findings
9 of the department upon all questions of fact properly before it shall be prima facie lawful and
10 reasonable.

11 V. If the appeal is of a decision to issue a permit, the permittee may appear and become a
12 party to the appeal as a matter of right. Requests by any other person to intervene in any appeal
13 shall be made and decided upon as provided in RSA 541-A:32.

14 VI. On appeal, the joint council may affirm the decision of the department or may remand to
15 the department with a determination that the decision complained of is unlawful or unreasonable.
16 In either case, the council shall specify the factual and legal basis for its determination and shall
17 identify evidence in the record created before the council that supports its decision.

18 VII. Any party aggrieved by a decision of the joint council may appeal to the supreme court
19 as specified in RSA 541.

20 VIII. In the case of a remand to the department by the joint council, the department shall
21 consider the council's determination and may either reissue the subject decision or order or appeal as
22 provided in paragraph VII.

23 489:11 Compliance.

24 I. The following shall constitute noncompliance with this chapter:

25 (a) Failure to comply with this chapter or any rule adopted or permit issued under this
26 chapter.

27 (b) Failure to comply with an order of the commissioner issued relative to this chapter or
28 any rule adopted or permit issued under this chapter.

29 (c) Misrepresentation by any person of a material fact made in connection with any
30 application filed under this chapter or any permit issued under this chapter.

31 II. The permittee shall be responsible for ensuring that all work done under the permit
32 complies with the permit and all other applicable requirements. Any person who performs work
33 under an integrated land development permit shall comply with the permit and all other applicable
34 requirements.

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1 III. The department may issue a written order to any person in noncompliance with this
2 chapter as specified in paragraph I to cease any continuing noncompliance and to remediate or
3 restore any land or water areas affected by the noncompliance.

4 IV. Any noncompliance with this chapter as specified in paragraph I may be enjoined by the
5 superior court upon application of the attorney general.

6 V. Any person who knowingly fails to comply with this chapter as specified in paragraph I
7 shall be subject to all remedies available under law in the applicable affected programs. For
8 purposes of this paragraph, a permit issued under this chapter shall constitute a permit issued
9 under each of the applicable affected programs.

10 270:2 Planning Board Procedures. Amend RSA 676:4, I(b) to read as follows:

11 (b) The planning board shall specify by regulation what constitutes a completed
12 application sufficient to invoke jurisdiction to obtain approval. A completed application means that
13 sufficient information is included or submitted to allow the board to proceed with consideration and
14 to make an informed decision. A completed application sufficient to invoke jurisdiction of the board
15 shall be submitted to and accepted by the board only at a public meeting of the board, with notice as
16 provided in subparagraph (d). An application shall not be considered incomplete solely because it is
17 dependent upon the *submission of an application to or the* issuance of permits or approvals from
18 other *state or federal* governmental bodies; however, the planning board may condition approval
19 upon the receipt of such permits or approvals in accordance with subparagraph (i). The applicant
20 shall file the application with the board or its agent at least 15 days prior to the meeting at which
21 the application will be accepted. The application shall include the names and addresses of the
22 applicant, all holders of conservation, preservation, or agricultural preservation restrictions as
23 defined in RSA 477:45, and all abutters as indicated in the town records for incorporated towns or
24 county records for unincorporated towns or unorganized places not more than 5 days before the day
25 of filing. Abutters shall also be identified on any plat submitted to the board. The application shall
26 also include the name and business address of every engineer, architect, land surveyor, or soil
27 scientist whose professional seal appears on any plat submitted to the board.

28 270:3 New Paragraph; Powers of the Zoning Board of Adjustment. Amend RSA 674:33 by
29 inserting after paragraph V the following new paragraph:

30 VI. The zoning board of adjustment shall not require submission of an application for or
31 receipt of a permit or permits from other state or federal governmental bodies prior to accepting a
32 submission for its review or rendering its decision.

33 270:4 New Paragraph; Powers of the Commission. Amend RSA 36-A:4 by inserting after
34 paragraph IV the following new paragraph:

35 V. The conservation commission, in reviewing an application to provide input to any other
36 municipal board, shall not require submission of an application for or receipt of a permit or permits

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1 from other state or federal governmental bodies prior to accepting a submission for its review or
2 providing such input.

3 270:5 New Subparagraph; Innovative Land Use Controls. Amend RSA 674:21, I by inserting
4 after subparagraph (n) the following new subparagraph:

5 (o) Integrated land development permit option.

6 270:6 New Paragraph; Innovative Land Use Controls. Amend RSA 674:21 by inserting after
7 paragraph VI the following new paragraph:

8 VII. In this section, “integrated land development permit option” means an optional land use
9 control to allow a project to proceed, in whole or in part, as permitted by the department of
10 environmental services under RSA 489.

11 270:7 Effective Date.

12 I. Sections 1, 5, and 6 of this act shall take effect January 1, 2015.

13 II. Sections 2-4 of this act shall take effect 60 days after its passage.

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

15

16 Approved: July 24, 2013

17 Effective Date: I. Sections 1, 5 and 6 shall take effect January 1, 2015.

18 II. Sections 2-4 shall take effect September 22, 2013.

19 III. Remainder shall take effect July 24, 2013.