

DAS MANUAL OF PROCEDURES

EXECUTIVE AND LEGISLATIVE BRANCHES

MOP 150 Governor and Executive Council Actions

I. Purpose and Scope

The Governor and Executive Council (also known as the Governor and “Governor’s Council,” or simply as the Governor and “Council” or “G & C”) are responsible for the prudent and economical expenditure of money appropriated by the Legislature. The Governor and Council are authorized to approve the expenditures of all State departments and to prescribe general regulations for such expenditures. Disbursements from the State Treasury can be made only on a warrant of the Governor with the advice of the Council, and must otherwise be made in accordance with the acts of the Legislature. The Governor and Council manage most state agency expenditures by approving the “warrant” (discussed at paragraph II, B below), as well as through the process of reviewing contracts, grants, leases, and other expenditures presented for approval at regular meetings (discussed at section V below).

This chapter of the Manual of Procedures describes for State agencies the rules that are generally applicable to agency action items requiring Governor and Council approval. Specific guidelines for each type of action item, including but not limited to service contracts, memoranda of understanding, grants, leases, acquisition of real property, acceptance of grants or gifts, expenditure approvals, transfers, travel and salary adjustments are or will be provided in other chapters of the Manual of Procedures.

II. The Governor and Executive Council Process

A. How the Council Operates - Generally

The Governor is the supreme executive authority of the State. N.H. Const. Pt. 2, Art. 41. The Executive Council is responsible for advising the Governor “in the executive part of government.” N.H. Const. Pt. 2, Art. 60. The Executive Council is vested with a substantial number of specific powers and responsibilities pursuant to the Constitution and statutes of the State of New Hampshire. The Governor holds the authority to convene the Council at his or her discretion for the purpose of directing the affairs of the state. N.H. Const. Pt. 2, Art. 62. As a practical matter, however, the Governor and Executive Council meet regularly, approximately twice monthly. A schedule of these meetings is typically posted on the Secretary of State’s website at six month intervals, noting the date, time and location of each meeting.

Meetings and records of the Governor and Council are subject to the provisions of RSA 91-

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A, the State's Right-to-Know Law. *See* RSA 91-A:1- a, VI(b). The Secretary of State serves as the recording officer for the Council. N.H. Const. Pt. 2, Art. 64; *see also* *Opinion of the Justices*, 79 N.H. 535, 535 (1919). The Department of Administrative Services ("DAS") serves as the facilitator of the G & C process. Any agency wishing to have an item addressed by the Council is required to submit the matter to DAS two weeks in advance of the meeting. DAS then compiles a meeting agenda for the review and approval of the Governor. Late items may be added to the agenda with the consent of the Governor. The agenda is then published by the Secretary of State and the items are delivered to the Executive Councilors for review approximately five (5) days before the meeting.

A majority of the Council constitutes a quorum. RSA 21:15, I. Action taken by Councilors at any duly convened meeting at which a quorum is present constitutes the action of the Council. *Opinion of the Justices*, 98 N.H. 530, 532 (1953). If Councilors present at a meeting choose to remain silent or otherwise abstain from voting, their silence or abstention will be taken as acquiescence or concurrence in the action taken by the majority of votes cast. *Opinion of the Justices*, 98 N.H. 530, 532 (1953). Most agenda items require approval of the Governor with the consent of the Council. The Council may approve or reject an agenda item, or table the item for action at a later time. The Governor does not vote on the agenda items but rather exercises his or her authority through control of the meeting agenda and retains a negative over agenda items.

B. Approval of Warrants

Among its many responsibilities, the Governor and Executive Council are charged with ensuring the prudent and economical expenditure of money appropriated by the Legislature. RSA 4:15. The primary means of carrying out that task is the approval of "warrants" to cover State expenditures. Disbursements from the State Treasury can be made only on a warrant of the Governor with the advice of the Council, and must otherwise be made in accordance with the acts of the Legislature. RSA 4:14; RSA 6:10; N.H. Const. Pt. 2, Art. 56; *Opinion of the Justices*, 75 N.H. 624, 626 (1910); *see also* *Op. Atty. Gen.* No. 92-009 (9/30/92).

The Governor and Executive Council are presented each month (unless another interval is specified by G & C) with an estimate of the funds required by State agencies to perform their functions. The Council approves this estimated amount, which serves as an overall authorization (a "warrant") to make the expenditures in question. Periodically, the Governor and Executive Council are presented with an actual total of the amounts spent and approve a warrant for those expenditures, essentially "truing up" the numbers in the initial estimate to reflect actual expenditures.

As discussed in Section V below, the Governor and Executive Council have traditionally added requirements beyond the mere approval of the warrant for certain types of

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expenditures, including through the review and approval of specific types of contracts, grants, memoranda of understanding, leases, and other expenditures presented by agencies.

III. Agency Items Requiring Governor and Council Review

Based upon instructions periodically issued by the Council, the Department of Administrative Services produces an inventory of various types of items that require specific G & C review. The inventory serves as a convenient guide for use by agencies. The most recent version of the DAS “Inventory of G & C Required Submissions” is incorporated into this Manual of Procedures by reference. The Inventory may be found in the directory located at:

<http://sunspot.nh.gov/DASManualProcedures/Incorporated.aspx>

Because the Inventory of G & C Required Submissions may be updated or revised by DAS as circumstances require, without further action by Governor and Council, agencies shall make certain that they utilize the most recent version of the Inventory.

IV. Incorporation by Reference – DAS Administrative Handbook

Periodically, the Department of Administrative Services Budget Office produces an “administrative handbook” (also known as the “DAS Book of Basics”) that is intended to provide State agencies with general information and guidance on the organization of State government, the budget process, the State accounting system, the Governor and Council Process, Fiscal Committee Processes and other matters. The most recent version of the Department of Administrative Services Administrative Handbook is incorporated into this Manual of Procedures by reference. The Handbook provides agencies with an easily accessible guide to common administrative issues, including but not limited to matters addressed in this Manual of Procedures. It is intended as basic guidance and should be interpreted so as to be consistent with this Manual and operative law. To the extent that any of the guidance contained in the Handbook may be inconsistent with this Manual, the terms of the Manual of Procedures shall control.

The Administrative Handbook may be found in the directory located at:

<http://sunspot.nh.gov/DASManualProcedures/Incorporated.aspx>

Because the Administrative Handbook may be updated or revised by DAS as circumstances require, without further action by Governor and Council, agencies shall make certain that they utilize the most recent version of the Handbook.

V. Governor and Executive Council Approval Thresholds

A. Thresholds Established

The Governor and Council have traditionally specified that certain types of expenditures require their direct approval in addition to the approval afforded by the warrant. Agencies must bring expenditures of various types which are above a specific monetary threshold to the Governor and Executive Council for their direct review and approval. Except as is otherwise provided in this chapter, approval of the Governor and Executive Council is required in order for any executive branch agency to:

1. Incur costs associated with organized meetings in the amount of \$2,500 or more;
2. Incur membership fees or dues in the amount of \$2,500 or more under DAS MOP Chapter 1200;
3. Enter into service contracts in the amount of \$10,000 or more covering any type of service.
4. Enter into an “interagency” memorandum of understanding (MOU), as to be further described in MOP 161, if the MOU involves an expenditure in the amount of \$10,000 or more;
5. Enter into an “external” memorandum of understanding, as to be further described in MOP 161, if the MOU involves either a State expenditure (in any amount), the receipt of funds, or the establishment of an enforceable obligation;
6. Award grant funds, as to be further described in MOP 163, in the amount of \$10,000 or more;
7. Accept grant funds, as to be further described in MOP 163, in any amount. In this regard, it may be necessary for an agency to request the authority to “accept and expend” the funds received. It is anticipated that “Accept and Expend” and “Budget and Expend” requests will be further described in Chapter MOP 199 of this Manual.

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8. Enter into a lease, license agreement or other use of premises agreement, as to be further described in MOP 165, in which the State will be a tenant of a third party, if the lease, license or other use of premises agreement involves an expenditure in the amount of \$10,000 or more; or
9. Unless otherwise provided by statute, enter into a lease, as to be described in MOP 165, in which the State will be a landlord to a third party.
10. Enter into a license agreement or other use of premises agreement, as to be described in MOP 165, where the State is the owner of the subject property, if the license or other use of premises agreement involves the receipt of funds in the amount of \$10,000 or more.

B. Applicability of G&C Approval Thresholds

1. All amendments to service contracts, memoranda of understanding, grants, leases, license agreements, or use of premises agreements which have been approved by the Governor and Executive Council shall themselves require the approval of the Governor and Executive Council regardless of whether or not those amendments impose an additional cost.
2. Amendments to service contracts, memoranda of understanding, grants, leases, license agreements, or use of premises agreements which would, in combination with the underlying contract or other item, bring the amount of the contract, memoranda of understanding, grant, lease, license agreement or use of premises agreement to the applicable threshold amount specified in subparagraph V, A. above shall require Governor and Council approval regardless of whether the underlying contract or other item was originally presented to the Governor and Council.
3. The approval thresholds noted in paragraph A. above apply in the aggregate. In other words, if a contract, memoranda of understanding, grant, lease, license agreement, or use of premises agreement would not involve an expenditure that is at or above the applicable threshold in a single fiscal year, but the item would last for a number of years and the total expenditure would ultimately bring the dollar value of the item to a figure which is at or above the threshold, Governor and Council approval shall be required.
4. Multiple contracts, grants, memoranda of understanding, leases, license

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agreements or use of premises agreements by an agency with the same vendor during a single fiscal year (regardless of whether or not all of the expenditures will be made during that fiscal year) shall require Governor and Council approval if the total amount of the multiple items is at or above the applicable G & C approval threshold.

C. Prohibition on Division of Costs to Avoid Thresholds

1. Agencies shall not seek to avoid Governor and Council approval of costs associated with organized meetings under subparagraph V, A. 1. above by viewing individual costs associated with the meeting independently. Costs associated with organized meetings which would, in combination with any other cost pertaining to that meeting, bring the total amount of those costs to the threshold amount specified in A. 1. above shall require Governor and Council approval.
2. Agencies shall not seek to avoid Governor and Council approval of contracts, grants, memoranda of understanding, leases, license agreements or use of premises agreements by entering into various agreements with a vendor that are below the applicable approval threshold. Such divided agreements shall be considered together for the purposes of determining whether the item is at or above the applicable approval threshold and shall thus require Governor and Council approval.

VI. Special Provisions Regarding the Department of Administrative Services

A. Department of Administrative Services Multiagency Service Contracts.

As a general matter, the Department of Administrative Services has statutory responsibility for procuring commodities for all state agencies and is charged with entering into contracts for services that are intended for use by more than one state agency. See RSA 21-I: 11, I (a) (1); RSA 21- I, 11, II (f); RSA 21-I:12, I (a). At times, the Department of Administrative Services may delegate to agencies the authority to purchase commodities valued below a particular dollar figure. See RSA 21-I: 17-a. Unlike other agencies, the Department of Administrative Services has been granted the authority to establish a set of administrative rules relating to the procurement of multiagency service contracts and commodity contracts. See RSA 21-I: 11, I (a) (2); RSA 21- I:14, XII. These rules (Adm Chapter 600) establish a process in which objective criteria are used to select a winning

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bidder, thereby helping to ensure that the State's vendors are selected in a fair and nondiscriminatory manner that does not involve favoritism. In light of the Department of Administrative Services' unique role in the State's procurement process, the Governor and Council have long recognized, and hereby specifically reaffirm, that multiagency service contracts established through the Department of Administrative Services are not subject to the service contract approval thresholds established in Section V. above.

B. Department of Administrative Services Reporting on Contracts and Grants

The Department of Administrative Services shall, on a quarterly basis:

1. Report to the Governor and Executive Council all service contracts, memoranda of understanding, leases, license agreements or use of premises agreements for amounts below the applicable thresholds set forth in paragraph V. A. above which have been approved by agencies without Governor and Executive Council action; and
2. Report to the Governor and Executive Council all grants awarded by State agencies which are at or below the threshold established in paragraph V, A. 7 above.

VII. Past Practice

Unless otherwise specified in this chapter, current practices regarding transactions not requiring Governor and Executive Council approval, or any other matter pertaining to the Governor and Executive Council process, shall remain in effect until otherwise specified in this Manual, or in the Administrative Handbook incorporated herein by reference under Section IV above, or until altered by direction of the Governor and Council.

VIII. Designation of Retroactive and Sole Source Contracts in Agency Requests to Governor and Executive Council

- A. In submissions to the Governor and Executive Council, agencies shall clearly and prominently identify any request for approval of a "sole source" contract or request for retroactive approval of a contract in the manner set forth below. Further information regarding "retroactive" and "sole source" contracts is to be included in Chapter MOP 160.

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- B. Agencies shall state in the first paragraph of their letter requesting Governor and Executive Council approval (the “Requested Action” section) that the item at issue involves a “sole source” contract, a request for retroactive approval, or both, whichever is the case. This statement shall be set forth in **bold print**.
- C. In addition to the foregoing, whenever a submission to the Governor and Executive Council involves a “sole source” contract and/or a request for retroactive approval, the agency shall include in the first paragraph of the explanatory portion of its letter (the “Explanation” section) a clear indication of the reason or reasons that the matter is presented as a “sole source” item and/or a retroactive item.

IX. Consent Calendar for Certain Items

- A. This section of the Manual of Procedures describes for agencies the “consent calendar” process established by the Governor and Executive Council. This calendar is for use in certain recurring circumstances where requests for review and/or approval generally do not give rise to inquiries by the Governor and Council.
- B. An agency may request that the following types of items be placed on the “Consent Calendar” for Governor and Council review and/or approval, provided that they do not involve a request for retroactive action. Regardless of whether an agency has made such a request, the Department of Administrative Services will determine whether requests of the following type received from agencies (which do not involve a retroactive action) are of such a nature as to render them appropriate for placement on the Consent Calendar and will convey that information to the office of the Secretary of State:
 - 1. The following types of *expenditure approvals*:
 - a) Requests to approve travel expenditures;
 - b) Requests to approve tuition expenditures;
 - c) Requests for issuance of a warrant from funds not otherwise appropriated authorizing the Treasury to issue checks to rightful owners of abandoned or unclaimed funds;
 - d) Requests to approve participation fees or dues for membership in an organization which are applied for and registered in the name of the State of New Hampshire and/or in the name of the State

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agency, to the extent that such dues or fees require the approval of the Governor and Executive Council pursuant to DAS MOP 1200.

2. The following types of *approvals of acceptances*:
 - a) Requests to approve receipt of gifts.
3. The following types of *reports and findings*:
 - a) Agency annual and biennial reports;
 - b) Requests to accept, ratify, confirm, approve and/or adopt reports and findings of the Governor and Council's designee under section 21 of RSA 195-D, the New Hampshire Health and Education Facilities Authority Act;
 - c) Department of Transportation Monthly Equipment Acquisition Plan Status Reports which the department is required to submit to the Governor and Executive Council pursuant to any law, including budget footnotes.
4. The following types of *nominations, confirmations and appointments*:
 - a) Nominations for appointments or promotions of field officers of the Army and Air National Guard and confirmations, appointments or promotions of those nominees as field officers;
 - b) Appointments and confirmations of assistant attorneys general, criminal justice investigators and consumer protection investigators in the Department of Justice;
 - c) Appointments of members of highway layout commissions established pursuant to RSA 230:14 and commissions and special commissions established pursuant to RSA 230: 45.
5. The following types of *other items*:
 - a) Amendments or extensions to contracts which would not result in an additional cost to the State that has not been previously authorized by the Governor and Executive Council.
 - b) "External" memoranda of understanding involving a state expenditure, the receipt of funds or an enforceable obligation if the dollar value of

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that memorandum of understanding is less than \$10,000.

- C. An agency wishing to place an item on the Consent Calendar shall clearly state at the beginning of its written submission to the Governor and Council that the item is to be placed upon the Consent Calendar. If the agency requests placement of an item on the Consent Calendar and the item is of the type specified in paragraph B above, it shall be placed on that calendar by the office of the Secretary of State if the Department of Administrative Services concludes that such placement is appropriate in light of the particular facts of the request. The Department of Administrative Services may also specify that the foregoing types of items are to be placed on the Consent Calendar, regardless of whether an agency has made such a request, if it concludes that the item is not likely to give rise to inquiries by the Governor or Executive Council and does not involve a request for retroactive approval.
- D. An agency that does not wish an item that is of the type specified in paragraph B above to be placed on the Consent Calendar shall clearly state that preference at the beginning of its written submission to the Governor and Council. If such a statement is made by the agency, the item shall not be placed on the Consent Calendar.
- E. Items specified as Consent Calendar items shall be listed in a separate section of the meeting agenda. This section shall precede the section of the agenda where other agency requests are considered.
- F. Prior to or at the time of a meeting, the Governor or any member of the Executive Council may remove any item from the Consent Calendar. Items removed from the Consent Calendar shall be considered at the time of other requests relating to the agency.
- G. All items not removed from the Consent Calendar shall be considered and voted on by way of a single motion for approval of the Consent Calendar.
- H. If an agency has no business before the Governor and Executive Council after action is taken on Consent Calendar items, the agency's representative is not required to attend the remainder of the meeting.

X. Audio Recording of Meetings of the Governor and Executive Council and Public Hearings Conducted by the Executive Council

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- A. This section of the Manual of Procedures describes for agencies a policy adopted by the Governor and Executive Council relating to the audio recording of certain Governor and Council proceedings.
- B. On March 10, 2010, the Governor and Executive Council adopted a policy entitled "Audio Recording of Meetings of: the Governor and Executive Council and Public Hearings Conducted by the Executive Council." At the time this policy was adopted, it was noted that the policy would be described in the DAS Manual of Procedures and that a copy of the policy would be available to State agencies as an addendum to the Manual. Policy 2010-1 is generally described below. The policy itself appears as an addendum at the end of this chapter of the Manual, under the section entitled "Other Sources and Information."
- C. Governor and Executive Council Policy 2010-1 provides that when the Governor and Council meet in official session, and when the Council conducts public hearings, the Secretary of State is to make an audio recording of the meeting or hearing. It further provides that the Secretary of State is to include an audio recording of each meeting and hearing in the Secretary's record of the proceedings, but that the Secretary's minutes will nonetheless remain the official minutes of the meeting, with the audio recording being a supplemental record.
- D. Governor and Executive Council Policy 2010-1 also provides that audio recordings should be available to the public in a common digital format; that the recordings should be accessible at the Secretary of State's office, the State Archives and on the State's web site; that electronic files are to be available for download, without charge, from the State's web site; and that any person requesting an electronic copy of the audio file on CD or other media shall pay the cost for producing and providing the copy. Additionally, certified paper transcripts of audio recordings shall be available upon written request for transcription and payment to the Secretary of State of the estimated cost of transcription, as well as payment of any balance due for the actual cost upon receipt of the paper transcript.

XI. Approval of Adjustments to Classified Employee Salary and/or Associated Amounts Relating to a Previous Fiscal Year

Governor and Executive Council approval of adjustments to classified employee salary and/or associated amounts relating to a previous fiscal year shall be included in Chapter MOP 166 of this Manual of Procedures. Until such time as that chapter is adopted, current practices regarding approval of adjustments to classified employee salary and/or associated amounts relating to a previous fiscal year (previously addressed in MOP 150, V) shall remain in effect unless otherwise specified in this

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Manual, the Administrative Handbook incorporated herein by reference under Section IV above, or until altered by direction of the Governor and Council.

XII. Council's Periodic Review of Processes

- A.** The Council concludes that new technologies, statutory provisions and practical concerns may at times make it advisable to reassess the processes associated with the submission of items to the Governor and Executive Council. Although the purely internal processes of the Governor and Council, such as the establishment of the agenda and times and topics of meetings, would not generally require memorialization in the Manual of Procedures, the Council formally adopts this section of the Manual so as to foster an organized, productive and focused method of continuing process improvement.
- B.** At a public meeting of the Council scheduled to take place approximately six (6) months after the Council's first meeting following an election, the Council shall schedule a meeting for the purpose of reviewing its functions and processes. That meeting shall include consideration of at least the following:

 - 1. The types of items which the Governor and Council review and assessment of whether particular types of items might appropriately be placed on, or removed from, the Governor and Council's consent calendar;
 - 2. Assessment of the Governor and Council's monetary thresholds for review and approval of various types of agency expenditures and contracts;
 - 3. Assessment of the documentation which agencies are required to submit to the Governor and Council in various contexts;
 - 4. Cost-effective technology which may be available to assist the Governor, the Council and agencies in the review of items submitted for Governor and Council consideration; and
 - 5. Such other matters as the Governor or members of the Council believe may improve the Governor and Council process, including consideration of whether additional meetings may be necessary to further discuss or implement any desired changes in processes.
- I.** One or more representatives of the Department of Administrative Services shall attend the Council's periodic review of its processes and shall provide a review of its continuing development of the Manual of Procedures.

XIII. Other Sources and Information

A. References for Section II:

Constitutional Provisions

N.H. Const. Pt. 2, Art. 41

N.H. Const. Pt. 2, Art. 56

N.H. Const. Pt. 2, Art. 60

N.H. Const. Pt. 2, Art. 62

N.H. Const. Pt. 2, Art. 64

Statutes

RSA 4:14

RSA 4:15

RSA 6:10

RSA 21:15, I.

RSA 21-I: 11, I (a) (1)

RSA 21-I: 11, I (a) (2)

RSA 21-I, 11, II (f)

RSA 21-I:12, I (a)

RSA 21-I:14, XII

RSA 21-I: 17-a

RSA 91-A:1-a, VI(b)

Opinions and Other Sources

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Opinion of the Justices, 75 N.H. 624, 626 (1910)

Opinion of the Justices, 79 N.H. 535, 535 (1919)

Opinion of the Justices, 98 N.H. 530, 532 (1953)

Op. Atty. Gen. No. 92-009 (9/30/92)

B. References for Section VI:

Statutes

RSA 21-I: 11, I (a) (1) and (2)

RSA 21-I: 11, II (f)

RSA 21-I: 12, I (a)

RSA 21-I: 14, XII

RSA 21-I: 17-a

Administrative Rules

Adm Chapter 600

C. Addenda – Governor and Executive Council Policies

1. Audio Recording of: Meetings of the Governor and Executive Council and Public Hearings Conducted by the Executive Council

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Governor and Executive Council Policy 2010 – 1

Audio Recording of: Meetings of the Governor and Executive Council and Public Hearings Conducted by the Executive Council

Whereas, the Governor and Executive Council seek to make their meetings and hearings more accessible to the public; and

Whereas, the Governor and Executive Council have determined that it is beneficial to make and maintain a verbatim audio record of their meetings and hearings;

Now, therefore, the Governor and Executive Council adopt the following policy:

When the Governor and Executive Council meet in official session and when the Executive Council conducts public hearings the Secretary of State is requested, pursuant to Part 2, article 68 of the New Hampshire Constitution, to make an audio recording of the meeting or hearing. Furthermore, the Secretary of State is requested to include an audio recording of each meeting and hearing in his record of the proceedings. The Secretary of State's minutes shall remain the official minutes of the meeting. The audio recording shall be a supplemental record of the meeting.

- A. The audio recordings should be available to the public in a common digital format. The audio recording should be accessible along with the official minutes kept by the Secretary of State at his State House office, the State Archives, and on the State's web site. Electronic files shall be available on the web site for download without charge. Any person requesting an electronic copy of the audio file on CD or other media shall pay the cost for producing and providing the copy.
- B. Certified paper transcripts of the audio recordings shall be available to any person who submits a written request for the audio record to be transcribed, pays to the Secretary of State the estimated cost of transcription prior to the transcription being made, and pays any balance due for the actual cost upon receipt of the paper transcript.

This policy shall be effective upon approval.

Approved by the Governor and Executive Council.

Meeting Date: 3-10-2010

Deputy 
Secretary of State