Bill as Introduced

HB 719-FN-A – AS INTRODUCED

2003 SESSION

03-1032
05/01

HOUSE BILL ***719-FN-A***

AN ACT relative to the duties, function, and operation of the Pease development authority.

SPONSORS: Rep. Leber, Merr 35; Rep. Graham, Hills 57; Rep. Hamel, Rock 79; Sen. Morse, Dist 22; Sen. Johnson, Dist 2; Sen. Kenney, Dist 3; Sen. Barnes, Dist 17

COMMITTEE: Public Works and Highways

ANALYSIS

This bill clarifies terms and adds statutory language relative to the duties, function, and operation of the Pease development authority, division of ports and harbors.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to the duties, function, and operation of the Pease development authority.

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

1 New Section; Pease Development Authority; Division of Ports and Harbors; Administrative Rules Relative to Commercial Piers. Amend 2001, 290 by inserting after section 290:1 the following new section:

290:1-a Transfer of Department of Resources and Economic Development Rules Relative to Commercial Piers to Division of Ports and Harbors. All existing rules of the department of resources and economic development relative to the commercial piers at Portsmouth, Rye Harbor, and Hampton Harbor shall remain in effect until amended or superceded by rules of the Pease development authority, division of ports and harbors.

2 Pease Development Authority; Definition of Division Project and Division Property Amended. Amend RSA 12-G:2, XII and XIII to read as follows:

XII. "Division project" means the development, construction, reconstruction, maintenance, or operation of any property of the authority related to the ports[~~, harbors,~~] and [~~navigable tidal river of the state~~] ***state tidal waters*** under the jurisdiction of the authority, including dredging activities authorized under RSA 12-G:45 and including all real property and tangible and intangible personal property, structures, machinery, equipment, and appurtenances or facilities used or useful in connection therewith and listed on the inventory of division projects maintained pursuant to RSA 12-G:43, I(e).

XIII. "Division property" means all real property and tangible and intangible personal property, rights, and facilities of the authority related to ports[~~, harbors,~~] and [~~navigable tidal rivers~~] ***state tidal waters*** administered or operated by the authority through the division and listed on the inventory of division property maintained pursuant to RSA 12-G:43, I(e).

3 New Paragraph; Pease Development Authority; Definition of Slip Added. Amend RSA 12-G:2 by inserting after paragraph XXII the following new paragraph:

XXII-a. "Slip" means a volume of water 25 feet long, 8 feet wide, and 3 feet deep as measured at normal high tide and located adjacent to a structure such as a dock, wharf, or pier to which a vessel may be secured.

4 New Paragraph; Pease Development Authority; Definition of State Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIII the following new paragraph:

XXIII-a. "State tidal waters" means any harbor, navigable river or other tidal waters within the state.

5 New Paragraph; Pease Development Authority; Definition of Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIV the following new paragraph:

XXIV-a. "Tidal waters" means waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

6 Pease Development Authority; Definition of Vessel Amended. Amend RSA 12-G:2, XXV to read as follows:

XXV. "Vessel" means boats of all sizes propelled by sail, machinery, or hand, scows, dredgers, shellfish cars, ***barges, seaplanes, personal water craft,*** and craft of every kind, ***including but not limited to non-displacement craft, used or capable of being used as a means of transportation or storage on water.***

7 Pease Development Authority; Contracts of the Division of Ports and Harbors Exempt from Request for Proposals. Amend RSA 12-G:8, VIII to read as follows:

VIII. To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with any person, firm, corporation, municipality, state agency, governmental unit, or other entity, foreign or domestic, provided that no contract in excess of $10,000, including contracts under paragraphs III and XV ***but excluding contracts and agreements entered into under paragraph V***, shall be made without requests for proposal. This requirement may ***also*** be eliminated by an affirmative vote of 5 members of the board on any particular matter. Justification for eliminating the requirement shall be recorded in the minutes of the meeting.

8 Pease Development Authority; Authorization to Seek Designation as Port of Entry or International Airport and to Establish Foreign Trade Zone and Free Port Area; References to Free Port Area Removed. Amend RSA 12-G:38 to read as follows:

12-G:38 Authorization to Seek Designation as Port of Entry or International Airport and to Establish Foreign Trade Zone [~~and Free Port Area~~].

I. The authority shall be and is hereby authorized to make application to the Secretary of the Treasury of the United States for the purpose of having Pease Air Force Base, or portions thereof, designated, established, or constituted, a port of entry, or an international airport, pursuant to the Customs Reorganization Act, 19 U.S.C. section 1 et seq., as amended, and 19 U.S.C. section 58b, as amended, and regulations of the United States Customs Service, including 19 C.F.R. section 101.0, et seq. and 19 C.F.R. section 122.1, et seq.

II. The authority shall be and hereby is authorized to make application to the Secretary of Commerce of the United States for the purpose of establishing, operating, and maintaining foreign-trade zones in the state of New Hampshire, including without limitation at Pease Air Force Base, pursuant to the Free Trade Zone Act, 19 U.S.C. section 81a, et seq., as amended, providing for the

establishment, operation, and maintenance of foreign trade zones in or adjacent to ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes. Unless precluded by federal law, any foreign trade zone [~~or free port area~~]previously under the jurisdiction of the former port authority, and all duties, responsibilities, and obligations associated therewith, shall be transferred to the authority when the duties, functions, and jurisdiction of the port authority are transferred to the authority.

III. The authority shall have full power and authority to select and describe the location of the zone for which application to establish may be made and to make such rules and take such other actions concerning the operation, maintenance, and policing of same as may be necessary to comply with the Free Trade Zone Act and the regulations adopted thereunder, or as may be necessary to comply with such regulations made in accordance with the acts of Congress relating to foreign trade zones. The authority hereby granted to the authority confers on the authority the right and duty to do all things necessary and proper to carry into effect the establishing, maintaining, and operating of foreign trade zones with the state of New Hampshire to comply with the provisions of any acts of Congress or rules promulgated thereunder relating to foreign trade zones[~~ or free port areas~~]. The authority shall also be authorized to set and collect fees for the management of any foreign trade zone [~~or free port area~~]established or maintained under this chapter.

IV. The authority shall have full power and authority to lease the right or to erect, maintain, and operate any structures or buildings or enclosures as may be necessary or proper for the establishing and operating of any such foreign trade zones that might be established at Pease Air Force Base or in the state of New Hampshire.

V. The authority shall have the power and the duty to establish areas at Pease Air Force Base and in and around the ports[~~, harbors,~~] and [~~navigable tidal rivers of the state~~] ***state tidal waters*** [~~of New Hampshire~~] wherein personal property in transit shall be exempt from the provisions of the stock-in-trade tax and such other taxes and customs as are normally levied in a port of entry. For the purpose of this section, personal property in transit through the areas established by the authority is defined as follows: goods, wares, and merchandise which is (a) moving in interstate or international commerce through or over the areas hereinbefore established, or (b) which was consigned to a warehouse, public or private, within the state, from outside the state, whether specified when transportation begins or afterward. Such property shall not be deprived of exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged. The exemption granted shall be liberally construed to effect the purposes of this chapter, provided, however, that the warehouse in which said goods, wares, or merchandise is stored shall not be owned, in whole or in part, by either the consignee or consignor.

9 Acquisition and Management of Division Property; Acquisition of Land for Port Purposes; Reference Changed. Amend RSA 12-G:39 to read as follows:

12-G:39 Acquisition of Land for Port Purposes. In addition to any other power or authority conferred on the authority under this chapter, the authority, with the approval of the governor and council, may, in the name of the state, purchase, lease, or otherwise acquire lands or interests in land, including options, on, near, or adjacent to the ***state*** tidal waters [~~of the state~~] suitable for constructing, establishing, and maintaining thereon piers, wharves, warehouses, or other facilities useful and necessary in the encouragement and development of commercial navigation. Before making any such purchase or acquisition, the authority shall submit to the governor and council a detailed description of the land or interests therein to be acquired, together with a statement of the purposes for which the property is suited and the cost of acquisition and estimated cost of development, as well as such other information as the governor and council shall require. The authority, with the approval of the governor and council, may accept gifts of land; and may in like manner accept and apply to the purchase of land or the development thereof, contributions, gifts, or aid in any form made or given for the purpose by any person, firm, or corporation, or by any municipality or by the United States, and may execute instruments necessary to qualify for such contributions, gifts, or aid. Any land or interest in land acquired by the authority pursuant to this section shall be considered division property and not airport property and shall not be included in the airport district.

10 Pease Development Authority; Division of Ports and Harbors; Authority Relative to Security. Amend RSA 12-G:42 to read as follows:

12-G:42 Additional Powers and Duties. The authority, acting through its division of ports and harbors, shall be responsible for the former functions, duties, and responsibilities of the port authority and shall have the following powers and duties in addition to any other powers and duties set forth in this chapter:

I. Have the authority to make all necessary arrangements with port authorities of other states and federal departments, agencies, and foreign countries and their port entities for the interchange of business, ***for the security of ports, division property, and state tidal waters,*** and for such other purposes as will facilitate and increase the commerce of the ports[~~, harbors,~~] and [~~tidal navigable rivers of the state~~] ***state tidal waters***.

II. Establish offices for the transaction of division business at such places as, in the opinion of the authority, shall be advisable and necessary in carrying out the purposes hereof.

III. Be authorized and empowered to appoint and compensate a chief harbor master, ***a deputy chief harbor master,*** and ***one or more*** harbor masters for communities within the confines of which there are ports [~~, harbors,~~] or [~~navigable tide waters of the state~~] ***state tidal waters*** who will enforce the directives of the authority and the division, [~~such as~~] ***including but not limited to*** the placement of moorings, the assignment of anchorage areas, and the movement of traffic. The authority may appoint [~~an~~] ***one or more*** assistant harbor [~~master~~] ***masters*** at any such place to assist the ***chief*** harbor master, ***the deputy chief harbor master, or one or more harbor masters***

[~~of such place~~] in carrying out [~~the harbor master's~~] *any of their* duties. ***Any person appointed by the authority as a chief harbor master or deputy chief harbor master shall hold a valid and current certification as a full-time police officer in accordance with RSA 188-F:27 and any rules adopted thereunder.***

IV. Be authorized and empowered to contract with and secure the services of a port terminal operating firm, subject to approval of governor and council, for the purpose of having such firm operate a part or all of the facilities of the authority, including piers, wharves, warehouses, parking and storage areas, or other facilities owned or leased by the authority acting through the division, with such operating firm having the exclusive right to operate the business of a port terminal operator and stevedore, including but not limited to the handling of cargo, the collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement, and solicitation of business for such port facility or facilities.

(a) Such contract with an operating firm shall include the following provisions:

[~~(a)~~] ***(1)*** Said firm shall file with the division for its approval a tariff clearly defining the terms "wharfage" and "dockage" and the charges to be made therefor;

[~~(b)~~] ***(2)*** The amount of minimum payments per year satisfactory to the authority to be paid to it for the exclusive right to operate upon the marine terminal, as described in the contract, the business of a port terminal operator and stevedore;

[~~(c)~~] ***(3)*** The amount retained by said firm from all fees for which it is accountable, said amount being a percentage to cover administrative costs of collection;

[~~(d)~~] ***(4)*** Said firm to supply a ship's manifest for every vessel using said facilities;

[~~(e)~~] ***(5)*** Said firm to provide a performance bond in an amount and form acceptable to the authority, as well as insurance in amounts acceptable to the authority for fire and extended coverage, public liability, property damage, and other risks as required by the authority, the insurance company or companies to be licensed to do business in New Hampshire and to be acceptable to the authority;

[~~(f)~~] ***(6)*** Said firm to file quarterly reports with the division indicating the amount of all fees for which it is accountable to the authority, the amounts collected, and the amounts retained, with a certified audit prepared by a certified public accountant submitted annually;

[~~(g)~~] ***(7)*** Such other appropriate provisions which in the opinion of the attorney general will carry out the intent of this section and best protect the interest of the authority and of the state.

(b) Handling of cargo, including its loading, unloading, stockpiling, storing, or other transfer or management, owned, controlled or otherwise lawfully in the possession of or being delivered to or from any non-exclusive lessee or licensee of the authority on division property shall not constitute operating the business of a port terminal operator or stevedore under this paragraph.

V. Be authorized and empowered, in lieu of the provisions set forth in paragraph IV, to undertake the business of a port terminal operator and stevedore as to any division property, including but not limited to the handling of cargo, the setting and collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement, and solicitation of business for such port facility or facilities. In undertaking the business of a port terminal operator or stevedore on any division property the authority may exercise any of the powers granted it under this chapter.

VI. Administer and enforce permit programs for the placement and use of moorings and slips in state tidal waters, including waiting lists for such permits.

[~~V.~~] *VII.* Set and collect fees for mooring and slip permits and waiting lists for such permits. The authority shall establish fees for slips in *ports,* harbors, and [~~tidal rivers that are equal to or proportional to the fees for moorings in harbors~~] *state tidal waters*. Fees shall not be charged for slips at industrial piers along the Piscataqua River or at state-owned piers in harbors. The fees for slips shall be paid into the harbor dredging and pier maintenance fund established under RSA 12-G:46.

[~~VI.~~] *VIII.* Install and continually maintain a uniform system for marking the intercoastal waters of the state including the state ports[~~, harbors,~~] and [~~navigable tidal rivers~~] *state tidal waters* not presently marked by the United States Coast Guard, using funds collected from the fees required under RSA 270-E:3, III, and any other funds so appropriated. Said marking system shall be installed on an incremental basis and maintained as necessary.

[~~VII.~~] *IX.* Have the responsibility for and jurisdiction over the state-owned commercial [~~fishing~~] piers and facilities at Portsmouth, Rye Harbor, and Hampton Harbor except as provided in RSA 12-A:7-a, *including the establishment of fees and rents associated with the use of such facilities*.

[~~VIII.~~] *X.* Adopt rules, pursuant to RSA 541-A, relative to:

(a) Port captains, pilots, and pilotage.

(b) Harbors and harbor masters.

(c) [~~Setting and collecting fees for moorings, slips, waiting lists, and pilotage. A table of such fees shall be attached to the commission of each pilot.~~]*The terms, conditions, and procedures under which the division shall issue, suspend, revoke, deny, or approve permits required under this chapter for moorings and slips.*

(d) [~~Setting and collecting fees authorized in the foreign trade zone and free port areas.~~] *State-owned commercial piers identified in paragraph IX.*

[~~(e) Civil and criminal penalties for violations of the rules of the division.~~

~~(f) Any matter necessary for the proper administration of the division.~~]

XI. Adopt rules, after obtaining prior approval by the board, relative to the setting and collecting of fees authorized under RSA 12-G:38 relating to foreign trade zones; RSA 12-G:42, IV and V, relating to wharfage, dockage, and other marine terminal operations; RSA 12-G:42, VI, relating to moorings, slips, and wait lists; RSA 12-G:42, IX, relating to commercial piers identified in paragraph IX and other division property; RSA 12-G:49-a relating to pilotage; and any other matter necessary for the proper administration of the division. The rules adopted under this paragraph shall not be subject to the provisions of RSA 541-A, so as to provide the authority with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry. Fees established pursuant to this paragraph shall be consistent with the following criteria:

(a) Fees relating to the establishment and operation of foreign trade zones shall be designed to recover a reasonable portion of budget expenses consistent with the purposes of RSA 12-G:38. The general court does not intend that such fees cover all of the budget expenses associated with the implementation of RSA 12-G:38.

(b) Fees relating to wharfage, dockage, and other marine terminal operations shall be comparable with the fees for wharfage, dockage, and other marine terminal operations assessed by other port authorities and other marine terminal operators and stevedores in the United States.

(c) Fees relating to the mooring permits and mooring wait lists shall be designed to recover all of the budget expenses associated with implementation of the mooring permit and wait list system as well as a reasonable portion of the budget expenses consistent with the purposes of RSA 12-G:42, III, VI, and VII; RSA 12-G:43, I (a) and (c); and RSA 12-G:50.

(d) Fees relating to slips shall be designed to be proportional to the fees for moorings established under subparagraph (c).

(e) Fees relating to commercial piers and use of other division property shall be comparable with the fees for use of similar privately- owned facilities.

(f) Fees relating to pilotage shall be comparable with the pilotage fees assessed by other port authorities in the United States.

[~~IX.~~] *XII.* Encourage any contractor bidding on a division project at the port of Portsmouth which is funded through the division or the state of New Hampshire, to employ the maximum possible number of New Hampshire residents. For the purposes of this paragraph, "resident" shall mean any person maintaining a dwelling within the state of New Hampshire who has a present intent to remain within the state for a period of time.

11 Division of Ports and Harbors; References to Navigable Tidal Rivers Changed to State Tidal Waters. Amend RSA 12-G:43, I(a)-(c) to read as follows:

(a) Plan for the maintenance and development of the ports[~~, harbors,~~] and [~~navigable tidal rivers of the state~~] ***state tidal waters*** [~~of New Hampshire~~] from the head of navigation to the seaward limits within the jurisdiction of the state, in order to foster and stimulate commerce and the shipment of freight through the state's ports and, as an agency of the state, to assist shipping, and commercial and industrial interests that may depend on the sea for transport of products, including such interests as may be desirous of locating in tidewater areas of the state; as well as to encourage the establishment of accommodations for the boat traveler, the area boat owners, the pleasure fishermen, and others who pass up and down our coast line or in its tributaries.

(b) Aid in the development of salt water fisheries and associated industries.

(c) Cooperate with any agencies or departments of the federal government in planning the maintenance, development, and use of the state ports[~~, harbors,~~] and [~~navigable tidal rivers~~] ***state tidal waters.***

12 Pease Development Authority; Division of Ports and Harbors Advisory Council; Designees Permitted. Amend RSA 12-G:44, I to read as follows:

I. There is hereby established a division of ports and harbors advisory council consisting of 8 members, 6 of whom shall be appointed by the governor, with the advice and consent of the council. At least 3 of said appointive members shall be residents of the cities and towns of the seacoast region or ***state*** tidal waters and at least one appointive member shall be a commercial fisherman engaged in that industry on the seacoast, and each shall serve for a term of 5 years. Said members shall serve until their successors are appointed and qualified. Any vacancy occurring in the membership of the appointive members shall be filled by the governor and council for the unexpired term. In addition to the 6 appointive members, the commissioner of the department of resources and economic development***, or designee,*** and the mayor of the city of Portsmouth***, or designee,*** shall be, by virtue of their offices, members of the council.

13 Division of Ports and Harbors Advisory Council; Reference to Rulemaking Authority Changed. Amend RSA 12-G:44, IV and V to read as follows:

IV. The division director shall present all rules proposed to be implemented by the authority under RSA 12-G:42, [~~VIII~~] ***X*** to the council for consideration prior to filing a notice of proposed rule under RSA 541-A:6. The council shall present any objections to the proposed rule to the division director and to the board in writing within 15 days of submission to the council by the division director. The authority may adopt a rule to which the council has objected only upon 5 affirmative votes of the authority and after presenting a written reply to the council detailing the reasons for adopting the rule over the objections of the council.

V. The council may propose rules to the authority for adoption under RSA 12-G:42, [~~VIII~~] ***X***. The authority shall adopt rules proposed by the council unless, within 15 days of their proposal, the authority, by 5 affirmative votes, objects to the adoption of such rules and presents a written reply to the council detailing the reasons for objection.

14 Division of Ports and Harbors; Dredge Management in Tidal Waters; Reference Changed. Amend the introductory paragraph of RSA 12-G:45 to read as follows:

12-G:45 Dredge Management in Tidal Waters. The division, subject to the supervision of the authority and in consultation with the division of ports and harbors advisory council, shall be responsible for managing harbor and channel dredging activities within [~~the~~] ***state*** tidal waters [~~of the state~~]. The division shall:

15 New Section; Division of Ports and Harbors; Harbor Management Fund Established. Amend RSA 12-G by inserting after section 46 the following new section:

12-G:46-a Harbor Management Fund Established.

I. There is hereby established a harbor management fund to be used by the authority acting through the division to meet its obligation to appoint and compensate a chief harbor master, a deputy harbor master, harbor masters, and assistant harbor masters; to establish and administer a mooring permits program; to plan for the maintenance and development of the ports and state tidal waters; and to pay the costs associated with any impoundment, removal, or storage authorized under RSA 12-G:52-b.

II. The fund shall be nonlapsing and continually appropriated for the purposes identified in paragraph I. The authority shall deposit in such fund all revenues received from the operation of the mooring permits and mooring wait list programs, fees received pursuant to RSA 270-E:7, II, and any proceeds received from any sale conducted in accordance with RSA 12-G:52-b, V. Interest earned on moneys deposited in the fund shall be deposited into the fund.

16 Pease Development Authority; Pilots and Harbor Masters. RSA 12-G:47-52 is repealed and reenacted to read as follows:

Pilots and Harbor Masters

12-G:47 Pilots. The authority, in consultation with the division director and the division of ports and harbors advisory council, may adopt rules prescribing the qualifications of pilots, and from time to time appoint and commission, under its hand and seal, as many pilots as it may judge necessary, and remove the same at pleasure; and it shall take from them such security, by bond or otherwise, as it may deem proper.

12-G:48 Authority of Pilot. Any pilot appointed by the authority, who has given security for the faithful discharge of his or her duties, may take charge of any vessel, except pleasure or fishing vessels, or a vessel of 150 gross tons and under, and shall pilot such vessel into and out of the river and harbor of the Piscataqua, first showing to the master thereof the pilot's appointment if requested.

12-G:49 Pilots Required. All vessels, except pleasure or fishing vessels or vessels of 150 gross tons or under, are required to be piloted by a pilot appointed by the authority into and out of the Piscataqua River and harbor from a point designated by the authority.

12-G:49-a. Pilotage Fees. All vessels required to engage a pilot under RSA 12-G:49 shall pay a pilotage fee to the pilot. Pilotage fees shall be established by the authority.

12-G:50 Duties; Chief Harbor Master; Deputy Chief Harbor Master; Harbor Masters.

I. Subject to the supervision of the authority and the division director, the chief harbor master's duties shall include but not be limited to the following:

(a) Enforcement of authority directives and rules adopted by the authority pursuant to this chapter relating to the activities and operations of the division or division property.

(b) Issuing and overseeing mooring permits and management of the mooring wait list and of the assignment and placement of moorings.

(c) Designation of anchorage areas.

(d) Management of navigation aides outside of the federal channel.

(e) Management of the movement of traffic, as necessary.

(f) Direction of the removal or movement of vessels during emergencies.

(g) Overseeing the dredge management program.

(h) Overseeing the harbor management program.

(i) Inquiring into and prosecuting all offenses occurring within the chief harbor master's jurisdiction.

(j) Any other duties assigned by the authority or the division director.

II. Subject to the supervision of the authority, the division director, and the chief harbor master, the deputy chief harbor master's duties shall include but not be limited to the following:

(a) Enforcement of authority directives and rules adopted pursuant to this chapter relating to the division or division property.

(b) Performance of the duties of the chief harbor master during the absence or incapacity of the chief harbor master or when such duties are specifically delegated to the deputy chief harbor master by the authority, the division director or the chief harbor master.

(c) Performance of any other duties assigned by the authority, the division director, or the chief harbor master.

III. Subject to the supervision of the authority, the division director, the chief harbor master, and the deputy chief harbor master, the duties of a harbor master shall include but not be limited to the following:

(a) Monitoring the placement and use of moorings in state tidal waters to which the harbor master has been specifically assigned by the chief harbor master or the deputy chief harbor master.

(b) Notifying the chief harbor master or the deputy chief harbor master of any violations of any provision of RSA 12-G or any rules of the authority adopted under RSA 12-G relating to the division or division property.

(c) Performance of any other duties assigned by the division director or the chief harbor master or the deputy chief harbor master.

IV. An assistant harbor master shall assist the chief harbor master, the deputy chief harbor master, or any harbor master as directed by the division director, the chief harbor master, or the deputy chief harbor master in the performance of the chief harbor master's, the deputy chief harbor master's, or harbor master's duties.

12-G:50-a Prohibitions.

I. No person shall abandon any vessel at any time on or in state tidal waters. Any vessel found unattended in a sunken, beached or drifting condition, or otherwise anchored and unattended in such a manner as to pose a threat to navigation or the safety of the public or other vessels shall be deemed abandoned by the owner.

II. No person shall place any mooring in state tidal waters without a permit issued by the division pursuant to this chapter and any rules adopted pursuant to this chapter.

III. No person shall moor, make fast or otherwise secure a vessel to a mooring located in state tidal waters unless:

(a) The owner of the vessel has secured a mooring permit from the division authorizing such vessel to be secured to such mooring;

(b) The owner of the vessel has been directed by, or otherwise has secured the permission of, the chief harbor master, the deputy chief harbor master, a harbor master, or an assistant harbor master to secure such vessel to such mooring, or

(c) Failure to secure such vessel to such mooring would otherwise present an imminent and substantial hazard to navigation or to the safety of any passenger on such vessel.

12-G:51 Enforcement Powers. The chief harbor master and the deputy chief harbor master shall have all of the powers of a police officer, including but not limited to the power to make arrests set forth in RSA 594, to enforce, investigate, and prosecute any:

I. Violation of the provisions of this chapter or rules adopted under this chapter relating to the division and division property, including but not limited to the provisions of RSA 12-G:42, X and XI; and

II. Offense under New Hampshire law occurring on division property where the arrest is made on division property or on vessels secured to or immediately adjacent to division property.

12-G:52 Penalty. Whoever violates any of the rules of the authority relating to the division or division property, including but not limited to the provisions of RSA 12-G:42, X or XI, or refuses or neglects to obey the lawful and reasonable orders of the division director, the chief harbor master, the deputy chief harbor master, a harbor master, or an assistant harbor master, or resists or otherwise interferes with the division director, the chief harbor master, the deputy chief harbor master, a harbor master, or an assistant harbor master in the execution of their duties shall be guilty of a class B misdemeanor.

12-G:52-a Penalty for Illegally Moored or Anchored Vessels. Notwithstanding the provisions of RSA 12-G:52 or any other provision of law, any owner or operator of any vessel moored or anchored in violation of RSA 12-G or rules adopted pursuant to this chapter relative to the division or division property shall be subject to the following penalties in addition to any other penalty, cost or forfeiture imposed under other provisions of law or this chapter:

I. For a first offense, the offense shall constitute a violation, and the fine shall be $100 if a natural person and $300 for any other person.

II. For a second offense, the offense shall constitute a violation, and the fine shall be $250 for a natural person and $500 for any other person.

III. For a third offense and any offense thereafter, the offense shall constitute a Class B misdemeanor, and the minimum fine shall be at least $500 for a natural person and $1000 for any other person.

12-G:52-b Impoundment and Forfeiture of Vessels and Moorings.

I. The division director, the chief harbor master, or the deputy chief harbor master may impound or order the removal and storage of any vessel or mooring found to be in violation of RSA 12-G:50-a or rule adopted pursuant to this chapter. All reasonable charges of such impoundment, removal, and storage shall be a lien against the vessel.

II. The division director shall notify the owner, if known, of the fact of such impoundment, removal, and storage. If the vessel is registered in this state, such notification shall be mailed to the person identified as the owner on the vessel registration at the address listed on such registration. In all other cases, notice shall be placed on file with the division director and published in a newspaper of general circulation.

III. The owner of the vessel or mooring impounded pursuant to this section may redeem the vessel or mooring within 90 days of its removal by payment of all charges and fees incurred by the division related to the impoundment, removal and storage of such vessel or mooring and release the lien identified in paragraph I.

IV. No person who impounds, removes or stores or who is in charge of the impoundment, removal, or storage of such vessel or mooring shall be liable for any damages to the vessel or mooring arising out of the impoundment, removal, or storage thereof.

V. Upon the expiration of the 90-day period identified in paragraph III, the division director may dispose of any unredeemed vessel or mooring by destroying such vessel or mooring or by offering such vessel or mooring for sale at public auction or the division director may retain such vessel or mooring for use by the state; provided, however, if the vessel or mooring is sold or retained, the purchaser or the state, in the event of retention, shall pay the cost of impoundment, removal, and storage, and shall obtain release of the lien identified in paragraph III. Any money received by reason of sale of such vessel or mooring at public auction shall be deposited in the harbor management fund.

VI. Nothing in this section shall be construed to limit, restrict or modify in any way authority granted to the commissioner of safety or the director of safety services to remove or impound boats or moorings pursuant to RSA 270 or RSA 270-B.

17 Pease Development Authority; Construction with Other Laws. Amend RSA 12-G:53, III - IV to read as follows:

III. Except for rules adopted pursuant to RSA 12-G:42, [~~VIII~~] ***X***, the authority shall be exempt from the provisions of RSA 541-A and may adopt rules and bylaws in accordance with its own procedures. Except for rules adopted pursuant to RSA 12-G:42, [~~VIII~~] ***X***, the authority shall file in the office of legislative services a copy of all rules and bylaws adopted, amended, or repealed by the authority. All such rules and bylaws shall be filed in the office of legislative services within 7 days of such adoption, amendment, or repeal.

IV. Any rule adopted by the authority pursuant to RSA 12-G:42, [~~VIII~~] ***X*** or RSA 12-G:47 shall be adopted in accordance with the provisions of RSA 541-A.

18 New Subparagraph; State Accounts; Application of Receipts; Harbor Management Fund. Amend RSA 6:12, I by inserting after subparagraph (lllllllll) the following new subparagraph:

(mmmmmmmmm) Moneys deposited in the harbor management fund under 12-G:46-a.

19 Administrative Procedure Act; Exemption of the Pease Development Authority. Amend RSA 541-A:21, I(n) to read as follows:

(n) Except for rules adopted by the division of ports and harbors ***under RSA 12-G:42, X, rules adopted under*** RSA 12-G, relative to the Pease development authority.

20 Effective Date. This act shall take effect July 1, 2003.

LBAO
03-1032
1/28/03

HB 719-FN-A - FISCAL NOTE

AN ACT relative to the duties, function, and operation of the Pease development authority.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

LBAO
03-1032
Revised 2/10/03

HB 719 FISCAL NOTE

AN ACT relative to the duties, function, and operation of the Pease development authority.

FISCAL IMPACT:

The Pease Development Authority has determined this bill will increase state restricted expenditures by $55,735 in FY 2004, $58,027 in FY 2005, $60,523 in FY 2006 and $63,019 in FY 2007. There will be no fiscal impact on county and local expenditures or state, county and local revenues.

METHODOLOGY:

The Pease Development Authority stated this bill establishes a new classified position of Deputy Chief Harbor Master. The Authority assumes the position will be established at labor grade 21, benefits will be calculated at 37%, and the position will be granted a one step increment each year.

	FY 2004	FY 2005	FY 2006	FY 2007
Salary	$39,811	$41,484	$43,306	$45,128
Benefits	14,730	15,349	16,023	16,697
Miscellaneous	1,194	1,194	1,194	1,194
Total	$55,735	$58,027	$60,523	$63,019

Costs associated with the new position will be borne by fees collected through the mooring permit and wait list system.

HB 719-FN-A – AS AMENDED BY THE HOUSE

13mar03... 0354h

2003 SESSION

03-1032
05/01

HOUSE BILL ***719-FN-A***

AN ACT relative to the duties, function, and operation of the Pease development authority.

SPONSORS: Rep. Leber, Merr 35; Rep. Graham, Hills 57; Rep. Hamel, Rock 79; Sen. Morse, Dist 22; Sen. Johnson, Dist 2; Sen. Kenney, Dist 3; Sen. Barnes, Dist 17

COMMITTEE: Public Works and Highways

ANALYSIS

This bill clarifies terms and adds statutory language relative to the duties, function, and operation of the Pease development authority, division of ports and harbors.

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

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to the duties, function, and operation of the Pease development authority.

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

1 New Section; Pease Development Authority; Division of Ports and Harbors; Administrative Rules Relative to Commercial Piers. Amend 2001, 290 by inserting after section 290:1 the following new section:

290:1-a Transfer of Department of Resources and Economic Development Rules Relative to Commercial Piers to Division of Ports and Harbors. All existing rules of the department of resources and economic development relative to the commercial piers at Portsmouth, Rye Harbor, and Hampton Harbor shall remain in effect until amended or superceded by rules of the Pease development authority, division of ports and harbors.

2 Pease Development Authority; Definition of Division Project and Division Property Amended. Amend RSA 12-G:2, XII and XIII to read as follows:

XII. "Division project" means the development, construction, reconstruction, maintenance, or operation of any property of the authority related to the ports[~~, harbors,~~] and [~~navigable tidal river of the state~~] ***state tidal waters*** under the jurisdiction of the authority, including dredging activities authorized under RSA 12-G:45 and including all real property and tangible and intangible personal property, structures, machinery, equipment, and appurtenances or facilities used or useful in connection therewith and listed on the inventory of division projects maintained pursuant to RSA 12-G:43, I(e).

XIII. "Division property" means all real property and tangible and intangible personal property, rights, and facilities of the authority related to ports[~~, harbors,~~] and [~~navigable tidal rivers~~] ***state tidal waters*** administered or operated by the authority through the division and listed on the inventory of division property maintained pursuant to RSA 12-G:43, I(e).

3 New Paragraph; Pease Development Authority; Definition of Slip Added. Amend RSA 12-G:2 by inserting after paragraph XXII the following new paragraph:

XXII-a. "Slip" means a volume of water at least 25 feet long, 8 feet wide, and 3 feet deep as measured at normal high tide and located adjacent to a structure such as a dock, wharf, or pier to which a vessel may be secured.

4 New Paragraph; Pease Development Authority; Definition of State Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIII the following new paragraph:

XXIII-a. "State tidal waters" means any harbor, navigable river or other tidal waters within the state.

5 New Paragraph; Pease Development Authority; Definition of Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIV the following new paragraph:

XXIV-a. "Tidal waters" means waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun.. Tidal waters end where the rise and fall of the water surface can no longer be measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

6 Pease Development Authority; Definition of Vessel Amended. Amend RSA 12-G:2, XXV to read as follows:

XXV. "Vessel" means boats of all sizes propelled by sail, machinery, or hand, scows, dredgers, shellfish cars, ***barges, seaplanes, personal water craft,*** and craft of every kind, ***including but not limited to non-displacement craft, used or capable of being used as a means of transportation or storage on water.***

7 Pease Development Authority; Contracts of the Division of Ports and Harbors Exempt from Request for Proposals. Amend RSA 12-G:8, VIII to read as follows:

VIII. To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with any person, firm, corporation, municipality, state agency, governmental unit, or other entity, foreign or domestic, provided that no contract in excess of $10,000, including contracts under paragraphs III and XV ***but excluding contracts and agreements entered into under paragraph V,*** shall be made without requests for proposal. This requirement may ***also*** be eliminated by an affirmative vote of 5 members of the board on any particular matter. Justification for eliminating the requirement shall be recorded in the minutes of the meeting.

8 Pease Development Authority; Authorization to Seek Designation as Port of Entry or International Airport and to Establish Foreign Trade Zone and Free Port Area; References to Free Port Area Removed. Amend RSA 12-G:38 to read as follows:

12-G:38 Authorization to Seek Designation as Port of Entry or International Airport and to Establish Foreign Trade Zone [~~and Free Port Area~~].

I. The authority shall be and is hereby authorized to make application to the Secretary of the Treasury of the United States for the purpose of having Pease Air Force Base, or portions thereof, designated, established, or constituted, a port of entry, or an international airport, pursuant to the Customs Reorganization Act, 19 U.S.C. section 1 et seq., as amended, and 19 U.S.C. section 58b, as amended, and regulations of the United States Customs Service, including 19 C.F.R. section 101.0, et seq. and 19 C.F.R. section 122.1, et seq.

II. The authority shall be and hereby is authorized to make application to the Secretary of Commerce of the United States for the purpose of establishing, operating, and maintaining foreign-trade zones in the state of New Hampshire, including without limitation at Pease Air Force Base, pursuant to the Free Trade Zone Act, 19 U.S.C. section 81a, et seq., as amended, providing for the

establishment, operation, and maintenance of foreign trade zones in or adjacent to ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes. Unless precluded by federal law, any foreign trade zone [~~or free port area~~]previously under the jurisdiction of the former port authority, and all duties, responsibilities, and obligations associated therewith, shall be transferred to the authority when the duties, functions, and jurisdiction of the port authority are transferred to the authority.

III. The authority shall have full power and authority to select and describe the location of the zone for which application to establish may be made and to make such rules and take such other actions concerning the operation, maintenance, and policing of same as may be necessary to comply with the Free Trade Zone Act and the regulations adopted thereunder, or as may be necessary to comply with such regulations made in accordance with the acts of Congress relating to foreign trade zones. The authority hereby granted to the authority confers on the authority the right and duty to do all things necessary and proper to carry into effect the establishing, maintaining, and operating of foreign trade zones with the state of New Hampshire to comply with the provisions of any acts of Congress or rules promulgated thereunder relating to foreign trade zones[~~or free port areas~~]. The authority shall also be authorized to set and collect fees for the management of any foreign trade zone [~~or free port area~~]established or maintained under this chapter.

IV. The authority shall have full power and authority to lease the right or to erect, maintain, and operate any structures or buildings or enclosures as may be necessary or proper for the establishing and operating of any such foreign trade zones that might be established at Pease Air Force Base or in the state of New Hampshire.

V. The authority shall have the power and the duty to establish areas at Pease Air Force Base and in and around the ports[~~, harbors,~~] and [~~navigable tidal rivers of the state~~] ***state tidal waters*** [~~of New Hampshire~~] wherein personal property in transit shall be exempt from the provisions of the stock-in-trade tax and such other taxes and customs as are normally levied in a port of entry. For the purpose of this section, personal property in transit through the areas established by the authority is defined as follows: goods, wares, and merchandise which is (a) moving in interstate or international commerce through or over the areas hereinbefore established, or (b) which was consigned to a warehouse, public or private, within the state, from outside the state, whether specified when transportation begins or afterward. Such property shall not be deprived of exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged. The exemption granted shall be liberally construed to effect the purposes of this chapter, provided, however, that the warehouse in which said goods, wares, or merchandise is stored shall not be owned, in whole or in part, by either the consignee or consignor.

9 Acquisition and Management of Division Property; Acquisition of Land for Port Purposes; Reference Changed. Amend RSA 12-G:39 to read as follows:

12-G:39 Acquisition of Land for Port Purposes. In addition to any other power or authority conferred on the authority under this chapter, the authority, with the approval of the governor and council, may, in the name of the state, purchase, lease, or otherwise acquire lands or interests in land, including options, on, near, or adjacent to the ***state*** tidal waters [~~of the state~~] suitable for constructing, establishing, and maintaining thereon piers, wharves, warehouses, or other facilities useful and necessary in the encouragement and development of commercial navigation. Before making any such purchase or acquisition, the authority shall submit to the governor and council a detailed description of the land or interests therein to be acquired, together with a statement of the purposes for which the property is suited and the cost of acquisition and estimated cost of development, as well as such other information as the governor and council shall require. The authority, with the approval of the governor and council, may accept gifts of land; and may in like manner accept and apply to the purchase of land or the development thereof, contributions, gifts, or aid in any form made or given for the purpose by any person, firm, or corporation, or by any municipality or by the United States, and may execute instruments necessary to qualify for such contributions, gifts, or aid. Any land or interest in land acquired by the authority pursuant to this section shall be considered division property and not airport property and shall not be included in the airport district.

10 Pease Development Authority; Division of Ports and Harbors; Authority Relative to Security. Amend RSA 12-G:42 to read as follows:

12-G:42 Additional Powers and Duties. The authority, acting through its division of ports and harbors, shall be responsible for the former functions, duties, and responsibilities of the port authority and shall have the following powers and duties in addition to any other powers and duties set forth in this chapter:

I. Have the authority to make all necessary arrangements with port authorities of other states and federal departments, agencies, and foreign countries and their port entities for the interchange of business, ***for the security of ports, division property, and state tidal waters,*** and for such other purposes as will facilitate and increase the commerce of the ports[~~, harbors,~~] and [~~tidal navigable rivers of the state~~] ***state tidal waters***.

II. Establish offices for the transaction of division business at such places as, in the opinion of the authority, shall be advisable and necessary in carrying out the purposes hereof.

III. Be authorized and empowered to appoint and compensate a chief harbor master***, a deputy chief harbor master,*** and ***one or more*** harbor masters for communities within the confines of which there are ports [~~, harbors,~~] or [~~navigable tide waters of the state~~] ***state tidal waters*** who will enforce the directives of the authority and the division, [~~such as~~] ***including but not limited to*** the placement of moorings, the assignment of anchorage areas, and the movement of traffic. The authority may appoint [~~an~~] ***one or more*** assistant harbor [~~master~~] ***masters*** at any such place to assist the ***chief*** harbor master***, the deputy chief harbor master, or one or more harbor masters***

[~~of such place~~] in carrying out [~~the harbor master's~~] *any of their* duties. ***Any person appointed by the authority as a chief harbor master or deputy chief harbor master shall hold a valid and current certification as a full-time police officer in accordance with RSA 188-F:27 and any rules adopted thereunder.***

IV. Be authorized and empowered to contract with and secure the services of a port terminal operating firm, subject to approval of governor and council, for the purpose of having such firm operate a part or all of the facilities of the authority, including piers, wharves, warehouses, parking and storage areas, or other facilities owned or leased by the authority acting through the division, with such operating firm having the exclusive right to operate the business of a port terminal operator and stevedore, including but not limited to the handling of cargo, the collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement, and solicitation of business for such port facility or facilities. Such contract with an operating firm shall include the following provisions:

(a) Said firm shall file with the division for its approval a tariff clearly defining the terms "wharfage" and "dockage" and the charges to be made therefor;

(b) The amount of minimum payments per year satisfactory to the authority to be paid to it for the exclusive right to operate upon the marine terminal, as described in the contract, the business of a port terminal operator and stevedore;

(c) The amount retained by said firm from all fees for which it is accountable, said amount being a percentage to cover administrative costs of collection;

(d) Said firm to supply a ship's manifest for every vessel using said facilities;

(e) Said firm to provide a performance bond in an amount and form acceptable to the authority, as well as insurance in amounts acceptable to the authority for fire and extended coverage, public liability, property damage, and other risks as required by the authority, the insurance company or companies to be licensed to do business in New Hampshire and to be acceptable to the authority;

(f) Said firm to file quarterly reports with the division indicating the amount of all fees for which it is accountable to the authority, the amounts collected, and the amounts retained, with a certified audit prepared by a certified public accountant submitted annually;

(g) Such other appropriate provisions which in the opinion of the attorney general will carry out the intent of this section and best protect the interest of the authority and of the state.

V. Be authorized and empowered, in lieu of the provisions set forth in paragraph IV, to undertake the business of a port terminal operator and stevedore as to any division property, including but not limited to the handling of cargo, the setting and collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement, and solicitation of business for such port facility or facilities. In undertaking the business of a port terminal

operator or stevedore on any division property the authority may exercise any of the powers granted it under this chapter. Notwithstanding any other provision of this chapter, any person granted by the authority a non-exclusive lease or license relative to division property who, pursuant to such lease or license, handles or manages or in any way participates in the handling or management, including but not limited to, the loading, unloading, stockpiling, storing, or other transfer, of cargo owned, controlled, or otherwise lawfully in the possession of or being delivered to or from any such non-exclusive lessee or licensee shall not be deemed to be operating the business of a port terminal operator and stevedore as set forth in paragraph IV.

VI. Administer and enforce permit programs for the placement and use of moorings and slips in state tidal waters, including waiting lists for such permits.

[~~V.~~] *VII.* Set and collect fees for mooring and slip permits and waiting lists for such permits. The authority shall establish fees for slips in *ports,* harbors, and [~~tidal rivers that are equal to or proportional to the fees for moorings in harbors~~] *state tidal waters.* Fees shall not be charged for slips at industrial piers along the Piscataqua River or at state-owned piers in harbors. The fees for slips shall be paid into the harbor dredging and pier maintenance fund established under RSA 12-G:46.

[~~VI.~~] *VIII.* Install and continually maintain a uniform system for marking the intercoastal waters of the state including the state ports[~~, harbors,~~] and [~~navigable tidal rivers~~] *state tidal waters* not presently marked by the United States Coast Guard, using funds collected from the fees required under RSA 270-E:3, III, and any other funds so appropriated. Said marking system shall be installed on an incremental basis and maintained as necessary.

[~~VII.~~] *IX.* Have the responsibility for and jurisdiction over the state-owned commercial [~~fishing~~] piers and facilities at Portsmouth, Rye Harbor, and Hampton Harbor except as provided in RSA 12-A:7-a, *including the establishment of fees and rents associated with the use of such facilities.*

[~~VIII.~~] *X.* Adopt rules, pursuant to RSA 541-A, relative to:

(a) Port captains, pilots, and pilotage.

(b) Harbors and harbor masters.

(c) [~~Setting and collecting fees for moorings, slips, waiting lists, and pilotage. A table of such fees shall be attached to the commission of each pilot.~~]*The terms, conditions, and procedures under which the division shall issue, suspend, revoke, deny, or approve permits required under this chapter for moorings and slips.*

(d) [~~Setting and collecting fees authorized in the foreign trade zone and free port areas.~~] *State-owned commercial piers identified in paragraph IX.*

[~~(e) Civil and criminal penalties for violations of the rules of the division.~~

~~(f) Any matter necessary for the proper administration of the division.~~]

XI. Adopt rules, after obtaining prior approval by the board, relative to the setting and collecting of fees authorized under RSA 12-G:38 relating to foreign trade zones; RSA 12-G:42, IV and V, relating to wharfage, dockage, and other marine terminal operations; RSA 12-G:42, VI, relating to moorings, slips, and wait lists; RSA 12-G:42, IX, relating to commercial piers identified in paragraph IX and other division property; RSA 12-G:49-a relating to pilotage; and any other matter necessary for the proper administration of the division. The rules adopted under this paragraph shall not be subject to the provisions of RSA 541-A, so as to provide the authority with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry. Fees established pursuant to this paragraph shall be consistent with the following criteria:

(a) Fees relating to the establishment and operation of foreign trade zones shall be designed to recover a reasonable portion of budget expenses consistent with the purposes of RSA 12-G:38. The general court does not intend that such fees cover all of the budget expenses associated with the implementation of RSA 12-G:38.

(b) Fees relating to wharfage, dockage, and other marine terminal operations shall be comparable with the fees for wharfage, dockage, and other marine terminal operations assessed by other port authorities and other marine terminal operators and stevedores in the United States.

(c) Fees relating to the mooring permits and mooring wait lists shall be designed to recover all of the budget expenses associated with implementation of the mooring permit and wait list system as well as a reasonable portion of the budget expenses consistent with the purposes of RSA 12-G:42, III, VI, and VII; RSA 12-G:43, I (a) and (c); and RSA 12-G:50.

(d) Fees relating to slips shall be designed to be proportional to the fees for moorings established under subparagraph (c).

(e) Fees relating to commercial piers and use of other division property shall be comparable with the fees for use of similar privately- owned facilities.

(f) Fees relating to pilotage shall be comparable with the pilotage fees assessed by other port authorities in the United States.

[~~IX.~~] *XII.* Encourage any contractor bidding on a division project at the port of Portsmouth which is funded through the division or the state of New Hampshire, to employ the maximum possible number of New Hampshire residents. For the purposes of this paragraph, "resident" shall mean any person maintaining a dwelling within the state of New Hampshire who has a present intent to remain within the state for a period of time.

11 Division of Ports and Harbors; References to Navigable Tidal Rivers Changed to State Tidal Waters. Amend RSA 12-G:43, I(a)-(c) to read as follows:

(a) Plan for the maintenance and development of the ports[~~, harbors,~~] and [~~navigable tidal rivers of the state~~] ***state tidal waters*** [~~of New Hampshire~~] from the head of navigation to the seaward limits within the jurisdiction of the state, in order to foster and stimulate commerce and the shipment of freight through the state's ports and, as an agency of the state, to assist shipping, and commercial and industrial interests that may depend on the sea for transport of products, including such interests as may be desirous of locating in tidewater areas of the state; as well as to encourage the establishment of accommodations for the boat traveler, the area boat owners, the pleasure fishermen, and others who pass up and down our coast line or in its tributaries.

(b) Aid in the development of salt water fisheries and associated industries.

(c) Cooperate with any agencies or departments of the federal government in planning the maintenance, development, and use of the state ports[~~, harbors,~~] and [~~navigable tidal rivers~~] ***state tidal waters.***

12 Pease Development Authority; Division of Ports and Harbors Advisory Council; Designees Permitted. Amend RSA 12-G:44, I to read as follows:

I. There is hereby established a division of ports and harbors advisory council consisting of 8 members, 6 of whom shall be appointed by the governor, with the advice and consent of the council. At least 3 of said appointive members shall be residents of the cities and towns of the seacoast region or ***state*** tidal waters and at least one appointive member shall be a commercial fisherman engaged in that industry on the seacoast, and each shall serve for a term of 5 years. Said members shall serve until their successors are appointed and qualified. Any vacancy occurring in the membership of the appointive members shall be filled by the governor and council for the unexpired term. In addition to the 6 appointive members, the commissioner of the department of resources and economic development***, or designee,*** and the mayor of the city of Portsmouth***, or designee,*** shall be, by virtue of their offices, members of the council.

13 Division of Ports and Harbors Advisory Council; Reference to Rulemaking Authority Changed. Amend RSA 12-G:44, IV and V to read as follows:

IV. The division director shall present all rules proposed to be implemented by the authority under RSA 12-G:42, [~~VIII~~] ***X*** to the council for consideration prior to filing a notice of proposed rule under RSA 541-A:6. The council shall present any objections to the proposed rule to the division director and to the board in writing within 15 days of submission to the council by the division director. The authority may adopt a rule to which the council has objected only upon 5 affirmative votes of the authority and after presenting a written reply to the council detailing the reasons for adopting the rule over the objections of the council.

V. The council may propose rules to the authority for adoption under RSA 12-G:42, [~~VIII~~] ***X***. The authority shall adopt rules proposed by the council unless, within 15 days of their proposal, the authority, by 5 affirmative votes, objects to the adoption of such rules and presents a written reply to the council detailing the reasons for objection.

14 Division of Ports and Harbors; Dredge Management in Tidal Waters; Reference Changed. Amend the introductory paragraph of RSA 12-G:45 to read as follows:

12-G:45 Dredge Management in Tidal Waters. The division, subject to the supervision of the authority and in consultation with the division of ports and harbors advisory council, shall be responsible for managing harbor and channel dredging activities within [~~the~~] ***state*** tidal waters [~~of the state~~]. The division shall:

15 New Section; Division of Ports and Harbors; Harbor Management Fund Established. Amend RSA 12-G by inserting after section 46 the following new section:

12-G:46-a Harbor Management Fund Established.

I. There is hereby established a harbor management fund to be used by the authority acting through the division to meet its obligation to appoint and compensate a chief harbor master, a deputy harbor master, harbor masters, and assistant harbor masters; to establish and administer a mooring permits program; to plan for the maintenance and development of the ports and state tidal waters; and to pay the costs associated with any impoundment, removal, or storage authorized under RSA 12-G:52-b.

II. The fund shall be nonlapsing and continually appropriated for the purposes identified in paragraph I. The authority shall deposit in such fund all revenues received from the operation of the mooring permits and mooring wait list programs, fees received pursuant to RSA 270-E:7, II, and any proceeds received from any sale conducted in accordance with RSA 12-G:52-b, V. Interest earned on moneys deposited in the fund shall be deposited into the fund.

16 Pease Development Authority; Pilots and Harbor Masters. RSA 12-G:47-52 is repealed and reenacted to read as follows:

Pilots and Harbor Masters

12-G:47 Pilots. The authority, in consultation with the division director and the division of ports and harbors advisory council, may adopt rules prescribing the qualifications of pilots, and from time to time appoint and commission, under its hand and seal, as many pilots as it may judge necessary, and remove the same at pleasure; and it shall take from them such security, by bond or otherwise, as it may deem proper.

12-G:48 Authority of Pilot. Any pilot appointed by the authority, who has given security for the faithful discharge of his or her duties, may take charge of any vessel, except pleasure or fishing vessels, or a vessel of 150 gross tons and under, and shall pilot such vessel into and out of the river and harbor of the Piscataqua, first showing to the master thereof the pilot's appointment if requested.

12-G:49 Pilots Required. All vessels, except pleasure or fishing vessels or vessels of 150 gross tons or under, are required to be piloted by a pilot appointed by the authority into and out of the Piscataqua River and harbor from a point designated by the authority.

12-G:49-a. Pilotage Fees. All vessels required to engage a pilot under RSA 12-G:49 shall pay a pilotage fee to the pilot. Pilotage fees shall be established by the authority.

12-G:50 Duties; Chief Harbor Master; Deputy Chief Harbor Master; Harbor Masters.

I. Subject to the supervision of the authority and the division director, the chief harbor master's duties shall include but not be limited to the following:

(a) Enforcement of authority directives and rules adopted by the authority pursuant to this chapter relating to the activities and operations of the division or division property.

(b) Issuing and overseeing mooring permits and management of the mooring wait list and of the assignment and placement of moorings.

(c) Designation of anchorage areas.

(d) Management of navigation aides outside of the federal channel.

(e) Management of the movement of traffic, as necessary.

(f) Direction of the removal or movement of vessels during emergencies.

(g) Overseeing the dredge management program.

(h) Overseeing the harbor management program.

(i) Inquiring into and prosecuting all offenses occurring within the chief harbor master's jurisdiction.

(j) Any other duties assigned by the authority or the division director.

II. Subject to the supervision of the authority, the division director, and the chief harbor master, the deputy chief harbor master's duties shall include but not be limited to the following:

(a) Enforcement of authority directives and rules adopted pursuant to this chapter relating to the division or division property.

(b) Performance of the duties of the chief harbor master during the absence or incapacity of the chief harbor master or when such duties are specifically delegated to the deputy chief harbor master by the authority, the division director or the chief harbor master.

(c) Performance of any other duties assigned by the authority, the division director, or the chief harbor master.

III. Subject to the supervision of the authority, the division director, the chief harbor master, and the deputy chief harbor master, the duties of a harbor master shall include but not be limited to the following:

(a) Monitoring the placement and use of moorings in state tidal waters to which the harbor master has been specifically assigned by the chief harbor master or the deputy chief harbor master.

(b) Notifying the chief harbor master or the deputy chief harbor master of any violations of any provision of RSA 12-G or any rules of the authority adopted under RSA 12-G relating to the division or division property.

(c) Performance of any other duties assigned by the division director or the chief harbor master or the deputy chief harbor master.

IV. An assistant harbor master shall assist the chief harbor master, the deputy chief harbor master, or any harbor master as directed by the division director, the chief harbor master, or the deputy chief harbor master in the performance of the chief harbor master's, the deputy chief harbor master's, or harbor master's duties.

12-G:50-a Prohibitions.

I. No person shall abandon any vessel at any time on or in state tidal waters. Any vessel found unattended in a sunken, beached or drifting condition, or otherwise anchored and unattended in such a manner as to pose a threat to navigation or the safety of the public or other vessels shall be deemed abandoned by the owner.

II. No person shall place any mooring in state tidal waters without a permit issued by the division pursuant to this chapter and any rules adopted pursuant to this chapter.

III. No person shall moor, make fast or otherwise secure a vessel to a mooring located in state tidal waters unless:

(a) The owner of the vessel has secured a mooring permit from the division authorizing such vessel to be secured to such mooring;

(b) The owner of the vessel has been directed by, or otherwise has secured the permission of, the chief harbor master, the deputy chief harbor master, a harbor master, or an assistant harbor master to secure such vessel to such mooring, or

(c) Failure to secure such vessel to such mooring would otherwise present an imminent and substantial hazard to navigation or to the safety of any passenger on such vessel.

12-G:51 Enforcement Powers. The chief harbor master and the deputy chief harbor master shall have all of the powers of a police officer, including but not limited to the power to make arrests set forth in RSA 594, to enforce, investigate, and prosecute any:

I. Violation of the provisions of this chapter or rules adopted under this chapter relating to the division and division property, including but not limited to the provisions of RSA 12-G:42, X and XI; and

II. Offense under New Hampshire law occurring on division property where the arrest is made on division property or on vessels secured to or immediately adjacent to division property.

12-G:52 Penalty. Whoever violates any of the rules of the authority relating to the division or division property, including but not limited to the provisions of RSA 12-G:42, X or XI, or refuses or neglects to obey the lawful and reasonable orders of the division director, the chief harbor master, the deputy chief harbor master, a harbor master, or an assistant harbor master, or resists or otherwise interferes with the division director, the chief harbor master, the deputy chief harbor master, a harbor master, or an assistant harbor master in the execution of their duties shall be guilty of a class B misdemeanor.

12-G:52-a Penalty for Illegally Moored or Anchored Vessels. Notwithstanding the provisions of RSA 12-G:52 or any other provision of law, any owner or operator of any vessel moored or anchored in violation of RSA 12-G or rules adopted pursuant to this chapter relative to the division or division property shall be subject to the following penalties in addition to any other penalty, cost or forfeiture imposed under other provisions of law or this chapter:

I. For a first offense, the offense shall constitute a violation, and the fine shall be $100 if a natural person and $300 for any other person.

II. For a second offense, the offense shall constitute a violation, and the fine shall be $250 for a natural person and $500 for any other person.

III. For a third offense and any offense thereafter, the offense shall constitute a Class B misdemeanor, and the minimum fine shall be at least $500 for a natural person and $1000 for any other person.

12-G:52-b Impoundment and Forfeiture of Vessels and Moorings.

I. The division director, the chief harbor master, or the deputy chief harbor master may impound or order the removal and storage of any vessel or mooring found to be in violation of RSA 12-G:50-a or rule adopted pursuant to this chapter. All reasonable charges of such impoundment, removal, and storage shall be a lien against the vessel.

II. The division director shall notify the owner, if known, of the fact of such impoundment, removal, and storage. If the vessel is registered in this state, such notification shall be mailed to the person identified as the owner on the vessel registration at the address listed on such registration. In all other cases, notice shall be placed on file with the division director and published in a newspaper of general circulation.

III. The owner of the vessel or mooring impounded pursuant to this section may redeem the vessel or mooring within 90 days of its removal by payment of all charges and fees incurred by the division related to the impoundment, removal and storage of such vessel or mooring and release the lien identified in paragraph I.

IV. No person who impounds, removes or stores or who is in charge of the impoundment, removal, or storage of such vessel or mooring shall be liable for any damages to the vessel or mooring arising out of the impoundment, removal, or storage thereof.

V. Upon the expiration of the 90-day period identified in paragraph III, the division director may dispose of any unredeemed vessel or mooring by destroying such vessel or mooring or by offering such vessel or mooring for sale at public auction or the division director may retain such vessel or mooring for use by the state; provided, however, if the vessel or mooring is sold or retained, the purchaser or the state, in the event of retention, shall pay the cost of impoundment, removal, and storage, and shall obtain release of the lien identified in paragraph III. Any money received by reason of sale of such vessel or mooring at public auction shall be deposited in the harbor management fund.

VI. Nothing in this section shall be construed to limit, restrict or modify in any way authority granted to the commissioner of safety or the director of safety services to remove or impound boats or moorings pursuant to RSA 270 or RSA 270-B.

17 Pease Development Authority; Construction with Other Laws. Amend RSA 12-G:53, III - IV to read as follows:

III. Except for rules adopted pursuant to RSA 12-G:42, [~~VIII~~] ***X, which shall be subject to the provisions of RSA 541-A:3 through RSA 541-A:15,*** the authority shall be exempt from the provisions of RSA 541-A and may adopt rules and bylaws in accordance with its own procedures, ***including, but not limited to, rules regulating the conduct of hearings.*** Except for rules adopted pursuant to RSA 12-G:42, [~~VIII~~] ***X***, the authority shall file in the office of legislative services a copy of all rules and bylaws adopted, amended, or repealed by the authority. All such rules and bylaws shall be filed in the office of legislative services within 7 days of such adoption, amendment, or repeal.

IV. Any rule adopted by the authority pursuant to [~~RSA 12-G:42, VIII or~~] RSA 12-G:47 shall be adopted in accordance with the provisions of RSA 541-A***; any rule adopted by the authority pursuant to RSA 12-G:42, X shall be adopted in accordance with the provisions of RSA 541-A:3 through RSA 541-A:15.***

18 New Subparagraph; State Accounts; Application of Receipts; Harbor Management Fund. Amend RSA 6:12, I by inserting after subparagraph (lllllllll) the following new subparagraph:

(mmmmmmmmm) Moneys deposited in the harbor management fund under 12-G:46-a.

19 Administrative Procedure Act; Exemption of the Pease Development Authority. Amend RSA 541-A:21, I(n) to read as follows:

(n) Except for rules adopted by the ***authority acting through the*** division of ports and harbors ***under RSA 12-G:42, X, which shall be subject to the provisions of RSA 541-A:3 through RSA 541-A:15,*** RSA 12-G, relative to the Pease development authority.

20 Effective Date. This act shall take effect upon its passage.

LBAO
03-1032
Revised 2/10/03

HB 719 FISCAL NOTE

AN ACT relative to the duties, function, and operation of the Pease development authority.

FISCAL IMPACT:

The Pease Development Authority has determined this bill will increase state restricted expenditures by $55,735 in FY 2004, $58,027 in FY 2005, $60,523 in FY 2006 and $63,019 in FY 2007. There will be no fiscal impact on county and local expenditures or state, county and local revenues.

METHODOLOGY:

The Pease Development Authority stated this bill establishes a new classified position of Deputy Chief Harbor Master. The Authority assumes the position will be established at labor grade 21, benefits will be calculated at 37%, and the position will be granted a one step increment each year.

	FY 2004	FY 2005	FY 2006	FY 2007
Salary	$39,811	$41,484	$43,306	$45,128
Benefits	14,730	15,349	16,023	16,697
Miscellaneous	1,194	1,194	1,194	1,194
Total	$55,735	$58,027	$60,523	$63,019

Costs associated with the new position will be borne by fees collected through the mooring permit and wait list system.

Amendments

Rep. Leber, Merr. 35
February 19, 2003
2003-0354h
05/03

adopted

Amendment to HB 719-FN-A

Amend RSA 12-G:2, XXII-a as inserted by section 3 of the bill by replacing it with the following:

XXII-a. "Slip" means a volume of water at least 25 feet long, 8 feet wide, and 3 feet deep as measured at normal high tide and located adjacent to a structure such as a dock, wharf, or pier to which a vessel may be secured.

Amend RSA 12-G:42, IV and V as inserted by section 10 of the bill by replacing them with the following:

IV. Be authorized and empowered to contract with and secure the services of a port terminal operating firm, subject to approval of governor and council, for the purpose of having such firm operate a part or all of the facilities of the authority, including piers, wharves, warehouses, parking and storage areas, or other facilities owned or leased by the authority acting through the division, with such operating firm having the exclusive right to operate the business of a port terminal operator and stevedore, including but not limited to the handling of cargo, the collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement, and solicitation of business for such port facility or facilities. Such contract with an operating firm shall include the following provisions:

(a) Said firm shall file with the division for its approval a tariff clearly defining the terms "wharfage" and "dockage" and the charges to be made therefor;

(b) The amount of minimum payments per year satisfactory to the authority to be paid to it for the exclusive right to operate upon the marine terminal, as described in the contract, the business of a port terminal operator and stevedore;

(c) The amount retained by said firm from all fees for which it is accountable, said amount being a percentage to cover administrative costs of collection;

(d) Said firm to supply a ship's manifest for every vessel using said facilities;

(e) Said firm to provide a performance bond in an amount and form acceptable to the authority, as well as insurance in amounts acceptable to the authority for fire and extended coverage, public liability, property damage, and other risks as required by the authority, the insurance company or companies to be licensed to do business in New Hampshire and to be acceptable to the authority;

(f) Said firm to file quarterly reports with the division indicating the amount of all fees for which it is accountable to the authority, the amounts collected, and the amounts retained, with a certified audit prepared by a certified public accountant submitted annually;

(g) Such other appropriate provisions which in the opinion of the attorney general will carry out the intent of this section and best protect the interest of the authority and of the state.

V. Be authorized and empowered, in lieu of the provisions set forth in paragraph IV, to undertake the business of a port terminal operator and stevedore as to any division property, including but not limited to the handling of cargo, the setting and collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement, and solicitation of business for such port facility or facilities. In undertaking the business of a port terminal operator or stevedore on any division property the authority may exercise any of the powers granted it under this chapter. Notwithstanding any other provision of this chapter, any person granted by the authority a non-exclusive lease or license relative to division property who, pursuant to such lease or license, handles or manages or in any way participates in the handling or management, including but not limited to, the loading, unloading, stockpiling, storing, or other transfer, of cargo owned, controlled, or otherwise lawfully in the possession of or being delivered to or from any such non-exclusive lessee or licensee shall not be deemed to be operating the business of a port terminal operator and stevedore as set forth in paragraph IV.

Amend the bill by replacing section 17 with the following:

17 Pease Development Authority; Construction with Other Laws. Amend RSA 12-G:53, III - IV to read as follows:

III. Except for rules adopted pursuant to RSA 12-G:42, [~~VIII~~] ***X, which shall be subject to the provisions of RSA 541-A:3 through RSA 541-A:15,*** the authority shall be exempt from the provisions of RSA 541-A and may adopt rules and bylaws in accordance with its own procedures, ***including, but not limited to, rules regulating the conduct of hearings.*** Except for rules adopted pursuant to RSA 12-G:42, [~~VIII~~] ***X***, the authority shall file in the office of legislative services a copy of all rules and bylaws adopted, amended, or repealed by the authority. All such rules and bylaws shall be filed in the office of legislative services within 7 days of such adoption, amendment, or repeal.

IV. Any rule adopted by the authority pursuant to [~~RSA 12-G:42, VIII or~~] RSA 12-G:47 shall be adopted in accordance with the provisions of RSA 541-A***; any rule adopted by the authority pursuant to RSA 12-G:42, X shall be adopted in accordance with the provisions of RSA 541-A:3 through RSA 541-A:15.***

Amend the bill by replacing all after section 18 with the following:

19 Administrative Procedure Act; Exemption of the Pease Development Authority. Amend RSA 541-A:21, I(n) to read as follows:

(n) Except for rules adopted by the ***authority acting through the*** division of ports and harbors ***under RSA 12-G:42, X, which shall be subject to the provisions of RSA 541-A:3 through RSA 541-A:15,*** RSA 12-G, relative to the Pease development authority.

20 Effective Date. This act shall take effect upon its passage.

Committee Minutes

COPY

MINUTES
HOUSE COMMITTEE ON FINANCE
DIVISION I - WORK & EXECUTIVE SESSION
MARCH 21, 2003 – Room 209, Legislative Office Building

Division Members Present: Reps. Stone, Holbrook, Wheeler, Anderson, Blanchard, Coes, Robert Johnson, King

Rep. Stone, chairman, called the work session to order at 9:00 a.m.

****HB 274-A, making an appropriation for the restoration of the White Island Light Station.**

Presentation by the students. They raised $15,000 on their own. Recessed for further information.

****HB 353-FN-A, making an appropriation for the pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.**

Prime Sponsor Rep. Cooney explained the bill and the consensus that had been garnered.

Paul Currier – exchange for either a capital or operating budget line (p. 630).

Rep. Blanchard moved ITL, **Rep. Coes** seconded the motion, passed 6-0.

****HB 643-FN, relative to establishing the family division of the courts statewide.**

Howard Zibel presented on behalf of the courts. The House supported the concept in both committees.

****HB 649-FN-A, (New Title) establishing a building permit surcharge to fund regional planning initiatives.**

Rep. Lockwood presented her bill and detailed the charges.

Rep. Wheeler moved to retain, **Rep. Anderson** seconded the motion. Motion passed 6-1. Submitted exhibits 1 and 2.

****HB 109-FN, (New Title) relative to telemarketing practices.**

Rep. Jane Langely and the **Attorney General's Office** presented.

Rep. Blanchard moved OTP, **Rep. Coes** seconded the motion. Motion failed 3-4.

Rep. Holbrook moved to retain, **Rep. Wheeler** seconded the motion. Motion passed 6-1.

****HB 738-FN-A, permitting aid to public water systems to be used for forming or improving regional water systems and making an appropriation therefor.**

Rep. Blanchard moved to accept the amendment, **Rep. King** seconded this motion. Amend to $1.00 in section 17 in each fiscal year. **Rep. Blanchard** moved to OTPA, **rep. King** seconded this motion.

****HB578 establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor.**

Rep. Allen and Ken Marshner.
Rep. Blanchard moved to OTP and **Rep. King** seconded this motion. OTP roll call vote 8-0.

****HB 728-FN-A establishing a dedicated fund for organic certification inspections.**

Rep. Ahern, Dept of Agriculture, Littleton Griss Mill, **Ron Merrow, Rebecca Wallace, and Dick Uncles from Dept. of Agriculture** – described organic regulations for certification of processors. **Rep. King** moved to OTP and **Rep. Coes** seconded this motion. OPT roll call vote 8-0.

****HB 737 FN-A relative to the state conservation committee and making an appropriation therefore.**

Rep. Blanchard, Joanna P., Richard Babcock, USDA and Mary Currier Rockingham County – discussion followed around the availability of federal dollars form The Farm Bill and our inability to apply. **Rep. Blanchard** shared with us that this issue needs leadership. **Rep. Holbrook** moved amendment 0429h and amended the money to $1, **Rep. King** seconded this motion. **Rep. Holbrook** moved OTPA and **Rep. King** seconded this motion. Roll call vote OTPA.

****HB 577-FN-A-L (New Title) relative to implementing the Help America Vote Act of 2002 and relative to rulemaking by the secretary of state.**

Dep. Secretary of State, Scanlon presented along with **Rep. Stevens and Ofitch(??)** – Exhibits 3 and 4 – relative to implementing The Help America Vote Act and the rule making by the Secretary of State. Recessed pending further information.

****HB 719-FN-A relative to the duties, function, and operation of the Pease development authority.**

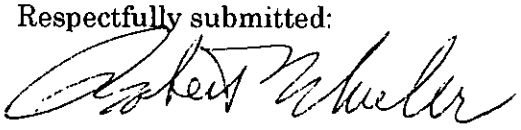
Rep. Leber, Pease Development Authority, Dept. Harbor. Rep. Wheeler moved to OTP and **Rep. King** seconded this motion. Roll call vote, OTP 7-0.

****HB 702 relative to payment of medical benefits costs for disabled group II members of the retirement system.**

Terminally funded. **Rep. Wheeler** moved to OTP and **Rep. Coes** seconded this motion. Roll call vote 7-0 OTP.

No other bills before the Committee, Rep. Stone adjourned the work session.

Respectfully submitted:



Robert L. Wheeler
Clerk for Division I

DIVISION I
2003 SESSION

Date: 3/ 103 Bill #: HB 719-FN-A

Bill Title: RELATIVE TO THE DUTIES, FUNCTION, AND OPERATION OF THE PEASE DEVELOPMENT AUTHORITY

Amendments

Sponsor: OLS Document #:

Sponsor: OLS Document #:

Sponsor: OLS Document #:

Motions: OTP, OTPA, ITL, TABLE, RETAIN

Motion made by: Wheeler **Seconded by:** King

	YEAS	NAYS	ABSENT
Stone, Joseph, Chairman	7		
Holbrook, Robert, Vice Chairman	1		
Wheeler, Robert, Clerk	2		
Anderson, Eric			
Blanchard, Maryann	3		
Coes, Betsy	4		
Johnson, Robert	5		
King, Fred	6		
Mitchell, McKim			
Kurk, Neal			

7-0

Rep. Robert Wheeler
Division I Clerk

MINUTES
HOUSE COMMITTEE ON FINANCE
WORK AND EXECUTIVE SESSION – March 24, 2003
Legislative Office Building, Room 210-211

Committee Members Present: Reps. Kurk, Weyler, Holbrook, Robert Johnson, Stone, Anderson, Hager, Emerton, Wheeler, Rodeschin, Elliott, Dodge, Hunter, King, Smith, Blanchard, Coes, Mitchell, Densmore, Eaton, Mercer

Work session brought to order by Rep. Kurk, Chairman at 9:30 a.m.

***HB 353 making an appropriation for the pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.**

Rep. Blanchard moved to ITL and **Rep. Coes** seconded this motion. Will be addressed in the budget bill no necessary. Roll Call vote, ITL, 18-2.

***HB 643-FN relative to establishing the family division of the courts statewide.

Rep. Wheeler moved and **Rep. Holbrook** seconded the motion to retain this bill. Roll call vote, 14-6.

***HB 649-FN (New Title) establishing a building permit surcharge to fund regional planning initiatives.**

Rep. Wheeler moved and **Rep. Anderson** seconded this motion to retain this bill. Roll call vote, 20-0.

***HB 738 FN-A-L permitting aid to public water systems to be used for forming or improving regional water systems and making an appropriation therefor.**

Rep. Blanchard moved and **Rep. King** seconded the motion of OTPA (#0952), roll call vote 19-0.

***HB 578 establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor.**

Rep. Blanchard moved and **Rep. King** seconded the motion to OTP. Roll call vote, OTP, 18-1

***HB 728-FN-A establishing a dedicated fund for organic certification inspections.**

Rep. King moved and **Rep. Coes** seconded this motion of OTP. Roll call vote, OTP, 20-0.

***HB 737 FN-A relative to the state conservation committee and making an appropriation therefore.**

Rep. Holbrook moved and **Rep. King** seconded this motion of OTPA. Amendment 0951h reduced appropriation to $1. Discussion followed regarding process and administration. Amendment passed, 20-1. Roll call vote OTPA, 20-1.

***HB 719 relative to the duties, function, and operation of the Pease development authority.**

Provides for a new position of Deputy Chief Harbor Master at grade #21. **Rep. Wheeler** moved and **Rep. King** seconded this motion of OTP. Roll call vote, OTP, 21-0.

*****HB 702 relative to payment of medical benefits costs for disabled group II members of the retirement system.**

Rep. Wheeler moved and **Rep. Holbrook** seconded the motion of OTP. Passed on a roll call vote, 20-0.

*****HB 621 FN-A-L establishing an early childhood literacy program.**

Rep. Smith moved and **Rep. Dodge** seconded to OTP as amended. Amendment 0955h discussed and accepted by voice vote. Roll call vote, OTPA, 17-2.

*****HB 304-A relative to state acquisition of certain acreage in the Connecticut Lakes headwaters tract and making an appropriation therefor.**

Rep. Weyler moved and **Rep. Eaton** seconded this motion. OTP as amended, amendment 0945h submitted and discussed and it passed. Roll call vote, OTPA, 20-0.

*****HB 786 FN-L relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.**

Rep. Dodge moved OTP and **Rep. Smith** seconded this motion. Roll call vote, OTP, 18-1.

11:00 **Governor, Staff, Department heads** appeared before the Finance Committee to present the details that were absent in the Governor's earlier presentation. IT, planning, Energy, Distance Learning.

*****HB 751 FN-L implementing an alternative school building aid grant formula, establishing size and cost standards for the construction of new school facilities, and permitting high school vocational technical education programs which lease space to be eligible for school building aid grants.**

Rep. Dodge moved and **Rep. Mercer** seconded the motion of OTP. Fiscal note revised 2/20/03. Roll call vote, OTP, 17-3.

*****HB 724 FN-L establishing a committee to study the relationship between groundwater withdrawals and the ownership of watershed land.**

Rep. Smith moved and **Rep. Eaton** seconded the motion of OTP, extending the effective date of the Skyhaven transfer plan, passed on a roll call vote, 21-0.

*****HB788 FN-A (New Title) transferring the duties of the health services planning and review board.**

Certificate of review of proposed new institutional health services. **Rep. Wendelboe** moved OTPA and **Rep. Rogers Johnson** seconded this motion. Passed on a roll call vote 15-7.

Adjourned work and executive session at 1:35 p.m.

Respectfully Submitted:

Robert P. Wheeler

Rep. Robert L. Wheeler
Clerk for the Committee

OFFICE OF THE HOUSE CLERK

2003 SESSION

FINANCE

Bill #: HB 219 **Title:**

PH Date: ___/___/___ **Exec Session Date:** 3/24/03

Motion: Wheeler OTP **Amendment #:**

MEMBER	YEAS	NAYS
Kurk, Neal M. Chairman	21	
Wevler, Kenneth L, V Chairman	1	
Holbrook, Robert G		
Johnson, Robert A	2	
Stone, Joseph E	3	
Anderson, Eric	4	
Wendelboe, Fran	5	
Hager, Elizabeth S	6	
Mercer, Robert S	7	
Emerton, Larry A	8	
Wheeler, Robert L	9	
Rodeschin, Beverly T	10	
Johnson, Rogers J	11	
Elliott, Larry G	12	
Dodge, Robert K	13	
Hunter, Bruce F		
King, Frederick W	14	
Wallner, Mary Jane	15	
Smith, Marjorie K	16	
Blanchard, MaryAnn N	17	
Coes, Betsy A	18	
Mitchell, McKim W		
Densmore, Edward D	19	
Eaton, Daniel A	20	
TOTAL VOTE:	21	0

Printed: 1/6/2003

Public Work
Finance

CONCUR EOS

NON CONCUR

NON CONCUR &
REQ C of C

APPOINTEES:

CHAIRMEN,
PLEASE INITIAL

STATE OF NEW HAMPSHIRE

SENATE MESSAGE

Mister Speaker:

The Senate concurs with the House of Representatives in the passage of the following entitled Bill, with amendments, in the passage of which amendments the Senate asks the concurrence of the House of Representatives:

HB 719-FN-A, relative to the duties, function, and operation of the Pease development authority.

Senate Executive Departments and Administration
May 15, 2003
2003-1666S
05/10

Amendment to HB 719-FN-A

Amend the bill by replacing sections 4 and 5 with the following:

4 New Paragraph; Pease Development Authority; Definition of State Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIII the following new paragraph:

XXIII-a. "State tidal waters" means any harbor or other tidal waters within the state.

5 New Paragraph; Pease Development Authority; Definition of Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIV the following new paragraph:

XXIV-a. "Tidal waters" means any waters, including rivers, that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

Amend the introductory paragraph of RSA 12-G:42, XI as inserted by section 10 of the bill by replacing it with the following:

XI. Adopt rules, after obtaining prior approval by the fiscal committee of the general court and the board, relative to the setting and collecting of fees authorized under RSA 12-G:38 relating to foreign trade zones; RSA 12-G:42, IV and V, relating to wharfage, dockage, and other marine terminal operations; RSA 12-G:42, VI, relating to moorings, slips, and wait lists; RSA 12-G:42, IX, relating to commercial piers identified in paragraph IX and other division property; RSA 12-G:49-a relating to pilotage; and any other matter necessary for the proper administration of the division with respect to the setting and collecting of fees. The rules adopted under this paragraph shall not be subject to the provisions of RSA 541-A, so as to provide the authority with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry. Fees established pursuant to this paragraph shall be consistent with the following criteria:

Amend RSA 12-G:42, XI(e) as inserted by section 10 of the bill by replacing it with the following:

(e) Fees relating to commercial piers and use of other division property shall be established giving due consideration to the fees for use of similar privately-owned facilities.

Amend RSA 12-G:42 as inserted by section 10 of the bill by inserting after paragraph XII the following new paragraph:

XIII. Have the authority to create and maintain a special account within the Pease Development Authority Ports and Harbors Fund established in RSA 12-G:37 for the purpose of providing funds for capital improvements, equipment, maintenance, and repair of division property. The authority shall deposit in the special account up to 50 percent of any rent revenue generated by the lease or license of division property for bulk or container cargo storage, pursuant to RSA 12-G:8, V, which exceeds the operating expenses of the division, as determined under RSA 12-G:37. The special account shall be nonlapsing and continually appropriated to the division for the purpose of initiating and implementing capital improvements, equipment purchases, maintenance projects, and repair of division property.

Amend the bill by inserting after section 19 the following and renumbering the original section 20 to read as 21:

20 Pease Development Authority Ports and Harbors Fund; Reference to Special Account for Division Property. Amend RSA 12-G:37, III to read as follows:

III. This fund shall constitute a continuing appropriation for the benefit of the authority. ***Except as provided in RSA 12-G:42, XIII,*** all division revenues associated with operations and responsibilities assigned by the authority to the division in excess of the operating expenditures required for the activities of the division shall be deposited in the general fund until such time as any bonds authorized and issued relating to division property or division projects have been retired. After such bonds have been retired, any amount remaining to the credit of the authority in this fund at the close of any fiscal year in excess of the amounts required under paragraph II shall lapse and shall be returned to the general fund of the state.

Speakers

3:00

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 719 FN-A Date Feb. 19, 2003

Committee Public Works & Highways

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Sen Chuck Morse	Dist. 22			✓	
Sen John D. "Jack" Barnes, Jr.				✓	
Senator Kenney				✓	

Hearing Minutes

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

PUBLIC HEARING ON HB 719-FN-A

BILL TITLE: relative to the duties, function, and operation of the Pease development authority.

DATE: February 19, 2003

LOB ROOM: 201 **Time Public Hearing Called to Order:** 3:05

Time Adjourned: 4:25

(please circle if present)

Committee Members: Reps. E. Smith, Leber, Gleason, Moore, Graham, Holland, Rausch, Tahir, Kehns, Gionet, Kenison, McConkey, O'Brien, Waterhouse, Cloutier, C. Bouchard, Benn, Norelli, Malloy and Vallone.

Bill Sponsors: Reps. Leber, Graham, Hamel; Sens. Morse, Johnson, Kenney, Barnes

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Prime sponsor, Rep. Leber. This bill clarifies areas in the bill relative to the duties and functions of the operation of PDA. He supports this bill.

Robert Cheney, special council to PDA and Geno Marconi, director of PDA Division of Ports and Harbors, both testifying together. They have submitted an amendment sponsored by Rep. Leber #2003-0354h.
Mr. Cheney states that they are trying to bring fiscal and management authority to the division of ports now under the authority of the PDA. They are also proposing to merge the rulemaking authority for the ports into the PDA.
****Mr. Cheney** has submitted a summary of the proposed changes as part of his testimony. There are 5 pages of supplied information that reference all the proposed changes and they should be noted for a understanding of this legislation.

OPINION – NOT SPEAKING:

Sen. Chuck Morse, Dist. 22 – PRO
Sen. John "Jack" Barnes, Jr. – PRO
Sen. Kenney – PRO

Respectfully submitted,

Rep. James B. Rausch, Clerk

Testimony

File copy

HB 719-FN-A
Additional Background Information

1. Use of the term "tidal waters":

   a) The term "tidal waters" is used in 9 other NH statutes besides RSA 12-G but is not defined in any of those statutes. In those statutes the term "tidal waters" usually stands in contrast to lakes, ponds, rivers and streams, i.e., freshwater bodies of water, and from the context of those statutes means waters of the state subject to ocean tides.

   b) RSA 271-A:9 defines "navigable waters" as follows: "Navigable streams or waters are those which are used, or are susceptible of being used in their ordinary condition, as highways for commerce, over which trade or travel is or may be conducted in the present customary modes of trade or travel on water, and such term shall not apply to streams or waters which are merely used as public highways for floating logs." Source 1911, 21:2.

   c) Under state common law doctrines private ownership of land adjacent to tidal waters ends at the high water mark. Tidelands below the high water mark (i.e., foreshore and sea bottom) and tidewaters are subject to the Public Trust Doctrine and are held by the State for the benefit of the general public. (According to the United States Supreme Court in Phillips Petroleum Company v. Mississippi (1987), the Public Trust applies to tidelands and tidewaters of states regardless of navigability.) It would seem logical that the legislature would intend that the Division of Ports and Harbors jurisdiction should extend over these tidelands and tidal waters subject to state control under the Public Trust Doctrine for all types of activities subject to regulation by the Division. For example, according to Director Marconi, it has always been the position of the state that no mooring could be place in any tidal waters without a permit from the Division or the former Port Authority. However, as indicated in the table below, the former Port Authority statute used the phrase "tidal waters" in certain places and "navigable tidal rivers" in other places. If the old references to "navigable tidal rivers" were retained in the same subject matter areas where the phrase had been used in the former Port Authority statute -- port planning, navigation aids and foreign trade zones -- tidewaters in or adjacent to non-navigable tidal rivers (if such rivers exist on the seacoast) would arguably not be subject to the requirements to establish navigation aids, undertake planning for port development, or establish foreign trade zones. Given the clear expression of the scope of the State's Public Trust jurisdiction in recent NH Supreme Court cases, the rationale for these distinctions between "tidal waters" and "navigable tidal rivers" in the former Port Authority statute are no longer apparent. In short, use of the term "state tidal waters" would eliminate inconsistent references to such waters in RSA 12-G, would clarify legislative intent that that all of the state's coastal waters are to be regulated uniformly, would reflect the current and past practices of the Division and the former Port Authority, and would be consistent with the State's current view of the scope of Public Trust jurisdiction in coastal waters.

d) Comparison of Usage of Terms -- HB 719 standardizes the various references used in the former Port Authority statute and RSA 12-G while maintaining the general intent of former RSA 271-A (see following examples):

Former Port Authority Statute (RSA 271-A)	**PDA Statute (RSA 12-G per HB 719)**
Pilots	
RSA 271-A:6 - "[s]hall pilot such vessel into and out of the river and harbor of the Piscataqua ..."	RSA 12-G:49 - "by a pilot appointed by the authority into and out of the Piscataqua River and harbor from a point designated by the authority ..."
Acquisition of Land	
RSA 271-A:13 - "The [port] authority ... may ...purchase, lease or otherwise acquire lands ... on, near or adjacent to the tidal waters of the state ..."	RSA 12-G:39 - "[t]he [pease development] authority ... may ... purchase, lease or otherwise acquire lands ... on, near or adjacent to the state tidal waters ..."
Dredging	
RSA 271-A:20 - "The New Hampshire port authority shall be responsible for managing harbor and channel dredging activities within the tidal waters of the state...."	RSA 12-G:45 - "The division, subject to the supervision of the authority and in consultation with ... shall be responsible for managing harbor and channel dredging activities within state tidal waters state...."
Harbor Masters	
RSA 271-A:3, III - "Be authorized and empowered to appoint and compensate a chief harbor master and harbor masters at Hampton, Rye, New Castle, Portsmouth, Seabrook and Newington ..."	RSA 12-G:42, III - "Be authorized and empowered to appoint and compensate a chief harbor mater, a deputy chief harbor master, and one or more harbor masters for communities within the confines of which there are ports or state tidal waters ..."
Moorings	
RSA 271-A:8(b) - "The chief harbor masters duties shall include ...: ...(b) management of the assignment and placement of moorings."	RSA 12-G:50, I(b): "Subject to the supervision of the authority and the division, the chief harbor master's duties shall include ...: ... (b) Issuing and overseeing mooring permits and management of the mooring wait list and of the assignment and placement of moorings."
Navigation Aids	
RSA 271-A:3, VI - "Be required to install and continually maintain a uniform system of marking the intercoastal waters of the state including the state ports, harbors and navigable tidal rivers ..."	RSA 12-G:42, VIII: "Install and continually maintain a uniform system of marking the intercoastal waters of the state including the state ports and state tidal waters ..."

Port Planning	
RSA 271-A:2, I - "Plan for the maintenance and development of the ports, harbors and navigable tidal rivers … in order to foster and stimulate commerce …"	RSA 12-G:43, I(a) - "Plan for the maintenance and development of the ports and state tidal waters … in order to foster and stimulate commerce …"
RSA 271-A:2, III - "Cooperate with any agencies or departments of the federal government in planning the maintenance, development and use of the state ports, harbors, and navigable tidal rivers;"	RSA 12-G:43, I(c) - "Cooperate with any agencies or departments of the federal government in planning the maintenance, development and use of the state ports and state tidal waters;"
RSA 271-A:3,I - "Have the authority to make all necessary arrangements with other port authorities and federal departments … for the interchange of business and such other purposes as will facilitate and increase the commerce of the ports, harbors, and tidal navigable rivers of the state."	RSA 12-G:42, I - "Have the authority to make all necessary arrangements with other port authorities and federal departments … for the interchange of business, for the security of ports, division property and state tidal waters, and such other purposes as will facilitate and increase the commerce of the ports and state tidal waters."
Foreign Trade Zones	
RSA 271-A:11, V - "The … port authority shall have the power and the duty to establish an area in and around the ports, harbors and navigable tidal rivers of the state …"	RSA 12-G:38, V - "The authority shall have the power and the duty to establish areas at Pease Air Force Base and in and around the ports and state tidal waters …"

e) A partial list of areas where moorings are currently permitted:
   i) Sagamore Creek
   ii) Hart's Cove
   iii) Exeter River
   iv) Great Bay
   v) Little Bay
   vi) Cocheco River
   vii) Lamprey River
   viii) Bellamy River
   ix) Piscataqua River
   x) Oyster River

2. Enforcement Powers of the Chief Harbor Master and Deputy Chief Harbor Master

   a) Current (and under former Port Authority statute): Chief Harbor Master could investigate and initiate criminal misdemeanor proceedings against persons violating the authority's enabling statute or rules or for failing to follow a order/directive of the Chief Harbor Master.

   b) HB 719 (RSA 12-G:51) -- same authority under the old statute plus the ability to take enforcement against any person violating any state law on property owned by the

Division (i.e., the Port Authority property in Portsmouth and the commercial piers now regulated by the Division) or on a vessel secured to Division property where the arrest can be made on such property or vessel, plus HB 719 gives the same authority to the Deputy Chief Harbor Master which is a new position. This additional authority to undertake enforcement for any violation of state criminal laws is confined to Division property and vessels tied up to Division property and does NOT extend generally to vessels on state tidal waters. On the water the Chief and Deputy Chief Harbor Masters can only enforce for violations of RSA 12-G, rules of the PDA, or failure to obey the reasonable and lawful orders of the Chief or Deputy Chief Harbor Masters -- the same authority as exists today under RSA 12-G:52 and formerly existed under RSA 271-A:9

i) Note: RSA 12-G:42, III, adds new language requiring the Chief Harbor Master and Deputy Chief Harbor Master to hold certification as full-time police officers from Police Standards and Training.

3. PDA Rulemaking

a) To address the concern about ensuring adequate public notice and comment prior to the adoption of any fees by the PDA Board through a non-RSA 541-A rulemaking process as provided for in RSA 12-G:42, XI, of HB 719, the committee could further amend HB 719 to do require that any PDA rule relating to the establishment of a fee under proposed RSA 12-G:42, XI, in HB 719 be subject to the approval of the legislative fiscal committee (in addition to the PDA Board) as is done under RSA 216-A:3-g for fees relating to the state park system.

i) Change the introductory clause in RSA 12-G:42, XI, of HB 719 from "Adopt rules, after obtaining prior approval by the board ..." to "Adopt rules, after obtaining prior approval of the fiscal committee and the board ...".

CROSS REFERENCES

Classification of crimes, see RSA 625:9.
Regulation of marine toilets and sewage disposal from boats, see RSA 487:1 et seq.
Sentences, see RSA 651.
Control of water pollution and disposal of wastes generally, see RSA 485-A.

LIBRARY REFERENCES

CJS
Navigable Waters §§ 11, 42.

Defining Navigable Waters

271:9 Navigable Waters. Navigable streams or waters are those which are used, or are susceptible of being used in their ordinary condition, as highways for commerce, over which trade or travel is or may be conducted in the present customary modes of trade or travel on water, and such term shall not apply to streams or waters which are used merely as public highways for floating logs.

HISTORY

Source. 1911, 21:2. PL 152:11. RL 182:10.

Hampton Harbor, Inlet and River

271:10-271:12.
[Repealed 1957, 262:3, eff. Sept. 1, 1957.]

HISTORY

Former RSA 271:10-271:12, which were derived from 1939, 220:1; RL 182:11-13; and 1950, 5, part 12:9, related to the harbor master, defined "vessel" and set penalty. See now RSA 271-A.

Rye Harbor, Harbor Inlet and Little Harbor

271:13-271:15.
[Repealed 1957, 262:3, eff. Sept. 1, 1957.]

HISTORY

Former RSA 271:13-271:15, which were derived from 1947, 194:1; and 1950, 5, part 12:9, related to the harbor master, defined "vessel" and set penalty. See now RSA 271-A.

nor and council shall provide the presiding officers of the general court with copies of the commissioner's financial reports.

History

Source. 1985, 389:6, eff. June 25, 1985.

Library References

West Key Number
States ⇐88.

Westlaw Topic
WESTLAW Topic No. 360.

CJS
C.J.S. States § 147.

AmJur
63C Am. Jur. 2d Public Lands §§ 7, 56, 76.

72 Am. Jur. 2d States, Territories, and Dependencies § 66 et seq.

216–A:3–f Promotion of Park Facilities.

I. The director of parks and recreation in consultation with the director of economic development shall formulate an annual promotion program for state park facilities.

II. This program shall be coordinated with the state's general tourism promotion efforts.

III. Funding for park system promotion shall be appropriated to the division of parks and recreation and shall be expended with the assistance of the division of travel and tourism development.

History

Source. 1985, 389:6, eff. June 25, 1985. 1999, 317:10, eff. July 1, 1999.

Amendments—1999. Paragraph III: Substituted "division of travel and tourism development" for "office of vacation travel of the division of economic development".

Editor's note. 1999, 250:2, eff. July 9, 1999, purported to amend par. III of this section by substituting "travel and tourism development" for "vacation travel" in the first sentence. However, the amendment was not implemented in light of the previous amendment by 1999, 317:10, eff. July 1, 1999.

Library References

West Key Number
States ⇐88.

Westlaw Topic
WESTLAW Topic No. 360.

CJS
C.J.S. States § 147.

AmJur
63C Am. Jur. 2d Public Lands §§ 7, 56, 76.

72 Am. Jur. 2d States, Territories, and Dependencies § 66 et seq.

216–A:3–g Fees for Park System.

The commissioner of the department of resources and economic development, in consultation with the director of parks and recreation,

shall establish fees for access to and use of the state park system. The fees approved by the commissioner, after prior approval of the fiscal committee, shall not be subject to the provisions of RSA 541–A, so as to provide the department with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry. Said fees shall be consistent with the following criteria:

I. Fees for the use of park areas shall be designed to recover a reasonable portion of budget expenses consistent with the purposes of RSA 216–A:1 and 216–A:3. The general court does not intend that all park facilities be self-supporting.

II. Fees for the use of campgrounds and ski lifts shall be comparable with the fees for use of similar privately owned facilities. The operation of all enterprise functions within the park system, including ski lifts, food service, retail facilities, campgrounds, and other concession activities, shall be as profitable as possible, within the purposes of the park system.

III. [Repealed.]

History

Source. 1985, 389:6. 1991, 355:62. 1993, 358:24. 1995, 308:127, X, eff. July 1, 1995. 1996, 210:6, eff. June 10, 1996.

Amendments—1996. Deleted "and the director of state ski operations" following "recreation" in the first sentence and "and" following "commissioner" in the second sentence of the introductory paragraph.

—1995. Paragraph III: Repealed.

—1993. Paragraph III: Added (initially designated as paragraph IV).

—1991. Inserted "the department of" preceding "resources" and "and the director of state ski operations" following "recreation" in the first sentence, added the second sentence and substituted "said fees" for "the fees adopted by the commissioner" at the beginning of the third sentence of the introductory paragraph, substituted "budget expenses" for "the operating costs" preceding "consistent", deleted "the park system established in" preceding "RSA 216–A:1" and added "and 216–A:3" thereafter in the first sentence of par. I, made minor changes in phraseology in the first sentence of par. II and deleted former par. III.

Severability—1993 amendment. 1993, 358 was subject to a severability clause. See 1993, 358:106.

Library References

West Key Number
States ⇐88.

Westlaw Topic
WESTLAW Topic No. 360.

CJS
C.J.S. States § 147.

AmJur
63C Am. Jur. 2d Public Lands §§ 7, 56, 76.

72 Am. Jur. 2d States, Territories, and Dependencies § 66 et seq.

erty of the state to the natural high water mark, a littoral owner's right to erect a wharf or other structure into such waters is superior to that of one who has rights only as a member of the public. Musgrove v. Cicco (1950) 96 N.H. 141, 71 A.2d 495.

3. Highways abutting water

Condemnation for highway purposes only of land bordering on public waters carries the right to reach such waters for boating, bathing, fishing, skating and cutting ice, but not the right to use the beach as a recreation spot, or to park automobiles there for such purpose. Hartford v. Gilmanton (1958) 101 N.H. 424, 146 A.2d 851.

Cited

Cited in Rothrock v. Loon Island (1951) 96 N.H. 421, 78 A.2d 512; Piper v. Merideth (1970) 110 N.H. 291, 266 A.2d 103; Leo Foundation v. State (1977) 117 N.H. 209, 372 A.2d 1311, certiorari denied, 434 U.S. 890, 98 S.Ct. 264, 54 L.Ed.2d 176 (1977); Seward v. Loranger (1988) 130 N.H. 570, 547 A.2d 207.

LIBRARY REFERENCES

New Hampshire Practice

15 N.H.P. Land Use Planning and Zoning § 39.05.

271:20-a Definition of Public Access.

I. Public access to public waters means legal passage to any of the public waters of the state by way of designated contiguous land owned or controlled by a state agency, assuring that all members of the public shall have access to and use of the public waters for recreational purposes.

II. Public access also means that no barriers or other impediments shall exist in the roads and ways leading to any of the public waters.

HISTORY

Source. 1990, 177:1, eff. June 26, 1990.

271:20-b Frozen Surface of Public Waters. The local governing body of a municipality may post warnings for the use of any frozen surface of any public body of water within its boundaries in the interest of public safety.

HISTORY

Source. 1993, 63:1, eff. June 15, 1993.

271:21 Smaller Ponds.

[Repealed 1977, 24:3, eff. May 28, 1977.]

HISTORY

Former RSA 271:21, which was derived from 1901, 9:5; PL 152:17; and RL 182:18, related to smaller ponds.

CHAPTER 271-A

NEW HAMPSHIRE STATE PORT AUTHORITY

271-A:1 Authority Established.
271-A:1-a Director of Port Authority.
271-A:1-b Removal.
271-A:1-c Salary.
271-A:2 Purposes.
271-A:3 Powers and Duties.
271-A:4 Rulemaking.
271-A:4-a Rulemaking; Commercial Boats. [Repealed.]
271-A:5 Pilots.
271-A:6 Authority of Pilot.
271-A:7 Fee on Offer. [Repealed.]
271-A:7-a Pilots Required.
271-A:8 Chief Harbor Master.
271-A:8-a Power of Arrest.
271-A:9 Penalty.
271-A:10 Definition.
271-A:11 Authorization to Establish Foreign Trade Zones and Free Port Areas.
271-A:12 Severability.
271-A:13 Acquisition of Land.
271-A:14 Improvements.
271-A:15 Reservation of Authority of Towns.
271-A:16 Prohibition of Certain Activities.
271-A:17 Payments in Lieu of Taxes.
271-A:18 Deposits.
271-A:19 Employment of New Hampshire Residents.
271-A:20 Dredge Management in Tidal Waters.
271-A:21 Dredging Projects Fund Established.

CROSS REFERENCES

Organization of executive branch of government generally, see RSA 21-G.

ANNOTATIONS

Cited

Cited in Sibson v. State (1969) 110 N.H. 8, 259 A.2d 397; Sibson v. State (1971) 111 N.H. 305, 282 A.2d 664.

271-A:1 Authority Established.

I. There shall be a New Hampshire state port authority, consisting of and governed by a board of 8 members, 6 of whom shall be appointed by the governor, with the advice and consent of the council. At least 3 of said appointive members shall be residents of the cities and towns of the seacoast region or tidal waters and at least one appointive member shall be a commercial fisherman engaged in that industry on the seacoast, and each shall serve for a term of 5 years. Said members shall serve until their successors are appointed and qualified. Any vacancy occurring in the membership of the appointive members shall be filled by the governor and council for the unexpired term. In addition to the 6 appointive members, the commissioner of the department of resources and economic development and the mayor of the city of Portsmouth shall be, by virtue of their offices, members of the board.

II. The board shall elect one of its members as a chairman, one as a vice-chairman and one as a secretary-treasurer. The members of the board shall receive no compensation for their services; but their reasonable expenses, incurred in the performance of their duties, shall be paid by the state. The board shall have the right to adopt a common seal and to alter same, and to establish bylaws and regulations for the management of its

affairs within the meaning of this chapter and the laws of the state. The board shall have its principal place of business in Portsmouth, New Hampshire.

HISTORY

Source. 1957, 262:1. 1963, 181:1. 1973, 429:1. 1975, 51:1, eff. May 26, 1975.

Amendments—1975. Amended section generally.

—1973. Substituted "six" for "five" preceding "of whom shall be appointed" in the first sentence, inserted "and at least one appointive member shall be a commercial fisherman engaged in that industry on the seacoast" following "tidal waters" in the second sentence and rewrote the fifth sentence.

—1963. Rewrote the fifth sentence, added "and one as a secretary-treasurer" following "vice-chairman" at the end of the sixth sentence and deleted the former seventh sentence.

271-A:1-a Director of Port Authority. The governor and council shall appoint a director of the port authority who shall be qualified by education and experience and who shall hold office for a term of 5 years. Said director shall serve as chief administrative officer of the port authority and perform such duties as the authority may require of him.

HISTORY

Source. 1981, 568:139, I, eff. July 1, 1981.

271-A:1-b Removal. The governor and council may remove the director of the port authority only as provided in RSA 4:1.

HISTORY

Source. 1981, 568:139, I, eff. July 1, 1981.

271-A:1-c Salary. The annual salary of the director of the port authority shall be that prescribed by RSA 94:1-4.

HISTORY

Source. 1981, 568:139, I, eff. July 1, 1981.

271-A:2 Purposes. The New Hampshire state port authority, in cooperation with the department of resources and economic development, shall:

I. Plan for the maintenance and development of the ports, harbors and navigable tidal rivers of the state of New Hampshire from the head of navigation to the seaward limits within the jurisdiction of the state, in order to foster and stimulate commerce and the shipment of freight through the state's ports and, as an agency of the state, to assist shipping, and commercial and industrial interests that may depend on the sea for transport of products, including such interests as may be desirous of

locating in tidewater areas of the state; as well as to encourage the establishment of accommodations for the boat traveller, the area boat owners, the pleasure fishermen, and others who pass up and down our coast line or in its tributaries;

II. Aid in the development of salt water fisheries and associated industries;

III. Cooperate with any agencies or departments of the federal government in planning the maintenance, development and use of the state ports, harbors, and navigable tidal rivers;

IV. Plan, develop, maintain, use and operate land transportation facilities within a 15 mile radius of the port authority headquarters at Portsmouth, except for any such facilities presently or formerly within the confines of Pease Air Force Base or Department of Defense facilities used in support of Pease Air Force Base; and maintain, use and operate a heliport facility on property owned or controlled by the port authority. The authority shall cooperate with departments, agencies, authorities or commissions of the federal, state or local governments and accept grants, aid or services from such agencies in the carrying out of this purpose. Such authorization relating to land transportation and heliport facilities shall include and be governed by all other provisions of this chapter.

HISTORY

Source. 1957, 262:1. 1963, 181:2. 1965, 278:1. 1990, 161:5, eff. June 1, 1990.

Amendments—1990. Paragraph IV: Rewrote the first sentence, added "the authority shall" preceding "cooperate" and inserted "authorities" preceding "or commissions" in the second sentence, and deleted "air navigation and" preceding "land transportation" and inserted "and heliport" thereafter in the third sentence.

—1965. Paragraph IV: Added.

—1963. Substituted "department of resources and economic development" for "state planning and development commission" in the introductory clause.

271-A:3 Powers and Duties. In order to enable it to carry out the purposes hereof, the authority shall:

I. Have the authority to make all necessary arrangements with other port authorities of other states and federal departments, agencies, and foreign countries and their port entities for the interchange of business, and for such other purposes as will facilitate and increase the commerce of the ports, harbors, and tidal navigable rivers of the state;

II. Establish offices for the transaction of its business at such places as, in the opinion of the authority, shall be advisable and necessary in carrying out the purpose hereof;

III. Be authorized and empowered to appoint and compensate a chief harbor master and harbor masters at Hampton, Rye, New Castle, Portsmouth, Seabrook and Newington who will enforce the directives of the authority, such as the placement of moorings, the assignment of anchorage areas and the movement of traffic. The authority may appoint an assistant

harbor master at any such place to assist the harbor master of such place in carrying out the harbor master's duties;

IV. Be authorized and empowered to contract with and secure the services of a port terminal operating firm, subject to approval of governor and council, for the purpose of having such firm operate a part or all of the facilities of the authority, including piers, wharves, warehouses, parking and storage areas, or other facilities owned or leased by the authority, with such operating firm having the exclusive right to operate the business of a port terminal operator and stevedore, including but not limited to the handling of cargo, the collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement and solicitation of business for such port facility or facilities; such contract with an operating firm shall include the following provisions:

(a) Said firm shall file with the authority for its approval a tariff clearly defining the terms "wharfage" and "dockage" and the charges to be made therefor;

(b) The amount of minimum payments per year satisfactory to the authority to be paid to it for the exclusive right to operate upon the marine terminal, as described in the contract, the business of a port terminal operator and stevedore;

(c) The amount retained by said firm from all fees for which it is accountable, said amount being a percentage to cover administrative costs of collection;

(d) Said firm to supply a ship's manifest for every vessel using said facilities;

(e) Said firm to provide a performance bond in an amount and form acceptable to the authority, as well as insurance in amounts acceptable to the authority for fire and extended coverage, public liability, property damage, and other risks as required by the authority, the insurance company or companies to be licensed to do business in New Hampshire and to be acceptable to the authority;

(f) Said firm to file quarterly reports with the authority indicating the amount of all fees for which it is accountable to the authority, the amounts collected and the amounts retained, with a certified audit prepared by a certified public accountant submitted annually;

(g) Such other appropriate provisions which in the opinion of the attorney general will carry out the intent of this section and best protect the interest of the authority and of the state.

V. (a) Be authorized to set and collect fees for mooring and slip permits and waiting lists for such permits.

(b) Be authorized to set and collect fees for the management of the foreign trade zone established under RSA 271-A:11.

VI. Be required to install and continually maintain a uniform system for marking the intercoastal waters of the state including the state ports, harbors, and navigable tidal rivers not presently marked by the U.S. Coast Guard using funds collected from the fees required under RSA 270-E:3, III and any other funds so appropriated. Said system shall be installed on an incremental basis and shall be completed no later than 4 years after the effective date of this paragraph.

HISTORY

Source. 1957, 262:1. 1963, 181:3. 1969, 367:12. 1975, 185:1. 1987, 139:1. 1991, 145:6. 1992, 289:6. 1995, 199:2, eff. Jan. 1, 1996; 273:6, eff. July 1, 1995.

Amendments—1995. Paragraph III: Chapter 273 inserted "a chief harbor master" following "compensate" in the first sentence and substituted "the harbor master's" for "his" preceding "duties" in the second sentence.

Paragraph VI: Added by ch. 199.

—1992. Paragraph V(a): Added "and waiting lists for such permits" following "slip permits".

—1991. Paragraph I: Deleted "and" preceding "agencies" and inserted "and foreign countries and their port entities" thereafter.

—1987. Paragraph V: Added.

—1975. Paragraph III: Added "Seabrook" and the second sentence.

—1969. Paragraph IV: Added.

—1963. Paragraph IV: Repealed.

ANNOTATIONS

Port terminal operating firm

City zoning ordinance did not apply to port terminal operating firm performing state functions under lease arrangement with port authority in absence of statute giving city power to subject state to its zoning ordinance requirements. City of Portsmouth v. John T. Clark & Son, Inc. (1977) 117 N.H. 797, 378 A.2d 1383.

Cited

Cited in Region 10 Client Management, Inc. v. Town of Hampstead (1980) 120 N.H. 885, 424 A.2d 207.

LIBRARY REFERENCES

ALR

Liability of wharf owner or operator for personal injuries to invitees or licensees resulting from condition of premises or operation of equipment. 34 ALR4th 572.

271-A:4 Rulemaking. The authority may adopt rules, pursuant to RSA 541-A, for the following:

I. Port captains, pilots, and pilotage.

II. Harbors and harbor masters.

III. Setting and collecting fees for moorings, slips, waiting lists and pilotage. A table of such fees shall be attached to the commission of each pilot.

IV. Setting and collecting fees authorized in the foreign trade zone and free port areas.

HISTORY

Source. 1957, 262:1. 1977, 600:10, I. 1978, 22:1. 1985, 298:3. 1987, 139:2. 1992, 289:7, eff. June 17, 1992.

Amendments—1992. Paragraph III: Inserted "waiting lists" following "slips" in the first sentence.

—1987. Amended section generally.

—1985. Amended section generally.

—1978. Deleted "except that mooring permits shall be set by the commissioner of resources and economic development pursuant to RSA 12-A:2-a" following "order" at the end of the section.

—1977. Added "except that mooring permits shall be set by the commissioner of resources and economic development pursuant to RSA 12-A:2-a" following "order" at the end of the section.

271-A:4-a Rulemaking; Commercial Boats.
[Repealed 1995, 273:10, eff. July 1, 1995.]

HISTORY

Former RSA 271-A:4-a, which was derived from 1990, 260:22, related to rulemaking authority of the port authority regarding a commercial boat exemption.

271-A:5 Pilots. The authority may prescribe the qualifications of pilots, and from time to time appoint and commission, under its hand and seal, as many pilots as it may judge necessary, and remove the same at pleasure; and it shall take from them such security, by bond or otherwise, as it may deem proper.

HISTORY

Source. CS 128:1. 1852, 1285:1. GS 104:3. GL 114:3. PS 120:3. PL 152:3. RL 182:3. 1950, 5, part 16:1. RSA 221:2. 1957, 262:1, eff. Sept. 1, 1957.

271-A:6 Authority of Pilot. Any pilot appointed by the authority, who has given security for the faithful discharge of his duties, may take charge of any vessel, except pleasure or fishing vessels, or a vessel of 150 registered or enrolled tons and under, and shall pilot such vessel into and out of the river and harbor of the Piscataqua, first showing to the master hereof his appointment if requested.

HISTORY

Source. 1859, 2220:1. GS 104:5. GL 114:5. PS 120:5. PL 153:5. RL 182:5. 1950, 5, part 16:1. 1951, 203:10. RSA 271:4. 1957, 262:1. 1969, 350:2, eff. Aug. 29, 1969.

Amendments—1969. Amended section generally.

271-A:7 Fee on Offer.
[Repealed 1969, 350:4, eff. Aug. 29, 1969.]

HISTORY

Former RSA 271-A:7, which was derived from 1859, 2220:2; GS 104:6; 1874, 1:2; GL 114:6; 1887, 39:1; PS 120:6; PL 153:6; RL 182:6; RSA 271:5; and 1957, 262:1, related to fee of a pilot who offered to pilot a vessel when that service was declined.

ANNOTATIONS UNDER FORMER RSA 271-A:7

Purpose

The payment of half the fee when the offered service was declined was required, not as a penalty, but for the special purpose of encouraging the constant and active pursuit of an occupation considered essential to a general and extensive commerce. Cook v. Curtis (1878) 58 N.H. 507.

271-A:7-a Pilots Required. All vessels (except pleasure or fishing vessels, or vessels of 150 registered or enrolled tons or under, and U.S. flag coastwise vessels with a Federal pilot aboard) are required to be piloted by a pilot appointed by the authority into and out of the Piscataqua River and harbor from a point designated by the authority.

HISTORY

Source. 1969, 350:3. 1971, 69:1. 1975, 49:1, eff. May 26, 1975.

Amendments—1975. Amended section generally.

—1971. Amended section generally.

271-A:8 Chief Harbor Master.

I. The chief harbor master's duties shall include but not be limited to the following:

(a) Enforcement of authority directives.

(b) Management of the assignment and placement of moorings.

(c) Designation of anchorage areas.

(d) Management of navigation aides outside of the federal channel.

(e) Management of the movement of traffic, as necessary.

(f) Direction of the removal or movement of vessels during emergencies.

(g) Overseeing the dredge management program.

(h) Overseeing the harbor management program.

(i) Inquiring into and prosecuting all offenses occurring within the chief harbor master's jurisdiction.

(j) Any other duties assigned by the authority.

II. The assistant harbor masters shall assist the chief harbor master in the performance of the chief harbor master's duties.

HISTORY

Source. 1957, 262:1. 1995, 273:7, eff. July 1, 1995.

Amendments—1995. Amended section generally.

271-A:8-a Power of Arrest. The chief harbor master shall have all of the powers of a police officer to make arrests for violations of the provisions of this chapter and rules adopted under the provisions of RSA 271-A:4.

HISTORY

Source. 1959, 138:1. 1995, 273:8, eff. July 1, 1995.

Amendments—1995. Amended section generally.

271-A:9 Penalty. Whoever violates any of the rules of the authority adopted under the authority of RSA 271-A, or refuses or neglects to obey the lawful and reasonable orders of the chief harbor master, or resists the chief harbor master in the execution of the chief harbor master's duties, shall be guilty of a class B misdemeanor.

HISTORY

Source. 1957, 262:1. 1973, 531:93. 1975, 49:2. 1995, 273:9, eff. July 1, 1995.

Amendments—1995. Amended section generally.

—1975. Substituted "misdemeanor" for "violation" following "guilty of a" at the end of the first sentence and deleted "and by it applied to the salaries of the harbor masters" following "authority" at the end of the second sentence.

—1973. Substituted "guilty of a violation" for "fined not more than fifty dollars" following "shall be" at the end of the first sentence and made other minor stylistic changes.

CROSS REFERENCES

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

271-A:10 Definition. The word "vessel" as used in this chapter shall include boats of all sizes propelled by sail, machinery or hand, scows, dredgers, shellfish cars and craft of every kind.

HISTORY

Source. 1939, 220:1. RL 182:12. RSA 271:11. 1957, 262:1, eff. Sept. 1, 1957.

271-A:11 Authorization to Establish Foreign Trade Zones and Free Port Areas.

I. Said authority shall be and hereby is authorized to make application to the Secretary of Commerce of the United States for the purpose of establishing, operating and maintaining foreign-trade zones in the state of New Hampshire, under the act of Congress passed at the second session of the 73rd Congress, providing for the establishment, operation and maintenance of foreign-trade zones in or adjacent to ports of entry of the United

States, to expedite and encourage foreign commerce, and for other purposes.

II. Said authority shall have full power and authority to select and describe the location of the zone for which application to establish may be made and to make such rules and regulations concerning the operation, maintenance and policing of same as may be necessary to comply with the act of Congress creating said foreign-trade zones, or as may be necessary to comply with such rules and regulations, made in accordance with the acts of Congress, relating to foreign-trade zones.

III. Said authority shall have full power and authority to lease the right and/or erect, maintain and operate any structures or buildings or enclosures as may be necessary or proper for the establishing and operating of any such foreign-trade zones that might be established in the state of New Hampshire under and by virtue of said act of the second session of the 73rd Congress.

IV. The authority hereby granted to said New Hampshire state port authority confers on said port authority the right and duty to do all things necessary and proper to carry into effect the establishing, maintaining and operating of foreign-trade zones within the state of New Hampshire to comply in full with the provisions of said act of Congress, and all regulations that might be made thereunder.

V. The New Hampshire state port authority shall have the power and the duty to establish an area in and around the ports, harbors, and navigable tidal rivers of the state of New Hampshire wherein personal property in transit shall be exempt from the provisions of the stock-in-trade tax and such other taxes and customs as are normally levied in a port of entry. For the purpose of this section personal property in transit through the areas established by the port authority is defined as follows: goods, wares, and merchandise which is (1) moving in interstate or international commerce through or over the areas hereinbefore established, or (2) which was consigned to a warehouse, public or private, within the state, from outside the state of New Hampshire, whether specified when transportation begins or afterward. Such property shall not be deprived of exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged. The exemption granted shall be liberally construed to effect the purposes of this chapter. Provided, however, that the warehouse in which said goods, wares or merchandise be stored be not owned, in whole or in part, by either the consignee or consignor.

HISTORY

Source. 1957, 262:1. 1982, 38:23, 24, eff. May 22, 1982.

References in text. The act of Congress referred to in this section is classified to 19 U.S.C. § 81a et seq.

Amendments—1982. Paragraph I: Substi-

tuted "state of New Hampshire" for "areaherein described" preceding "under the act", inserted "or adjacent to" preceding "ports of entry" and made other minor stylistic changes.

Paragraph III: Substituted "state of New Hampshire" for "area herein described" following "established in the".

Paragraph IV: Substituted "state of New Hampshire" for "area herein described" following "within the" and made other minor stylistic changes.

271-A:12 Severability. If any provision of this chapter shall be held invalid the remainder of the chapter shall not be affected thereby.

HISTORY

Source. 1957, 262:1, eff. Sept. 1, 1957.

271-A:13 Acquisition of Land. The authority, with the approval of the governor and council, may, in the name of the state, purchase, lease or otherwise acquire lands or interests in land, including options, on, near or adjacent to the tidal waters of the state suitable for construction, establishing and maintaining thereon piers, wharves, warehouses or other facilities useful and necessary in the encouragement and development of commercial navigation. Before making any such purchase or acquisition, the authority shall submit to the governor and council a detailed description of the land or interests therein to be acquired, together with a statement of the purposes for which the property is suited and the cost of acquisition and estimated cost of development, as well as such other information as the governor and council shall require. The authority, with the approval of the governor and council, may accept gifts of land; and may in like manner accept and apply to the purchase of land or the development thereof, contributions, gifts or aid in any form made or given for the purpose by any person, firm or corporation, or by any municipality or by the United States, and may execute instruments necessary to qualify for such contributions, gifts or aid.

HISTORY

Source. 1959, 287:1, eff. Sept. 17, 1959.

Biennial Report. 1959, 287:7, provided: "The authority shall make a biennial report to the legislature setting forth in detail the operations and transactions conducted by it pursuant to this act" [which added this section and RSA 271-A:14.]

271-A:14 Improvements. The authority, with the approval of the governor and council as to the nature and specifications of the intended project and the cost thereof, may undertake the improvement of any land acquired by it, by the construction thereon of piers, wharves, warehouses or other facilities as specified in RSA 271-A:13. Any such improvement shall, insofar as possible, be self-liquidating; and the authority shall charge just and reasonable fees for the use thereof. All revenue received from such fees shall be accounted for separately, and, after the deduction therefrom of the cost of operating such project, shall be applied to the amortization of

obligations issued for the construction of such improvements under the provisions of this chapter.

HISTORY

Source. 1959, 287:1, eff. Sept. 17, 1959.

Biennial Report. See note set out under RSA 271-A:13.

271-A:15 Reservation of Authority of Towns. All towns and cities within the confines of which there are ports, harbors or navigable tide rivers of the state which are subject to the jurisdiction of the authority shall retain all the powers of such town or city relative to such ports, harbors and navigable tide rivers and the lands abutting the same so long as the authority has not by positive action or definite rule or regulation preempted the jurisdiction hereof.

HISTORY

Source. 1972, 21:1, eff. May 14, 1972.

ANNOTATIONS

Preemptions

Port authority, by positive action, preempted city zoning ordinance in accordance with this section when it leased portion of land it owned within city to private corporation to secure its services as a port terminal operating firm. City of Portsmouth v. John T. Clark & Son, Inc. (1977) 117 N.H. 797, 378 A.2d 1383.

271-A:16 Prohibition of Certain Activities. Notwithstanding any other provisions of this chapter, the N.H. port authority shall not before July 1, 1975 exercise its authority to construct, own, lease, operate or take any other action with respect to any pipe-line, pumping station, on-shore or off-shore loading facility, bulk storage or transmission facility or processing plant connected directly or indirectly with the processing of oil or liquefied natural gas or liquefied petroleum gases without first obtaining the approval of the fiscal committee of the general court and the governor and council.

HISTORY

Source. 1974, 50:8, eff. April 9, 1974.

271-A:17 Payments in Lieu of Taxes. The property of the authority is declared to be public property and shall be exempt from all taxes and special assessments of the state or any political subdivision thereof; provided that in lieu of such taxes the authority shall make payments to the city of Portsmouth in the amount of $30,000 annually for the tax year commencing April 1, 1975, and each subsequent tax year for highway maintenance, fire protection or other services.

HISTORY

Source. 1977, 600:84, eff. Oct. 26, 1977.

ANNOTATIONS

Cited

Cited in State v. City of Portsmouth (1977) 117 N.H. 936, 379 A.2d 1262.

271-A:18 Deposits. All revenue in excess of the operating expenditures required for the authority's activities shall be deposited in the general fund until such time as the bonds authorized and issued in 1991, 351:10 have been retired.

HISTORY

Source. 1992, 260:22, eff. July 14, 1992.

271-A:19 Employment of New Hampshire Residents.

I. Any contractor bidding on a project at the port of Portsmouth which is funded through the New Hampshire port authority or the state of New Hampshire shall be encouraged to employ the maximum possible number of New Hampshire residents.

II. For the purposes of this section, "resident" shall mean any person maintaining a dwelling within the state of New Hampshire who has a present intent to remain within the state for a period of time.

HISTORY

Source. 1992, 260:22, eff. July 14, 1992.

271-A:20 Dredge Management in Tidal Waters. The New Hampshire port authority shall be responsible for managing harbor and channel dredging activities within the tidal waters of the state. The authority shall:

I. Assess the existing dredge permitting process with state and federal permitting agencies for the purposes of identifying an improved review process.

II. Establish and implement a process to ensure that dredging projects are completed in a timely and cost effective manner, recognizing the need to:

(a) Coordinate with and utilize the services of the local and private sector to establish a reliable program; and

(b) Work in conjunction with other state and federal agencies to ensure uniform and timely compliance with other laws, regulations and rules, including, but not limited to, permitting in accordance with RSA 482-A and RSA 485-A and to ensure that a certificate of consistency is obtained from the coastal zone management program; and

(c) Develop a long-range plan and schedule to serve as a guide for individual dredging activities.

III. Initiate and implement dredging projects to maintain and improve channels and harbors in accordance with the long-range plan and schedule.

IV. Submit an annual report to the senate president, the speaker of the house and the governor on the status of current dredging projects and the projection of future dredging projects and costs.

HISTORY

Source. 1994, 292:2, eff. June 6, 1994.

271-A:21 Dredging Projects Fund Established.

I. There is hereby established a dredging projects fund to be used by the New Hampshire state port authority to meet its obligation to initiate and implement dredging projects to maintain channels and harbors.

II. The fund shall be nonlapsing and continually appropriated for the purposes of initiating and implementing dredging projects. The New Hampshire state port authority shall, in each biennium, request annual appropriations to the fund in an amount sufficient to provide for the funding of the authority's periodic dredging efforts. The state treasurer shall invest the moneys deposited in the fund as provided by law. Interest earned on moneys deposited in the fund shall be deposited into the fund.

III. The New Hampshire state port authority shall not encumber, obligate, or expend any funds from the dredging projects fund without the prior approval of the capital budget overview committee.

HISTORY

Source. 1998, 355:2, eff. July 1, 1999.

HB 719-FN-A

Summary of Proposed Changes

1. Section 1:

   - Prior to 2001 DRED adopted rules regulating the State's commercial piers at Portsmouth, Rye Harbor, and Hampton Harbor -- Part Res 7307 and 7308.
   - In 2001 (Chapter 290) the responsibility for these piers was shifted to Port Authority, which became the PDA Division of Ports and Harbors.
   - Section 1 clarifies that these existing rules are enforceable by the PDA and that they shall remain in effect until the PDA can adopt new rules (anticipated to be end of 2003, early 2004).

2. Section 2:

   - First set of conforming amendments to standardize reference to "state tidal waters".
   - Between the former Port Authority statute -- RSA 271-A -- and the PDA statute -- RSA 12-G -- areas where tidally influenced waters ebbed and flowed were referred to as "harbors", "navigable tidal waters of the state", "navigable tidal rivers of the state", "navigable tide waters of the state", "tidal rivers", and "tidal waters".

3. Section 3: **[additional amendment submitted today]**

   - Clarifies statute by adding definition of "slip".
   - Clarification is needed because PDA is charged under other provisions of the existing statute with collecting fees for slips.
   - Definition is based on definition of "boat slip" for bodies of water over 10,000 acres in RSA 482-A:2, VIII(a).

4. Section 4:

   - Adds definition of "state tidal waters" (addressing the issue described in #2 above).

5. Section 5:

   - Adds definition of "tidal waters" (predicate step to defining "state tidal waters" in #4 above).

6. Section 6:

   - Amends and broadens the definition of "vessel".

- Intended to eliminate any legal argument that barges, seaplanes and personal watercraft are covered by the existing statutory term as well as floating craft that can be used for transportation or storage .

7. Section 7:

- RSA 12-G:8 enumerates the powers of the PDA:
  - VIII requires the PDA to use an RFP process in certain instances; the proposed change clarifies when it is not necessary to employ the RFP process
  - III is the PDA's power to employ independent contractors.
  - XV is the power for the PDA to contract for planning, financing, construction, operation, leasing, use of facilities, products and services of third parties doing business at Pease.
  - V is the power sell, lease, license, etc., property of the PDA for use by others.
- Under the amendment in HB 719 RFP's would be necessary for the acquisition or employment of contractors, services and facilities by the PDA, i.e., where the PDA is pledging its funds, but not necessary when the PDA is leasing or licensing its property to generate revenues.

8. Section 8:

- Removes references to "Free Port Area" -- while foreign trade zones have been created, the Port of Portsmouth is not a "Free Port Area" and is not a designation that will be sought; removal of the term is intended to avoid confusion.
- Other changes relate to updating references to "state tidal waters".

9. Section 9:

- Updates reference to "state tidal waters".

10. Section 10:

- I. -- Makes explicit that the PDA/DP&H shall have authority to enter into arrangements with other port authorities, states and the federal government for matters relating to port security as well as business and commerce.

- III. -- Authorizes the PDA to appoint a deputy chief harbor master in addition to a chief harbor master; the additional appointment is necessary to ensure that there is adequate enforcement authority available, especially in the absence of the chief harbor master.

- IV. and V. **[additional amendment submitted today]** -- Changes to these two paragraphs are intended to make explicit what is already implicit in the

language of the existing statute -- i.e., that the PDA itself may serve as the marine terminal operator and that the issuance of a non-exclusive lease or license to a third party does not elevate that party to the status of a marine terminal operator.

- VI. -- The existing statute calls for the PDA to adopt rules relating to moorings and slips. This change to the powers and duties section of the existing statute makes explicit that the PDA is empowered to regulate the placement and use of moorings and slips in state tidal waters.

- VII. and VIII. -- Conforms references to "state tidal waters".

- IX. -- Makes explicit that, with the transfer of responsibility for state piers to the PDA, the PDA is now authorized to set the usage fees for the piers.

- X. and XI. -- Since its inception, the PDA has been exempt from the provisions of RSA 541-A. Consequently, PDA rules (e.g., land use controls, rules governing FBO's, procurement of marketing services) are adopted by action of the PDA board of directors. The amendments to paragraphs X. and XI. make explicit which rules of the PDA relating to DP&H activities are subject to RSA 541-A and which are not. In short, 4 specific areas of regulation will be subject to RSA 541-A rulemaking procedures; all other rules adopted by the PDA will be adopted by the PDA board in accordance with its authority under RSA 12-G. The areas that will remain subject to RSA 541-A, except for the setting of fees, are the following:

    - Port captains, pilots and pilotage
    - Harbors and harbor masters
    - State-owned commercial piers
    - Mooring and slips

11. Section 11:

    - Conforms references to "state tidal waters".

12. Section 12:

    - Amends the existing statute so that the mayor of Portsmouth and the Commissioner of DRED may send designees to the Ports and Harbors Advisory Council meetings.

13. Section 13:

    - Updates a citation reference.

14. Section 14:

- Conforms a reference to "state tidal waters."

15. Section 15:

- This new section provides a statutory foundation that reflects the manner in which these funds are managed by the PDA, which, in turn, reflects the manner in which these funds were utilized by the former Port Authority.
- This section also give specific authorization to use these funds to cover the costs of any necessary vessel impoundment provided for under RSA 12-G:52-b.

16. Section 16:

- RSA 12-G:48 -- Replaces the reference to "registered or enrolled tons" with a reference to "gross tons"; "gross tons" is the measure most often used by the Coast Guard and is more universally understood.

- RSA 12-G:49 -- Under the existing law no NH pilot is required for a US flag coastwise vessel. This exception from the requirement to have a pilot is removed. Piscataqua Harbor has such tricky tides and currents that merely having a master with a federal pilot's license should not exclude a vessel from using a local, NH pilot.

- RSA 12-G:50 -- Establishes the respective responsibilities and chain of command for the chief harbor master, the deputy chief harbor master, harbormasters and assistant harbor masters.

- RSA 12-G:50-a -- Identifies activities that should be expressly prohibited on state tidal waters.

- RSA 12-G:51 -- Grants to chief harbor master and deputy chief harbor master -- both certified police officers -- the power to arrest any person violating state law on DP&H property or on vessels adjacent to DP&H property.

- RSA 12-G:51-a -- Establishes that any person disobeying a lawful and reasonable order of the deputy chief harbor master, a harbor master or an assistant harbor master in addition to any order of the chief harbor master shall be subject to enforcement, i.e., Class B misdemeanor.

- RSA 12-G:52 -- Makes a person's first two illegal mooring offenses a "violation" with a fixed penalty. Illegal mooring is the most common and one of the most troublesome area of non-compliance with the statute and rules encountered by

harbormasters. Establishing these offenses will enable the chief harbor master and deputy chief harbor master to summons the violators in a manner similar to a parking ticket. Third offenses will be handled as a Class B misdemeanor with a minimum penalty.

- RSA 12-G:52-b -- This new section identifies the circumstances under which the PDA/DP&H can impound or dispose of an abandoned vessel on state tidal waters or a vessel moored or anchored in violation of state law. It also provides for the recovery by the state of any fees or costs incurred in undertaking an impoundment or sale of any seized vessel. These provisions are based on the RSA 270-B, which authorizes the Department of Safety to impound "abandoned boat" in "public waters of the state".

17. Section 17: **[additional amendment submitted today]**

- RSA 12-G:53, III and IV -- These are further amendments required to clearly establish that only certain activities regulated by the PDA are subject to RSA 541-A rulemaking. The additional amendment offered today specifies which provisions of RSA 541-A are applicable to PDA rulemakings subject to RSA 541-A.

18. Section 18:

- This is a conforming amendment to RSA 6:12 that is related to the establishment by statute of the Harbor Management Fund.

19. Section 19: **[additional amendment submitted today]**

- The OLS default is to make statutes effective on July 1, 2003, or 60 days after enactment. The PDA is requesting that the statute be made effective immediately upon passage since many of the activities are presently on-going and would be greatly assisted by the statutory clarifications and additions identified in this bill.

Voting Sheets

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on HB 719-FN-A

BILL TITLE: **relative to the duties, function, and operation of the Pease development authority.**

DATE: March 5, 2003

LOB ROOM: 201

Amendments:

Sponsor: Rep. Leber — OLS Document #: 2003 0354h Posed

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Leber On Amendment

Seconded by Rep. Graham

Vote: (Please attach record of roll call vote.)

Motions: OTP, (OTP/A) ITL, Interim Study (Please circle one.)

Moved by Rep. Leber

Seconded by Rep. Graham

Vote: 14-2 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO - REG.

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on HB 719-FN-A

BILL TITLE: **relative to the duties, function, and operation of the Pease development authority.**

DATE: 3-5-02

LOB ROOM: 201

Amendments:

Sponsor: Rep. Leber — OLS Document #: 2003-0354h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.) on amendment #2003-0354h

Moved by Rep. Leber

Seconded by Rep. Graham

Vote: (Please attach record of roll call vote.) passed

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Leber

Seconded by Rep. Graham

Vote: (Please attach record of roll call vote.) 14-2

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

PUBLIC WORKS AND HIGHWAYS

Bill #: HB719 FN-A **Title:**

PH Date: ____/____/____ Exec Session Date: 3/5/02

Motion: OTP/A Amendment #: 2003-0354h

MEMBER	YEAS	NAYS
Smith, Edwin O, Chairman	✓	
Leber, William E, V Chairman	✓	
Gleason, John P	✓	
Moore, Benjamin E	✓	
Graham, John A	✓	
Holland, James E absent		
Rausch, James B, Clerk	✓	
Tahir, Saghir A	✓	
Keans, Sandra B		✓
Gionet, Edmond D absent		
Kenison, Leon S	✓	
McConkey, Mark E	✓	
O'Brien, Lori J	✓	
Waterhouse, Kevin K	✓	
Cloutier, John R	✓	
Bouchard, Candace C W	✓	
Benn, Bernard L	✓	
Norelli, Terie		✓
Malloy, Chris S absent		
Vallone, Matthew J absent		
OTP/A	14	2
TOTAL VOTE:		

Printed: 1/21/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Public Works and Highways**

BILL NUMBER: **HB 719-FN-A**

TITLE: relative to the duties, function, and operation of the Pease development authority.

DATE: March 5, 2003 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill makes various corrections to the statute that governs the Pease Development Authority, Division of Ports and Harbors that will improve the operation of our ports and harbors. Since the reorganization of the old Port Authority into the Pease Development Authority, Division of Ports and Harbors in 2001, the PDA has experienced some areas in the statutes that need improvement to reflect the new organization and operations. Some changes include standardizing the terminology, providing for law enforcement training and responsibility for Chief and Assistant Chief Harbor Master, and provides for rulemaking authority for PDA for certain fees charged at the Ports and Harbors. This bill will have a positive effect on the efficient and improved operation of the Port and Harbors.

Vote 14-2.

Rep. William E. Leber
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Public Works and Highways

HB 719-FN-A, relative to the duties, function, and operation of the Pease development authority. **OUGHT TO PASS WITH AMENDMENT**

Rep. William E. Leber for Public Works and Highways: This bill makes various corrections to the statute that governs the Pease Development Authority, Division of Ports and Harbors that will improve the operation of our ports and harbors. Since the reorganization of the old Port Authority into the Pease Development Authority, Division of Ports and Harbors in 2001, the PDA has experienced some areas in the statutes that need improvement to reflect the new organization and operations. Some changes include standardizing the terminology, providing for law enforcement training and responsibility for Chief and Assistant Chief Harbor Master, and provides for rulemaking authority for PDA for certain fees charged at the Ports and Harbors. This bill will have a positive effect on the efficient and improved operation of the Port and Harbors. **Vote 14-2.**

HB 719 technical corrections to the PDA division of Ports and Harbors statutes

OTP/AM

This bill makes various corrections to the statute that governs the PDA/division of Ports and Harbors that will improve the operation of our ports and harbors. Since the re-organization of the old Port Authority into the Pease Development Authority, Division of Ports and Harbors in 2001, the PDA has experienced some areas in the statutes that need improvement to reflect the new organization and operations. Some changes include standardizing the terminology, providing for law enforcement training and responsibility for Chief and Assistant Chief Harbor Master, and provides for rulemaking authority for PDA for certain fees charged at the port and harbors. This bill will have a positive effect on the efficient and improved operation of the port and harbors.

EOS

COMMITTEE REPORT

COMMITTEE: **Public Works and Highways**

BILL NUMBER: **HB 719-FN-A**

TITLE: relative to the duties, function, and operation of the Pease development authority.

DATE: 3-5-02 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Vote {Type VOTE}. 14-2

Rep. {Type NAME}
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

COMMITTEE REPORT

COMMITTEE: **Finance**

BILL NUMBER: **HB 719-FN-A**

TITLE: relative to the duties, function, and operation of the Pease development authority.

DATE: March 24, 2003 CONSENT CALENDAR YES ☐ NO ☒

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill provides for the addition of a new position of Deputy Chief Harbor Master at labor grade 21 and benefits at 37%. This is in response to both the increased business volume and the additional responsibility which springs from homeland protection. Fees for services will cover the additional cost.

Vote 21-0.

Rep. Robert L. Wheeler
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Finance

HB 719-FN-A, relative to the duties, function, and operation of the Pease development authority. **OUGHT TO PASS**

Rep. Robert L. Wheeler for Finance: This bill provides for the addition of a new position of Deputy Chief Harbor Master at labor grade 21 and benefits at 37%. This is in response to both the increased business volume and the additional responsibility which springs from homeland protection. Fees for services will cover the additional cost. **Vote 21-0.**

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B Wheeler

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Rep. Wheeler for the committee

7-0 OTP