Bill as Introduced

HB 719-FN-A – AS AMENDED BY THE HOUSE

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2003 SESSION

03-1032
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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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relative to the commercial piers at Portsmouth, Rye Harbor, and Hampton Harbor shall remain in effect until amended or superceded by rules of the Pease development authority, division of ports and harbors.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.

HB 719-FN-A – VERSION ADOPTED BY BOTH BODIES

13mar03... 0354h
05/22/03 1666s

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.

HB 719-FN-A – VERSION ADOPTED BY BOTH BODIES

13mar03... 0354h
05/22/03 1666s

03-1032
05/01

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 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.

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 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:

(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 established giving due consideration to 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.

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.

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 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.

21 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. Pantelakos, Rock. 86
May 2, 2003
2003-1477h
05/03

Draft Amendment to HB 719-FN-A

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.

Sen. Prescott, Dist. 23
May 6, 2003
2003-1510s
05/03

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.

Sen. Prescott, Dist. 23
May 13, 2003
2003-1610s
05/09

Amendment to HB 719-FN-A

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:

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.

Committee Minutes

Date: May 7, 2003
Time: 1:15 p.m.
Room: 102 LOB

The Senate Committee on Executive Departments and Administration held a hearing on the following:

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

Members of Committee present:
Senator Prescott
Senator Cohen
Senator Estabrook
Senator Kenney
Senator Peterson

The Chair, Senator Russell Prescott, opened the hearing.

I'd like to open the hearing on HB 719 relative to the duties, function, and operation of the Pease Development Authority. I appreciate everyone coming to testify on behalf of this bill. We have set aside the next 20 minutes to give ample time to the next hearing. I would like to have you keep that in consideration as I call upon the prime sponsor, Representative Pantelakos. No, Representative Leber. Thank you for coming.

Representative Leber: Thank you Mr. Chairman and members of the committee. I am Representative Bill Leber from Andover representing Merrimack County District 35, which includes Andover, Boscawen, Canterbury, Loudon, Northfield and Salisbury. I wanted to get them all in. It's a long way from the Port Authority. This bill is basically a request from the Pease Development Authority and the Division of Ports and Harbors. As you know a couple of years ago we combined or merged the Port Authority into the Pease Development Authority and after a couple of years of operation some of the things that pop up that need to be changed in the statute and that's basically what this bill does. It clarifies some of the language and makes it more workable for the Pease Development Authority through the Division of Ports and Harbors to operate.

I guess I could go through the entire bill but I'm sure you can handle that. If you want me to I could go through some of the changes where definitions

such as Tidal Waters. State Tidal Waters. There was a lot of language, there was different language but meaning the same thing. Navigable Tidal Waters. So they requested to have one definition, one language of Tidal Waters, State Tidal Waters.

I also want to point out on page 1 there's some existing rules. It's about existing rules, section 1. This is important too because when we transferred the commercial piers to PDA from DRED, division of Parks where it was responsible for the piers and we and another legislation transferred the commercial piers to the Port Authority. In doing so it created some problems with existing rules and how they manage the piers. So this legislation, this part, says all the existing rules of the Department of Resources and Economic Development relative to the piers will be in effect until the Division of Ports and Harbors are able to make those changes. So we can continue to operate the commercial piers.

I think there were some other definitions that were included in here. New paragraph 3 with slips. We have been trying to get them to establish fees for slips because the legislation long ago said they could establish fees for moorings and slips. They got the moorings established ok but they've never been able to accomplish the fees for slips. This definition, though I'm not sure I understand it totally but on line 24 means a slip would mean a volume of water of at least 25 feet long and 8 feet wide. It would indicate a boat of 25 feet or more would only be subject to a slip fee. I'm not sure that's a good number but I'll let it go.

Definition of vessels over on page 2, line 9. They had to include all of those different craft in order to make sure they could manage, I guess is the word, or regulate those vessels coming up the river and also into the Port facilities.

I think, I'm trying to find the new changes as we go through this but.

Senator Russell E. Prescott, D. 23: If there are highlights we'll take the highlights otherwise we'd be glad to review the legislation outside of a public hearing.

Representative Leber: There were a couple of changes that I want to point out though. One is the Deputy Chief Harbor Master. They have currently a Chief Harbor Master, which is in their statute. That is one that carry on the duties which is law enforcement type duties and they need another, deputy chief identified so they could have some coverage, I guess to cover the different hours that we have. This is getting extremely important now with Homeland Security situations. So we include in here a person appointed as a

Deputy Chief HarborMaster. He would have those authorities of law enforcement and he would have to have a current certification.

Senator Russell E. Prescott, D. 23: Is that in the budget passed by the House?

Representative Leber: I think so. It went to the.

Mr. Marconi, Port Director: It's a restricted fund. It has no affect on general funds.

Representative Leber: It's funded out of their funds.

Senator Russell E. Prescott, D. 23: Does that do it?

Representative Leber: I think you can see changes. Some minor and those were the only significant changes on that. If you have any questions I'll be around. The folks behind me from PDA can probably give you more details on that.

Senator Russell E. Prescott, D. 23: Thank you for your testimony. Any questions of the committee? Senator Estabrook.

Senator Iris Estabrook, D. 21: On page 2. Lines 19 and 20. It allows them to enter into the contracts in excess of $10,000 without an RFP process. It is an agreement entered into under paragraph roman 5. What is that?

Ms. Hinchee: Do you want to save that one for me?

Representative Leber: Let her. She'd better answer that.

Senator Iris Estabrook, D. 21: I'll hold my question. Thank you very much.

Senator Russell E. Prescott, D. 23: Thank you very much for your testimony. Would it be appropriate for Lynn Marie Hinchee and Geno Marconi come forward at the same time? Would it be more appropriate, I'm sorry, for Representative Pantelakos should come first.

Representative Pantelakos: Thank you Mr. Chairman and members of the committee. I appear here on kind of a halfway for it and halfway against it. If it sounds crazy to you, that's the way I feel.

I don't believe that they need a Deputy harbormaster for 15 miles of water. It's pretty crowded down there now between the Safety Patrol and the Marine Patrol and the Coast Guard and others that are patrolling that river.

I think we have to consider that every one that we put on, Deputy Harbor Masters or other Harbor Masters become state employees, I believe, so they are on the payroll for the rest of the time that they are with us. We need to consider that. I believe that PDA has just hired a security firm, at least there was talk of that whether they have done so or not, who was a retired police officer from Portsmouth.

My main concern with this is on page 7. I believe that the PDA is a quasi committee that doesn't account to the State of New Hampshire about anything. I don't think that a quasi committee should take over the rules and regulations of our waterways. To make them without having to come before the rules committee and that's what 541-A takes them right out of it that they don't have to come before. I think that the citizens out there need some place to go when a fee is put up or a slip, somebody might take a mooring away from somebody or something like that. They actually have no place to go.

Whether the PDA is getting better now? I think they're getting a little calmer but it used to be "please don't ask" because if you had a complaint and you took it to PDA it's tough. You had no where else to go. If they didn't agree with what you had to say then you were out in the cold. You just had nothing to say.

I just want to be sure that they're taking over the port, but I need to know that the citizens within the state can go and say, "I believe that mooring fee is too high, it needs to come down." They need someplace to go. They will not have that without the rules committee.

The other thing that has bothered me is that I keep hearing that they want to be competitive with privately owned facilities. I don't think that is what the state pier is supposed to do. I think that the state pier is supposed to be there to help our fishermen, to help our economy, to help other people and not be competitive with privately owned facilities.

That's just about all that I have to complain about.

Senator Russell E. Prescott, D. 23: Senator Cohen.

Senator Burton J. Cohen, D. 24: Does this bill here specifically address that concern that you and I share about being competitive with private enterprises. Is there something in here that allows them to do that?

Representative Pantelakos: It allows them to set all the fees. It says in the bill as you go along that it wants them to be comparative with the private

facilities. That kind of rings a bell with me and says we're not supposed to do that. Private facilities have to pay taxes on their land and they're much higher on their costs. So John Q. Public doesn't always have a place to go to get something that might be reasonable for them with a boat. I think it would, some people have had moorings down there for as much as 30 years and it's very easy if it's taken out of the hands of the rules committee to put that mooring fee up so high that they can't reach it. So they'd just put somebody else in there that has a little more money. They wouldn't have any place to go to complain about it. So I think rules need to be in any agency, especially in the ports.

Senator Russell E. Prescott, D. 23: Do you propose an amendment?

Representative Pantelakos: The amendment that I proposed there was offered by Chairman Bartlett and John Bohinko because it's a maintenance fund that they can put money aside for when things need to be repaired at the port. I hope you will consider that.

Senator Russell E. Prescott, D. 23: Did you draft an amendment to take care of your objections to the bill?

Representative Pantelakos: No, I did not. I felt that you as Senators would have the wisdom to do that properly the way it should be done.

Senator Russell E. Prescott, D. 23: In what section of the bill does it pertain too exactly, page and line?

Representative Pantelakos: Page 7, line 1 where it starts to say "adopt rules".

Senator Russell E. Prescott, D. 23: Would you delete that?

Representative Pantelakos: I would certainly make it so they had, yes I would. I believe they need to come before the rules committee. I believe every state agency and I was here when the PDA was set up and it was set up as a quasi committee because it was a group parcel of land that had to be developed and they needed to do it so that it would not have the legislature throwing kinks in it all the time to do it. People didn't realize at the time that they were doing, but they were just setting up an agency that accounted to no one. They might have to come and ask the Governor and Council for some money, to spend some money but they do what they want to do. If you have a complaint about them there's no where to go. I certainly don't want that to happen to the poor. The ports are very vital item on the seacoast down

around to the fishing piers. There's a lot of charter boats, a lot of fishing boats there.

Senator Iris Estabrook, D. 21: In order to make them subject to JLCAR looking on page 7, on line 7 to line 10 there's a sentence that exempts them. ***The rules adopted under this paragraph shall not be subject to the provisions of RSA 541-A.*** Then it gives a reason for why they're doing that. If you took that sentence out and left the rest wouldn't that accomplish what you had in mind?

Representative Pantelakos: My main concern is that they need to come before the rules committee. There needs to be somewhere for the people to go to express their thoughts and interests.

Senator Iris Estabrook, D. 21: Do you know whether we need to be explicit in saying that they are subject to the provisions in 541-A or that they're silent doesn't mean that they are?

Representative Pantelakos: I believe that you need to be explicit about what you say that it has to be done. The other one that I was relating to is on that same page 7, line 27 ***(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.*** That bothers me that they would want to do that.

Senator Iris Estabrook, D. 21: Where is that?

Representative Pantelakos: That is line 27 e, page 7. I had a problem with the word State Tidal Water but I was told earlier that they had the authority before this was put in.

Senator Russell E. Prescott, D. 23: Have you spoken to former Senator Bartlett that had you bring in your amendment?

Representative Pantelakos: Yes.

Senator Russell E. Prescott, D. 23: Did you speak to him regarding your other concerns with the bill?

Representative Pantelakos: Yes, I did express my concerns with him and told him that I do believe that they do need to come before some sort of agency to make rules and regulations, to that effect. He did not give me an opinion one way or another.

Senator Russell E. Prescott, D. 23: Thank you very much for your testimony. Any further questions?

Representative Pantelakos: Thank you.

Senator Russell E. Prescott, D. 23: Marie Hinchee.

Ms. Hinchee: Mr. Chairman, I would with your permission like to have Geno Marconi. I think between us we would probably cover most of your questions.

Senator Russell E. Prescott, D. 23: Yes that would be fine. Geno Marconi Port Authority Director? Thank you for coming. Representative John A Graham for the record signed up in favor of the bill and not wishing to speak.

Ms. Hinchee: Before speaking to the amendment that Representative Pantelakos mentioned and that I was asked to attend and speak on by Mr. Bartlett and Mr. Bohinko, I wanted to clarify a couple of questions I think.

Senator you asked about what section 5 is. That is a part of the existing statute, which permits the authority to sell, lease and grant interest in division in airport property. There have been some questions in the last year about whether if you do a lease with someone for an amount of money that exceeds $10,000 whether you were supposed to go out and RFP.

It was fairly clear to the Development Authority that the legislative intent was that to operate like a business when in fact someone comes to you and expresses interest in your property and you have that property available you should be able to lease it to them and not have to say "wait, I'll have to check and see if I can get something better". So it was intended to clarify that the restrictions and regulations in respect to procurement do not apply to when you are out leasing property. That those you can do in the ordinary course of business.

Senator Iris Estabrook, D. 21: Thank you.

Ms. Hinchee: So that's what that was. There is language, if you look on page 6 of the House Bill and you look at line 26 and following you will see that the statute already does make the Division of Ports and Harbors specifically subject to rule making under 541-A and that includes rule making for terms, conditions, and procedures under which the division issues, suspends, revokes, denies or improves permits for moorings and slips. So it has been the divisions position that this new language does in fact subject to rule making and makes it clear that procedures need to be adopted. We're in the process of procuring the rules for the moorings. The Port Authority, the former Port Authority had rules for moorings but they did not provide for any

administrative hearings and in fact we seek to remedy that by this legislation and by the current applications we've made for new rules.

Mr. Marconi: What precipitated a lot of this as Representative Leber said is when we embarked on revising our administrative rules we realized that some of the language was conflicting through certain sections of the old rules, certain sections of the statute so a lot of this is as Representative Leber says is to clean up the language, especially that term Tidal Waters. In that section where it defines a vessel we had to consolidate that terminology to make our rules work. As we proceeded along under 541 we became aware of the enormity of and the changes that occur in setting fees for certain services that are provided by the state.

There are other agencies, Department of Resources and Economic Development and the Department of Safety that they do follow the rule making in 541 in setting the rules that have the effect to the public but there is another process in place by which the fees are set. Anytime you want to change the parking fees at a state park, the minimum process is 180 days with administrative services and JLCAR. We saw that with what we're doing down there that wasn't applicable and wouldn't work for us. So what we're asking of this legislation is to allow us to have the same public process that DRED and Safety and other state agencies have when they set certain fees that have an effect on the public.

The other thing that we looked for here was information about the Chief and the Deputy Chief Harbor Master. The old Port Authority had some tumultuous times and part of that tumultuous time revolved around the Chief HarborMaster. Working with the Police Standards and Training Council and Earl Sweeney, we've recognized the fact that under statute and under the code of Administrative Rules for PSTC that the Chief Harbor Master has to be a certified full time police officer. He's the only one in our department that has that authority. He can't work 24/7.

There are some differences in the statutory authority between marine patrol, department of safety and what the Chief Harbor Master of the Division of Ports and Harbors has. What we're asking for is to allow us to establish a position that is a certified full time police officer. It is totally funded by a restricted fund. All of the revenues that we collect from the moorings and wait lists and Department of Safety Boat Registrations stay in that restricted fund. They are non-lapsing. We certainly wouldn't hire anybody or fund that position unless we had adequate funding sources within that class of money.

I guess that would be my direct testimony Senator. I'd limit it to that at this point in time. I offer to answer any questions and defer to Lynn with her testimony on the amendment.

Senator Russell E. Prescott, D. 23: Are you finished with your testimony then?

Ms. Hinchee: I wanted to speak to the amendment but I can wait for questions on what you have before you.

Senator Russell E. Prescott, D. 23: I did want to speak about Representative Pantelakos' concerns on page 7, line 27 that certain fees would be raised and people used to using the dock system wouldn't be able to use the dock system because they wouldn't be able to afford it.

Mr. Marconi: The fee system as I've testified would be no different to what the Parks Department or the Department of Safety would do. It's not our intentions to raise fees so that commercial fishermen or the pier users. My background is in commercial fishing. I know what the times are and how they present themselves.

I was involved in the construction of the commercial fish piers back in the mid-70's. But it's our responsibility also to operate those facilities and pay the electric light bill and pay the water bill and make sure that we maintain those facilities. The bottom line would be that any fees that we set, be it moorings, wait list, slip fees, tie up fees or pier use fees would be a public process with public input as any other state agency does.

Senator Russell E. Prescott, D. 23: Thank you very much. Senator Cohen.

Senator Burton J. Cohen, D. 24: Following up on that, it appears that the deleted lines on page 6 line 3, it had said that setting or collecting fees that's stricken and that RSA 541 no longer applies to that and then you have it setting fees on line 27 of page 7. It does seem to be outside the purview of JLCAR.

Mr. Marconi: You're correct. Setting the fee is outside of the purview of JLCAR. However the rules governing how those fees are set and the rules and regulations governing those fish piers or those moorings according to page 6 line 27, we still have to adopt rules according 541 for harbors and harbor masters and those types of things.

Senator Burton J. Cohen, D. 24: If I may follow up on that. It specifically excludes setting and collecting fees.

Mr. Marconi: Yes, we're setting the rules but the fee schedule to make it more flexible and workable in today's economy and whatever would be set from the division through the PDA. I don't know, maybe I'm not being clear on that.

Senator Burton J. Cohen, D. 24: Doesn't that validate the concerns that were raised by Representative Pantelakos that the public input with regard to setting fees, there would be no channel for that to be a factor.

Mr. Marconi: I don't believe so. I believe the Pease Development Authority when they make rules and regulations and they set fees they do a public process. That would be as the division director, my intention to make that. I think we're already on a track down that road and we're in the process of revising our mooring rules. Before we even did that we had a public input session where we invited the public. WE sent out a mailing to all of our mooring permit holders to come in and tell us what your concerns are. I think we would follow that same process in setting rates.

Senator Burton J. Cohen, D. 24: Just one final follow-up. What is the purpose of specifically leaving out the setting and collecting of fees.

Ms. Hinchee: I think I can answer that. There was concern expressed to us not, it didn't generate from us, addressing that all the fees including dockage, wharfage, all the fees that are set at the port take too long to respond. In other words, the people who were saying it was difficult to compete with us were saying that if in fact every time you were changing fees you went through a rulemaking process what happens is if the marketplace changes their costs go up, their fees go up we cannot respond as quickly.

So it was recommended that what we do is submit to rulemaking terms conditions and procedures for everything. Issuing, suspending I mean that includes certain cost factors and then follow the lead of other state agencies like DRED with respect to parks and department of safety and go through agency proceedings with respect to the fees. The PDA is still subject, you're right, it's not subject to rulemaking but it is still subject to public process on fees and that be the process that be followed. That was my understanding.

In fact there was early on amendment language, Representative Leber is not here right now, that we had prepared that would make it even more clear and he has that language I'm sure. In the early hearings they determined that the statute itself was sufficient on those hearings and they didn't need the clarification of the fees going through the PDA process.

Senator Iris Estabrook, D. 21: Relating to Senator Prescott's question on lines 27 and 28, when he asked about Representative Pantelakos' concern about fees that are set. It says specifically here that they are to be comparable with private facilities. That might be a problem for some folks. Your response was simply to describe how you would be sensitive to that issue. If that's the case, why do we need to state this explicitly here? Why can't we just leave out section e and whether the fees were comparable or not could be determined along the way? Why (inaudible) say that they have to be?

Mr. Marconi: I'm comfortable with that. I just need to reiterate that other agencies when they set the fees, like DRED, they'll set their fees or propose their fees and then get approved by the fiscal committee. What fees we would propose are still subject to the public process and the legislative process but in a different manor.

Ms. Hinchee: I would like to address that Senator. It is my understanding that this provision, e, requiring, obligating that all fees established or comparable was inserted to address the concern of private commercial enterprises that the port not set fees which are lower than those which are commercially reasonable and therefore the port would compete unfairly by imposing, by having the legislature impose that our fees be at least comparable, it's going to require that as part of the analysis I believe in adopting a fee structure.

Senator Iris Estabrook, D. 21: Sort of a follow-up. Because you said DRED, you pointed out how other agencies don't have to go through JLCAR for their rules, their fee setting rules, I didn't realize that they did need to go to fiscal. Now I'm not, I've never been on fiscal and I (inaudible) operations a while but I'm wondering if we need language that makes these rules go to fiscal but you're saying that they automatically go to fiscal.

Ms. Hinchee: No they don't automatically go to fiscal. In fact, the early amendment I spoke of that was proposed while this bill was making it's way through the process did suggest that it was an alternative of making it go to fiscal after the board established it. I don't think that the authority has any objection to that process at all. If you would like, Mr. Chairman, we'll get that language back to Representative Pantelakos, to yourself, to Representative Leber and maybe you can all look at that and see if, rather than eliminating language, adding something would satisfy the concerns of the committee.

Senator Iris Estabrook, D. 21: Thank you. That would be helpful.

Ms. Hinchee: If I may, very quickly.

Senator Iris Estabrook, D. 21: I have another question. At the top of page 7 the paragraph that we're focusing on, roman 11, you have described to us as the paragraph that simply allows you this flexibility that you need when you're setting fees. I understand that (inaudible). But yet the first sentence has quite a few references to other statutes, which clearly we're not familiar with, unless they're parts of this bill and I haven't found them. They seem to relate to things other than fee setting, relating to foreign trade zones, wharfage, dockage, and terminal operations and any other matter necessary for the proper administration of the division. So we're saying any matter necessary, that you feel is necessary for the proper administration of the division doesn't have to go to JLCAR. That's a lot more than fees don't you think?

Ms. Hinchee: I don't read the language quite that broadly. I will say that as I was, I think the intent of the drafter was basically to, the statute itself deals with what areas were subject to rule making. This is for the Division of Ports and Harbors only and when we were looking at the items that have fees, the statute was searched to find everything. We do set fees for the use of the foreign trade zones already. In fact, to my knowledge that has never gone to JLCAR so all we were doing again in clarify was going through the whole statute and picking out anything that related to a time fees were set and moving those in. Marine terminal operations and that includes a fuel fee and these are things that have already been in place and operational, not only within this merged statute but previously for the New Hampshire Port Authority.

Senator Iris Estabrook, D. 21: Thank you. That does clarify but all those references were connected to the word setting incorrectly and fees so I understand that but then the words and then the other matter necessary for proper administration of the division is an awfully broad bandaid that we would be giving you. I wonder how you feel about that (inaudible)

Ms. Hinchee: I have read that as being related to the collection of fees just to say that if in fact there are other areas here where we do have fees associated it's just to make clear that when it has to do with fees there's a process that's separate from rulemaking and the statute I think is clear.

Mr. Marconi: There is some history behind that. When the legislature turned over the commercial fish piers in Portsmouth, Rye and Hampton to us I got ownership of the pier but I couldn't collect the fees. So ergo we went almost two years without collecting any rent from the Portsmouth Fisherman's Cooperative because I owned the property, DRED had the contract and their rules became null and void when they turned the property over to us. So as

we progressed along and we get into other areas we need to have the ability to make rules through the 541 process but we need to be able to set fees in a more expedited manner.

Senator Iris Estabrook, D. 21: Final follow-up. Well then it would seem that it would satisfy that need if we said in any other manner necessary for the proper administration of the setting and collecting of fees.

Ms. Hinchee: It seems fine to me.

Senator Russell E. Prescott, D. 23: Do you want to go ahead with your testimony?

Ms. Hinchee: If I may, I just want to briefly address the amendment that Representative Pantelankos discussed.

At the March board meeting the PDA had before it a request before it for the extension of the license agreement for storage of bulk cargo at the Market Street terminal. This is not a use that is preferred by some members of the board and many of the members of the community. Although it does provide significant revenue for the Division of Ports and Harbors. Also such a use for storage of this bulk cargo is consistent with the obligations of the division to stimulate commerce and the shipment of freight through the port. But the board is extremely cognizant of the need to provide infrastructure and equipment that will support more diverse maritime uses including such things as container cargo.

So the PDA board determined that to meet its obligation under the statute to keep this as a working port to maximize the diversity of potential port users, it should make a firm commitment to create a prudent reserve account to provide funds for capital improvements, equipment, maintenance and repair of division property. Such a reserve fund is already permitted to the PDA for its airport property.

To that end, at its March 6 meeting the board did resolve to seek from the General Court authority to create and maintain such an account. It would fund this account by taking a percentage of the land rents it's receives at the Market Street terminal from it's tenants. In keeping with the legislative objective that the division be as self sustaining as possible we support this amendment in it's requirement that we satisfy operating expenses prior to allocating any funds into the account and further that we continue to return excess revenues to the general funds so that not all the surplus funds are put into that account.

Through the efforts of Representative Pantelakos and PDA director John Bohinko the City of Portsmouth representative to the board we're very grateful for the opportunity to have the legislature consider the creation of this special account and to confirm the PDA's commitment to promote and develop the New Hampshire Port as a working port with due consideration to all commercial, recreational and private interests.

Senator Russell E. Prescott, D. 23: Questions from the committee?

Senator Andrew R. Peterson, D. 11: I do have a question. You have the Chief Harbor Master joined in this bill with the Deputy Harbor Master which is a new position. They're both under the bill hired to be full time police officers certified. Is that the case now? Is this a Group II position now?

Mr. Marconi: Yes, it is.

Senator Andrew R. Peterson, D. 11: So that new position would be a Group II position obviously?

Mr. Marconi: That's correct.

Senator Andrew R. Peterson, D. 11: How about the harbormaster's that are underneath them?

Mr. Marconi: They are part time employees. They do not have police power. We liken them to a code enforcer. We hire local people from the local area, say Seabrook who know the people and know the area and if he sees some violations or misuses of moorings and what not, he would report to the Chief Harbor Master who has the enforcement authority.

Senator Andrew R. Peterson, D. 11: When they exercise that authority in some sense that puts them in harms way I take it? Are they Group II qualified?

Mr. Marconi: To take it a next step further, they're about to fall under some serious requirements by the United States Coast Guard and Port Security Regulations. Our facilities in those harbors, we believe are going to require someone with those credentials.

Senator Andrew R. Peterson, D. 11: It must be on the citizen terrorist consideration and so forth. The Harbor Masters themselves, is there any thought to them having some police standards training.

Mr. Marconi: That had been done in the past. The assistant Harbor Master and the local Harbor Master's were certified part time. Right now we don't believe that the demand is there but we've just hired a new Chief Harbor Master. We've been without a Chief harbormaster or an active Chief HarborMaster for almost 2 years. He's just come on board as of Monday and he'll be reviewing those requirements.

Senator Andrew R. Peterson, D. 11: I'm proceeding on my own, I apologize. The other question is about the creation of this new fund. What is it a reserve account or something? The state has been living on lapses for awhile now and my question is, are we going to see a decrease, you were talking about the overage coming to the state beside what we're paying with this fund, is there a budgetary implication that this change will need a fiscal note?

Ms. Hinchee: I do not believe a fiscal note has been prepared on the amendment because they don't think the amendment was preferred before today however, the PDA in prior years there has not always been a return to the general fund. Last year, approximately $4000 was returned to the general fund so a portion of that might now be. However, because of some of the other changes we actually anticipate an increase in surplus in the biennium budget, which has already been put in for the next two years. So we would expect to see a continuation in increase of funds returned to the general fund from the port.

Senator Andrew R. Peterson, D. 11: Just one final. Due to the fiscal, FN bill and the fact that it has some fiscal implications, it's my understanding that we are going to have to have this out by next week. If you were going to do an amendment which was discussed you ought to be aware of that.

Ms. Hinchee: That's not a problem.

Senator Burton J. Cohen, D. 24: Any other questions of the committee? Senator Kenney.

Senator Joseph D. Kenney, D. 3: The Homeland Defense money that is coming into the State of New Hampshire, is any of that being targeted to towards the Port Authority?

Mr. Marconi: Yes, we have applied for an approximately $8.3 million grant just to cover port security. We're working in coordination with the Department of Safety. They've piggybacked for the lack of a better term on our port security analysis and the Senate risk assessment that we had done by our consultant.

Senator Joseph D. Kenney, D. 3: Will there be any positions created out of that money?

Mr. Marconi: No. This money is only for infrastructure construction and infrastructure improvements. There is no design or engineering money in there. There are no positions or salaries in there. It's all bricks and mortar.

Senator Burton J. Cohen, D. 24: Any further questions of the committee? Seeing none, thank you very much. Is there anyone else? Representative Pantelakos, do you wish to speak?

Representative Pantelakos: I would just like to comment that when we referred to the parts as not having to set fees, we're not looking at anybody's livelihood. The piers in Portsmouth, Seabrook and those places do rely on, many people rely on their livelihood there. So it's needs not, rules need to be in place. Through the state, not through the PDA, they need to come to the state, the people have a place to come to when something goes wrong. It's no comparison with the parks. A $5 fee at the parks does not bother anybody. If you want to go you can go. If you put a fee up on the pier you need to stop and think about that person's livelihood. Thank you.

Senator Burton J. Cohen, D. 24: Anyone else wishing to speak on HB 719?

Senator Andrew R. Peterson, D. 11: May I ask Representative Pantelakos one question? I'm sorry you came in late while you were in the middle of talking about your amendment. I just want to understand for my own purposes the concern. Are you more concerned that these rates are going to be below competitive rates and therefore are going to cause a problem for privately owned or are you more concerned that they rise to that level and that creates a burden on those who use them?

Representative Pantelakos: I'm concerned about them rising to a level that would create a burden to people that use it. I understand what they're saying about the rate of the pier, renting the land on the salt pier should be comparable to other places that charge that fee. I'm talking about mooring fees, pier fees and things like that, that would affect the livelihood of the people down there. There's only 11 acres of land there and I'm talking particularly about the other particular piers that are outside, they have the commercial piers, the charter codes and fishing boats and things like that. And people have that have moorings that might have had them for 20 or 30 years but if you go way up on that mooring fee they can no longer continue to have it and they have no place to go to argue that particular question. I'm sorry I interrupted you Senator.

Senator Andrew R. Peterson, D. 11: No, you've given me the information I need. I just, the question I had was that I didn't see in your amendment anything to do with this one thing. Secondly, I had another question. Would it satisfy you if we drafted some language relative that they should take this into account in their own process instead of tying them to make them comparable. Or is what you're really advocating is just deleting the section so that it remains with JLCAR?

Representative Pantelakos: I believe that they should be coming to JLCAR. I believe that's the citizen's place where they can get things out to the public. I don't believe that a program, a meeting that is held at the PDA office. I mean you can go and complain and they'll tell you right out that they're not going to do anything and the legislature is not going to do anything and the governor is not going to do anything because they are a quasi committee and I don't want to see this happen to the port division.

Senator Burton J. Cohen, D. 24: Anyone else wishing to speak on HB 719? Seeing none, thank you. I'll close the hearing on HB 719.

Hearing closed at 2:00 p.m.

Respectfully submitted

Pamela Manocchi

Pamela Manocchi
June 19, 2003

Speakers

SENATE Executive Departments & Administration

Date 5/7/03 Time 1:15 Public Hearing on

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

Please check box(es) at left that apply.

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
☑	☐	☐	Rep Laura Pantelakos	Rock 86th
☑	☐	☐	Rep Bill Leber	Merr. 35
☑	☑	☐	Lynn Marie Hinchee	Pease Dev Authority
☐	☒	☐	Rep. John A Graham	Dist 57
☒	☒	☐	Gene Marconi	Port Director
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Testimony

Estabrook

HB 719

Page 7

XI. .....line 6: 12-G:49-a relating to pilotage; *and any other matter necessary for the proper administration of the division (STRIKE THIS),* relative to the setting and collecting of fees (ADD THIS). The rules adopted under this paragraph shall *not (STRIKE THIS)* be subject to the provisions of RSA 541-A. (ADD PERIOD) *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.(STRIKE THIS)* Fees established pursuant to this paragraph shall be consistent with the following criteria:

DELETE ITEM (e), LINES 27-28

Alternative to JLCAR would be fiscal for setting fees approval

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May 14, 2003

THE COMMITTEE ON Executive Departments and Administration

to which was referred House Bill 719-FN-A

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

VOTE: 5-0

2003-1666s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Burt Cohen
For the Committee

HB719 Docket

Next|Prev|Results List|Main|Bill Status

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

Date	Body	Description
1/9/2003	H	Introduced and ref. to Public Works; HJ 12, p206
2/5/2003	H	Hearing Feb 19 3:00 RM201,LOB
3/5/2003	H	Maj Report OTP/AM for Mar 13 (Vote 14-2;Reg)
3/5/2003	H	Prop Comm Am{0354}; HC20, p474-475
3/13/2003	H	Comm Am, AA VV; Passed with Am and ref to Finance RC(234-109); HJ24, p619-622
3/13/2003	H	Fin DivI Subcom Work & Exec Sess Mar 21 9:00 RM209,LOB
3/24/2003	H	Fin Maj Report OTP for Apr 10 (Vote 21-0;Reg)
4/10/2003	H	Passed VV; HJ 34, p1126 + 1143
4/17/2003	S	Introduced and Ref. to Executive Departments & Administration; SJ 13, Pg.331
4/29/2003	S	Hearing; May 7, 2003, Room 102, LOB, 1:15 p.m.; SC21
5/16/2003	S	Committee Report; Ought to Pass with Amendment{1666}, [05/22/03]; SC23, Pg.39-40
5/22/2003	S	Committee Amendment{1666}, AA, VV; SJ 17, Pg.445-446
5/22/2003	S	Ought to Pass with Amendment{1666}, MA, VV; OT3rdg; SJ 17, Pg.446
5/22/2003	S	Passed by 3rd Reading Resolution; SJ 17, Pg.479-480
6/5/2003	H	House Conc with Sen Am, Rep E Smith MA VV; HJ 47, p1497
6/24/2003	H	Enrolled Am{2262}, Adopted;
6/24/2003	S	Enrolled Bill Amendment{2262}, Adopted
6/30/2003	H	Enrolled;
6/30/2003	S	Enrolled;
7/8/2003	H	Became Law Without Signature on 7/8/2003 Eff: 7/8/2003 Chap: 0242

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Docket Abbreviations