

Pease Development Authority

Port Committee Meeting - December 16, 2024

PDA COMPLIANCE WITH RSA 541-A

Brenda Therrien, Administrative Assistant, Division of Ports and Harbors, 555 Market St., Portsmouth, NH 03801 [603-766-9221] sent an email to Sylvia Cheever, owner of Rye Harbor Lobster LLC on Dec 9, 2024, at 8:19 AM from B.Therrien@peasedev.org:

"Per your request to be notified of rulemaking proceedings, I am writing to let you know that a Pease Development Authority (PDA) Port Committee meeting will be held on Monday, December 16, 2024 at 8:30 AM in the Boardroom at the PDA offices at 55 International Dr., Portsmouth NH.

It is expected that Administrative Rule Pda 610.02 will be discussed at this meeting, regarding fees for vehicle parking, vessel launch, and vessel storage for Rye and Hampton Harbor Marine Facilities. Although Admin Rule Pda 610.02 is Exempt from the Rulemaking process outlined in RSA 541-A, we are notifying you as a courtesy.

If the Port Committee recommends moving forward with Initial Proposed Fees, they will be presented to the PDA Board at its January 7th meeting. If the PDA Board approves the Initial Proposed Fees, the public comment period will begin and a public hearing will be held prior to the PDA adopting any proposed fees."

ANALYSIS

The statement: "Although Admin Rule Pda 610.02 is Exempt from the Rulemaking process outlined in RSA 541-A, we are notifying you as a courtesy." does not appear to be well grounded in law.

RSA 541-A:21, I(n) states: "rules adopted by the authority [PDA] 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. ."

Moreover, it appears that Division of Ports and Harbors Administrative Rules must start at the Division of Ports and Harbors [DPH] Advisory Council by the DPH Division Director pursuant to RSA 12-G:44, not with the Pease Development Authority.

APPLICABLE NH RSA LAWS

RSA 12-G:53 III: Construction and Effect of Other Laws -

Except for rules adopted pursuant to RSA 12-G:42, 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, 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.

RSA 12-G:53 IV: Construction and Effect of Other Laws -

Any rule adopted by the authority pursuant to 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.**

RSA 12-G:42 X: Additional Powers and Duties -

Adopt rules, pursuant to RSA 541-A, relative to:

(a) Port captains, pilots, and pilotage.

(b) Harbors and harbor masters.

(c) The terms, conditions, and procedures under which the division shall issue, suspend, revoke, deny, or approve permits required under this chapter for moorings and state-owned slips.

(d) **State-owned commercial piers and associated facilities**, including without limitation the terms, conditions, and procedures under which the division shall issue, suspend, revoke, deny, or approve permits authorized under this chapter relative to the use of state-owned commercial piers and associated facilities and such other rules as the division deems necessary for the proper and safe use, operation, and management of such commercial piers and associated facilities.

RSA 12-G:47 Pilots. -

The authority, in consultation with the executive director, 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.

RSA 541-A:21, I(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.

RSA 12-G:44 Division of Ports and Harbors Advisory Council -

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. Two of said appointive members shall be residents of the cities and towns of the seacoast region or state tidal waters that are not represented on the board, one appointive member shall be a commercial fisherman engaged in that industry on the seacoast, and 2 appointive members shall be experienced in a maritime industry. Each appointive member 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 business and economic affairs, or designee, and the mayor of the city of Portsmouth, or designee, shall be, by virtue of their offices, members of the council.

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

management of its affairs within the meaning of this chapter and the laws of the state. The division shall provide the council with the administrative support necessary to carry out its responsibilities under this chapter.

III. The council shall consult with and advise the division director with respect to the policy, programs, and goals of the division, the operation of the port, the selection of harbor masters and assistant harbor masters, and the procurement of services of a port terminal operating firm. In order to accomplish said purposes, the council shall meet with the division director no less frequently than quarterly, or at the call of the chairman or 3 council members. All potential conflicts of interest shall be adequately disclosed. The council shall file annually a report of its deliberations and recommendations with the board and the executive director. The authority, by 5 affirmative votes, may override any action of the council.

IV. The division director shall present all rules proposed to be implemented by the authority under RSA 12-G:42, 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, 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.