

Analysis of the Pease Development Authority Compliance with State Law RSA 541-A

Background: The former United States Pease Air Force Base [PAFB] was turned over to the State of New Hampshire in 2001 and the legislature created Revised Statutes Annotated (RSA) Chapter 12-G "*Pease Development Authority*" [PDA]. RSA 12-G:42 granted certain "*Powers and Duties*" to the PDA regarding administration of the former PAFB and RSA 12-G:43 established within the PDA a "*division of ports and harbors*" [DPH], which from 1936 to 2001 was under the administration of what is now the Department of Natural & Cultural Resources. The PDA was also granted authority to be exempt from mandatory RSA 51-A, "*Administrative Procedure Act*" [APA] compliance pursuant to RSA 541-A:21, I (n) in its administration of the former PAFB property, which is now the 3,000 acre "*Pease International Tradeport*" and the 1,100 acre "*Great Bay National Wildlife Refuge*".

Exceptions: RSA 541-A:21 is a section that excludes mandatory APA compliance bearing upon scores of RSAs. Regarding the PDA, section, "I (n)" requires mandatory DPH APA compliance: "*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.*" Constructively, this exception is an exception to the exception whereby the PDA's administration of the DPH requires APA compliance to be consistent with the "*Division of Ports and Harbors, Section 12-G:42 Additional Powers and Duties*", subsection: "*X. Adopt rules, pursuant to RSA 541-A*".

Compliance: The PDA and its Port Committee have undertaken many times the mandatory promulgation of DPH APA rules pursuant to RSA 12-G:42 X, sections (a) through (c): "*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.*"

Non-Compliance: The PDA has yet to comply with RSA 12-G:42 X "*Adopt rules, pursuant to RSA 541-A, relative to: ... (d) State-owned commercial piers and associated facilities...*", which constructively relates to the administration of scores of widely varying DPH Right Of Entry [ROE] "*Agreements*" promulgated by the PDA that allows private businesses to use state owned facilities and land. If the PDA had considered and voted for appropriate APA rule-makings to support the administration of ROEs, the problem of not having uniform, just and fair treatment for all ROEs would have been solved whether or not such APA compliance was mandatory or discretionary.

Remedy: The proposed September 11, 2024 "*Chapter Pda 800 – Management Of State-Owned Commercial Piers And Associated Facilities And Usage By Private Businesses*" should at least be considered for discussion and disposition at a PDA board of directors meeting in order to put in place uniform, just and fair DPH rules for all DPH private businesses operating on "*State-owned commercial piers and associated facilities*" using the well established APA process model employed by all 50 states and the United States government.