

HB 266 – AS INTRODUCED

2013 SESSION

13-0073
10/03

HOUSE BILL **266**

AN ACT repealing certain agency rulemaking exemptions from the administrative procedures act.

SPONSORS: Rep. C. McGuire, Merr 29; Rep. Jones, Straf 24

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill repeals certain specific exceptions for rules adopted by an agency from compliance with the procedures of RSA 541-A, the administrative procedures act.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT repealing certain agency rulemaking exemptions from the administrative procedures act.

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

1 1 Repeal of Exceptions to Rulemaking. The following are repealed:

2 I. RSA 541-A:21, I(a), relative to the exception for RSA 230:53, relative to the use of limited
3 access highway facilities.

4 II. RSA 541-A:21, I(g), relative to the exception for RSA 236:13, relative to driveway permits.

5 III. RSA 541-A:21, I(h), relative to the exception for RSA 231:161, relative to licensing utility
6 poles and appurtenances within public highways.

7 IV. RSA 541-A:21, I(l), relative to the exception for RSA 284:12, IV, relative to the sale of
8 pari-mutuel pools as authorized under RSA 284:22 and RSA 284:22-a.

9 V. RSA 541-A:21, I(u), relative to the exception for RSA 162-A, relative to the business
10 finance authority.

11 VI. RSA 541-A:21, I(v), relative to the exception for rules adopted under RSA 195-D, relative
12 to the New Hampshire health and education facilities authority.

13 VII. RSA 541-A:21, I(w), relative to the exception for RSA 485:16-b, II, relative to limits on
14 the concentration of methyl tertiary butyl ether in gasoline.

15 VIII. RSA 541-A:21, I(x), relative to the exception for RSA 204-C:53, relative to the housing
16 finance authority.

17 IX. RSA 541-A:21, I(dd), relative to the exception for RSA 270:12, relative to boat operating
18 restrictions.

19 X. RSA 541-A:21, II, relative to the exemption from committee review under RSA 541-A:13
20 for rules adopted under RSA 394-A:7.

21 2 Limited Access Highways. Amend RSA 230:53 to read as follows:

22 230:53 Regulations; Posting. The commissioner of transportation may regulate, restrict, or
23 prohibit the use of such limited access facilities by trucks, buses, and other commercial vehicles, may
24 regulate or prohibit the use of such facilities by all other types of vehicles, and may regulate or
25 prohibit other use of such facilities. Such regulations, ***adopted under RSA 541-A***, shall be posted
26 on every such highway and a return thereof shall be filed with the department of transportation to
27 be kept in a special book which shall be open to public inspection.

28 3 New Paragraph; Highway Regulations; Driveways; Rulemaking. Amend RSA 236:13 by
29 inserting after paragraph VI the following new paragraph:

30 VII. The commissioner of transportation shall adopt rules, pursuant to RSA 541-A, for the

HB 266 – AS INTRODUCED
- Page 2 -

1 following:

- 2 (a) The form of application for a driveway permit, including alterations and temporary
3 driveways.
- 4 (b) Additional data required and the types of driveways that require such data.
- 5 (c) Design and maintenance requirements for driveways.
- 6 (d) The approval process for permits, including criteria for nonapproval and deadlines.
- 7 (e) Conditions for suspension or revocation of a driveway permit.
- 8 (f) The process for appeals of decisions.

9 4 Transportation; Procedure to Install Poles and Wires Across Highway. Amend RSA 231:161,
10 I(c) to read as follows:

11 (c) State Maintained Highways. Petitions for such permits or licenses concerning all
12 class I and class III highways and state maintained portions of class II highways shall be addressed
13 to the commissioner of transportation who shall have exclusive jurisdiction of the disposition of such
14 petitions to the same effect as is provided for selectmen in other cases, and also shall have like
15 jurisdiction for changing the terms of any such license or for assessing damages as provided herein.
16 The commissioner shall also have the same authority as conferred upon the selectmen by
17 RSA 231:163 to revoke or change the terms and conditions of any such license. The commissioner is
18 hereby authorized to delegate all or any part of the powers conferred upon him *or her* by the
19 provisions of this section to such agent or agents as he *or she* may duly appoint in writing; ~~he~~ *the*
20 *commissioner* shall cause such appointments to be recorded in the office of the secretary of state,
21 who shall keep a record thereof. *The commissioner shall adopt rules under RSA 541-A for the*
22 *criteria to change terms of licenses, to assess damages, or to delegate powers to agents as*
23 *provided in this section.*

24 5 New Hampshire Health and Education Facilities Authority. Amend RSA 195-D:5, VIII to read
25 as follows:

26 VIII. To ~~establish~~ *adopt* rules ~~[and regulations]~~ *pursuant to RSA 541-A* for the use of a
27 project or any portion thereof and *the procedure* to designate a participating institution as its agent
28 ~~[to establish rules and regulations for the use of a]~~ *for any* project undertaken ~~[by such participating~~
29 ~~institution]~~;

30 6 Repeal. RSA 195-D:5-a, relative to an exemption from rules and from the administrative
31 procedure act, for the New Hampshire health and education facilities authority, is repealed.

32 7 Housing Finance Authority; Rulemaking. Amend the introductory paragraph of RSA 204-C:9
33 to read as follows:

34 204-C:9 Rulemaking Authority. The authority may adopt rules pursuant to ~~[its own procedures]~~
35 *RSA 541-A* relative to:

36 8 Repeal. RSA 204-C:53, relative to the exemption from the administrative procedure act for the
37 housing finance authority, is repealed.

HB 266 – AS INTRODUCED

- Page 3 -

1 9 Housing Finance Authority; Rulemaking References Changed. Amend the following
2 RSA provisions by replacing “RSA 204-C:53” with “RSA 541-A”: the introductory paragraph of
3 RSA 204-C:62; the introductory paragraph of RSA 204-C:68; the introductory paragraph of
4 RSA 204-C:85; the introductory paragraph of RSA 204-D:6.

5 10 Commissioner of Safety; Boat Operating Restrictions. Amend RSA 270:12, I to read as
6 follows:

7 I. The commissioner of safety shall, after receiving a petition signed by 25 or more residents
8 or property owners of each affected town or towns in which a lake, pond, or river is located and after
9 notice and hearing, at which it appears that the public interest requires, adopt ***pursuant to the***
10 ***requirements of RSA 541-A*** rules governing the maximum horsepower of boat engines and
11 outboard motors or prescribe maximum speed limits for the operation of such boats or outboard
12 motors applicable to or upon all or any portion of the public waters of this state. The commissioner
13 of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and
14 outboard motors on bodies of public water having an area of 35 acres or less; provided, that said
15 prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75 through
16 270:132. Hearings under this section shall be held in the vicinity of the body of water under
17 consideration during the months of June, July, August, and September following the date of the
18 petition.

19 11 Repeal. RSA 485:16-b, II through V, relative to authority to limit MTBE in gasoline, are
20 repealed.

21 12 Effective Date. This act shall take effect 60 days after its passage.