

# Fish and Game Commission Authority on Rulemaking

The ability to make a rule starts with “Legislative Authority”

Without an RSA giving the agency the ability to make a rule. The rule is  
invalid

Pursuant to RSA 541-A:22,II: Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise.

How does a bill become a law? - Legislative Approval

How does a thought become a rule? - Legislative Approval(JLCAR)

*Rulemaking is therefore lawmaking, in areas which the legislature has decided are too specific or too detailed to be handled by legislation. The legislature therefore delegates its lawmaking power to an agency by passing a law granting rulemaking authority to the agency to adopt rules pursuant to RSA 541-A in these selected areas.*

Within the executive branch, there are three different types of agencies as defined in RSA 21-G:5 and are as follows:

- IX. “Executive agency” means an administrative unit within the executive branch of state government, which is concerned with a specific objective or administrative function.
- X. “Executive commission” means an administrative units within the executive branch of state government established to provide a **specific enterprise or regulatory function.**
- XI. “Executive department” means the principal administrative unit within the executive branch of state government, which is concerned with broad functional responsibilities.

RSA 21-G:6-b lists the Constitutional agencies, the executive agencies, the executive commissions, and the executive departments. The fish and game department is not listed under any of the agencies listed. This was adopted in 2019 within the State Budget – HB 2

Per RSA 21-G:6-b, V, there are only 4 executive commissions in NH state government as follows:

- (a) The fish and game commission
- (b) The public utilities commission
- (c) The state liquor commission
- (d) The state lottery commission

This being said, the fish and game department appears to be under the governance of the fish and game commission. This being stipulated in RSA 206:1 “Commission Created; Name of Department. There shall be an agency of the state to be known hereafter as the fish and game department under a commission to be known as the fish and game commission.” - 1935

88 yrs ago

Pursuant to RSA 206:4-a Duties – In addition to other duties provided by law, it shall be the duty of the fish and game commissioners, as the citizens' representatives, to be stewards of the fish, wildlife, and marine resources of the state of New Hampshire and to set general policy in the following areas:

**... V. Establishment of positions on proposed legislation that affects fish, wildlife, and marine resources and the overall management of the fish and game department.**

This being said, when it comes to rules, which are established through lawmaking just as a bill is established through lawmaking, the commission with its **Regulatory Authority** shall establish positions on **ALL** rules.

### III. Administrative Rules Process (RSA 541)

#### A. RULE DEFINED

An administrative "rule" under RSA 541-1, XV is defined as:

*Each regulation, standard or other statement of general applicability adopted by an agency to:*

- 1. implement, interpret or make specific a statute enforced or administered by such agency or*
- 2. prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies.*

#### B. "AGENCY" DOES NOT INCLUDE THE LEGISLATURE OR THE COURTS

The term "agency" is defined in RSA 541-A:1, II as:

*Each state board, commission, department, institution, officer, or any other state official or group, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.*

#### C. RULES HAVE THE FORCE OF LAW

Pursuant to RSA 541-A:22, II:

*Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise.*

Rulemaking is therefore lawmaking, in areas which the legislature has decided are too specific or too detailed to be handled by legislation. The legislature therefore delegates its lawmaking power to an agency by passing a law granting rulemaking authority to the agency to adopt rules pursuant to RSA 541-A in these selected areas.

#### D. DOCUMENTS THAT ARE NOT RULES

The term "rule", pursuant to RSA 541-A:1, XV, does not include:

*(a) Internal memoranda which set policy applicable only to [an agency's] own employees and which do not affect private rights or change the substance of rules binding upon the public,*

# TITLE I

## THE STATE AND ITS GOVERNMENT

### CHAPTER 21-G

#### ORGANIZATION OF EXECUTIVE BRANCH

##### Section 21-G:5

###### **21-G:5 Definitions. –**

In this chapter:

- I. " Administratively attached agency " means an independent agency linked to a department for purposes of reporting and sharing support services.
- II. " Administrative head of the agency " means the individual, by whatever title conferred upon them by the relevant statute, who is in charge of operations of an executive agency, executive commission, or administratively attached agency.
- III. " Advisory committee " means a committee established pursuant to RSA 21-G:11 which shall furnish advice, gather information, make recommendations and perform such other activities as may be instructed or as may be necessary to fulfill advisory functions or to comply with federal funding requirements, but which shall not administer a program or function or set policy.
- IV. " Agency " means any department, commission, board, institution, bureau, office, or other entity, by whatever name called, other than the legislative and judicial branches of state government, established in the state constitution, statute, session law, or executive order.
- V. " Bureau " means the principal unit within a division, which is directly responsible to the division level and is concerned with individual program management.
- VI. " Commissioner " means the individual in charge of the operations of an executive department, who is directly responsible to the governor.
- VII. " Constitutional office " means an executive department that also comprises a constitutional office established by the state constitution and common law practice.
- VIII. " Division " means the principal unit within a department, which is directly responsible to the department level and is concerned with related major functional programs and activities.
- IX. " Executive agency " means an administrative unit within the executive branch of state government; which is concerned with a specific objective or administrative function.
- X. " Executive commission " means an administrative unit within the executive branch of state government established to provide a specific enterprise or regulatory function.
- XI. " Executive department " means the principal administrative unit within the executive branch of state government, which is concerned with broad functional responsibilities.
- XII. " Field operations " means district or area offices which may combine division, bureau, and section functions.
- XIII. " Section " means the principal unit of a bureau, which is directly responsible to the bureau level and is concerned with direct provision of services to the public or other state agencies.

**Source.** 1983, 372:1, eff. July 1, 1983. 2019, 346:306, eff. July 1, 2019.

# TITLE I

## THE STATE AND ITS GOVERNMENT

### CHAPTER 21-G

#### ORGANIZATION OF EXECUTIVE BRANCH

##### Section 21-G:6

###### **21-G:6 Structure of Executive Branch Departments. –**

All departments of the state established following July 1, 1983, shall be structured as follows, unless otherwise provided for specifically by the general court:

I. The department shall be the principal administrative unit of the executive branch, and each department shall be headed by a commissioner. Each department shall bear a title beginning with the words "The State of New Hampshire Department of ....." and continuing with the name designated for the department.

II. All departments shall adhere to the following operational structure and standard terminology:

- (a) The principal unit of the department shall be the division; and each division shall be headed by a director.
- (b) The principal unit of the division shall be the bureau; and each bureau shall be headed by an administrator.
- (c) The principal unit of the bureau shall be the section; and each section shall be headed by a supervisor.
- (d) [Repealed.]

Source. 1983, 372:1, eff. July 1, 1983. 2019, 346:307, 308, eff. July 1, 2019.

# TITLE I

## THE STATE AND ITS GOVERNMENT

### CHAPTER 21-G

#### ORGANIZATION OF EXECUTIVE BRANCH

##### Section 21-G:6-b

###### 21-G:6-b Organization of the Executive Branch. –

###### I. Constitutional offices are as follows:

- (a) The executive department, comprising the office of the governor.
- (b) The department of state, comprising the office of the secretary of state.
- (c) The state treasury, comprising the office of the state treasurer.
- (d) The department of justice, comprising the office of the attorney general.

###### II. The executive departments are as follows:

- (a) The department of administrative services.
- (b) The department of agriculture, markets, and food.
- (c) The department of banking.
- (d) The department of business and economic affairs.
- (e) The department of corrections.
- (f) The department of education.
- (g) The department of employment security.
- (h) The department of energy.
- (i) The department of environmental services.
- (j) The department of health and human services.
- (k) The department of information technology.
- (l) The department of insurance.
- (m) The department of labor.
- (n) The department of military affairs and veteran services.
- (o) The department of natural and cultural resources.
- (p) The department of revenue administration.
- (q) The department of safety.
- (r) The department of transportation.

###### III. The executive agencies are as follows:

- (a) Council on developmental disabilities.
- (b) Veterans' home.
- (c) The office of professional licensure and certification.
- (d) The police standards and training council.
- (e) The public employee labor relations board.
- (f) The board of tax and land appeals.
- (g) The judicial council.

###### IV. The executive commissions are as follows:

- (a) The fish and game commission.
- (b) The public utilities commission.
- (c) The state liquor commission.
- (d) The state lottery commission.

**Source.** 2019, 346:309, eff. July 1, 2019. 2021, 91:192, eff. July 1, 2021.