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Commissioner

State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

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His Excellency, Christopher T. Sununu
And the Honorable Council
State House
Concord New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 21-I: 14, I (b) (4); RSA 541-A: 1, XV; and RSA 4:15, the Department of Administrative Services requests approval of an amendment to paragraph MOP 150 II. A. of the DAS Manual of Procedures so as to clarify the voting action of a councilor that remains silent at the time the vote is called. Specifically, the Department of Administrative Services (DAS) requests the addition of wording in II.A. paragraph 3, as noted in **bold** below.

II. The Governor and Executive Council Process

A. How the Council Operates - Generally

The Governor is the supreme executive authority of the State. N.H. Const. Pt. 2, Art. 41. The Executive Council is responsible for advising the Governor “in the executive part of government.” N.H. Const. Pt. 2, Art. 60. The Executive Council is vested with a substantial number of specific powers and responsibilities pursuant to the Constitution and statutes of the State of New Hampshire. The Governor holds the authority to convene the Council at his or her discretion for the purpose of directing the affairs of the state. N.H. Const. Pt. 2, Art. 62. As a practical matter, however, the Governor and Executive Council meet regularly, approximately twice monthly. A schedule of these meetings is typically posted on the Secretary of State’s website at six month intervals, noting the date, time and location of each meeting.

Meetings and records of the Governor and Council are subject to the provisions of RSA 91-A, the State’s Right-to-Know Law. See RSA 91-A:1- a, VI(b). The Secretary of State serves as the recording officer for the Council. N.H. Const. Pt. 2, Art. 64; see also *Opinion*

of the Justices, 79 N.H. 535, 535 (1919). The Department of Administrative Services ("DAS") serves as the facilitator of the G & C process. Any agency wishing to have an item addressed by the Council is required to submit the matter to DAS two weeks in advance of the meeting. DAS then compiles a meeting agenda for the review and approval of the Governor. Late items may be added to the agenda with the consent of the Governor. The agenda is then published by the Secretary of State and the items are delivered to the Executive Councilors for review approximately five (5) days before the meeting.

A majority of the Council constitutes a quorum. RSA 21:15, I. Action taken by Councilors at any duly convened meeting at which a quorum is present constitutes the action of the Council. *Opinion of the Justices*, 98 N.H. 530, 532 (1953). If Councilors present at a meeting choose to remain silent or otherwise abstain from voting, **at the time the question is called**, their silence or abstention will be taken as acquiescence or concurrence in the action taken by the majority of votes cast. *Opinion of the Justices*, 98 N.H. 530, 532 (1953). Most agenda items require approval of the Governor with the consent of the Council. The Council may approve or reject an agenda item, or table the item for action at a later time. The Governor does not vote on the agenda items but rather exercises his or her authority through control of the meeting agenda and retains a negative over agenda items.

EXPLANATION

Per the Governor and Council minutes dated February 22, 2023, prior to approval of the minutes [from February 8, 2023] the Governor and Council had a discussion regarding voting practices of the Council and the recording of the votes of individual Councilors. At the next Governor and Council meeting on March 8, 2023, the Department was asked by the Governor and all five Councilors to propose an amendment to the MOP to clarify the voting practices. This request is to put forward an amendment that would require, if a councilor should take exception to an item for approval, that he or she voice that objection at the meeting and further that if he or she remains silent or abstain from voting, at the time the vote is called, that it will indicate the councilor's agreement with the majority of the votes cast.

Respectfully submitted,



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