February 25, 1999

HOUSE BILL No. 1745

DIGEST OF HB 1745 (Updated February 24, 1999 2:50 pm - DI 98)

Citations Affected: IC 12-7; IC 12-17.2; IC 12-17.4; IC 16-36.

Synopsis: Emergency closure of child care facilities. Allows the division of family and children to issue an order for emergency closure of a child care center, a child care home, a child care ministry, and a child caring institution under certain circumstances. Provides that a child care facility or child caring institution that does not receive state or federal funds is exempt from the emergency closure procedure. Provides for administrative review upon request. Requires the division to report the issuance of an order for emergency closure to the attorney general, the county office of family and children attorney, and the local prosecuting attorney. Changes references to "county department of public welfare" to "county office of family and children" to reflect the correct name of that office.

Effective: July 1, 1999.

Dickinson, Budak, Day, Linder

January 26, 1999, read first time and referred to Committee on Human Affairs.
February 24, 1999, amended, reported — Do Pass.

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February 25, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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HOUSE BILL No. 1745

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-7-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. "Child caring institution" means the following:

(1) For purposes of IC 12-17.4:

(A) a residential facility that provides child care on a twenty-four (24) hour basis for more than ten (10) children; or

(B) a residential facility with a capacity of not more than ten (10) children that does not meet the residential structure requirements of a group home.

(2) For purposes of ~~section 82(3)~~ **section 82(4)** of this chapter and IC 12-26, an institution that:

(A) operates under a license issued under IC 12-17.4;

(B) provides for delivery of mental health services that are appropriate to the needs of the individual; and

(C) complies with the rules adopted under IC 4-22-2 by the division of family and children.

SECTION 2. IC 12-7-2-82 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 82. "Facility" means the following:

(1) For purposes of IC 12-17-12, the meaning set forth in IC 12-17-12-3.

(2) For purposes of IC 12-17-13, the meaning set forth in IC 12-17-13-2.

(3) For purposes of IC 12-17.2-2.5, the meaning set forth in IC 12-17.2-2.5-2.

~~(3)~~ **(4)** For purposes of IC 12-26, a psychiatric hospital, a community mental health center, another institution, a program, a managed care provider, or a child caring institution:

(A) where a mentally ill individual can receive rehabilitative treatment, or habilitation and care, in the least restrictive environment suitable for the necessary care, treatment, and protection of the individual and others; and

(B) that has adequate space and treatment staff appropriate to the needs of the individual as determined by the superintendent of the facility.

The term includes all services, programs, and centers of the facility, wherever located.

~~(4)~~ **(5)** For purposes of IC 12-15-32, the meaning set forth in IC 12-15-32-1.

SECTION 3. IC 12-7-2-111.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 111.5. "Imminent danger", for purposes of IC 12-17.2 and IC 12-17.4, means a:**

(1) condition;

(2) practice; or

(3) violation of:

(A) IC 12-17.2;

(B) IC 12-17.4; or

(C) a rule adopted under:

(i) IC 12-17.2; or

(ii) IC 12-17.4;

that could reasonably be expected to cause substantial physical harm to a child enrolled in a child care facility before the condition, practice, or violation is abated.

SECTION 4. IC 12-17.2-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 2.5. Emergency Closure of Child Care Facilities

Sec. 1. This chapter does not apply to a facility that does not

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receive any state or federal funds, either:

(1) directly from the state or federal government; or

(2) by assignment from the:

(A) parent;

(B) guardian; or

(C) custodian;

of a child who is cared for at the facility.

Sec. 2. As used in this chapter, "facility" means a:

(1) child care center;

(2) child care home; or

(3) child care ministry;

that is required to be licensed or registered under this article.

Sec. 3. (a) The division may issue an order for emergency closure of a facility that is or is required to be licensed if:

(1) the facility is operating:

(A) without the required license; or

(B) with a probationary license;

(2) the division determines that:

(A) the facility is not in compliance with this article, including operating without the required license; and

(B) there is reasonable cause to suspect that the health or safety of a child enrolled in the facility is in imminent danger; and

(3) a supervisor of the division has reviewed and concurred with the inspector's determination that an order for emergency closure of the facility should be issued.

(b) The division may issue an order for emergency closure of a facility that is or is required to be registered if:

(1) the facility is not in compliance with IC 12-17.2-6;

(2) the division has issued an order to the facility to correct any noncompliance within ten (10) days of the date of the order;

(3) the facility has failed to comply with an order issued under subdivision (2);

(4) the division determines that there is reasonable cause to suspect that the health or safety of a child enrolled in the facility is in imminent danger; and

(5) a supervisor of the division has reviewed and concurred with the inspector's determination that an order for emergency closure of the facility should be issued.

(c) An order for emergency closure issued under this section must include the following information:

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(1) The date and time of emergency closure.

(2) Each reason for emergency closure.

(3) Any condition that the facility must remedy immediately.

(4) The right of the facility to request an administrative hearing under section 9 of this chapter.

Sec. 4. An order for emergency closure issued under this chapter takes effect immediately upon notice to the facility.

Sec. 5. A facility may not operate during the time that an order for emergency closure is in effect.

Sec. 6. (a) The facility may request an informal meeting with the division within five (5) days after the order for emergency closure is issued.

(b) The division shall grant a request made under subsection (a).

Sec. 7. An order for emergency closure issued under this chapter remains in effect until the earliest of the following:

(1) The facility takes the action required by the division to address the reason for emergency closure.

(2) The division determines through an investigation that the required reasonable cause no longer exists.

(3) Fourteen (14) days after the date of issuance of the order.

Sec. 8. After issuing an order for emergency closure of a facility under this chapter, the division shall:

(1) require a plan of corrective action for emergency protection of the children; and

(2) assist in obtaining appropriate child care for any child who had been enrolled in the facility.

Sec. 9. (a) Subject to the requirements of this section, the division shall provide an administrative hearing concerning the issuance of an order for emergency closure.

(b) The facility must make a written request for an administrative hearing under this section within ten (10) days after the date the division issued the order for emergency closure. This request must be made separately from a request for an informal meeting under section 6 of this chapter.

(c) The division shall hold an administrative hearing within ten (10) days after receiving a written request under subsection (b).

(d) The division shall issue a decision not more than ten (10) days after the conclusion of the hearing.

SECTION 5. IC 12-17.2-4-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. (a) The division shall investigate a report of an unlicensed child care center and report the division's findings to the attorney general and to the county

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~~department of public welfare~~ **office of family and children** attorney and the prosecuting attorney in the county where the child care center is located. **The division shall also report the issuance of an order for emergency closure of a child care center under IC 12-17.2-2.5 to the attorney general and to the county office of family and children attorney and the prosecuting attorney in the county where the child care center is located.**

(b) The attorney general or the county ~~department of public welfare~~ **office of family and children** attorney may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child care center if there is reasonable cause to believe that:

(A) the child care center is operating without a license required under this article; or

(B) a licensee's noncompliance with this article and the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars ($100) a day for each day a child care center is operating without a license required under this article.

(c) The division may provide for the removal of children from child care centers described in subsection (b).

(d) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

(e) The civil penalties collected under this section shall be deposited in the child care fund.

(f) Section 34 of this chapter does not apply to the civil penalties imposed under this section.

SECTION 6. IC 12-17.2-5-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. (a) The division shall investigate a report of an unlicensed child care home and report the division's findings to the attorney general and to the county ~~department of public welfare~~ **office of family and children** attorney and the prosecuting attorney in the county where the child care home is located. **The division shall also report the issuance of an order for emergency closure of a child care home under IC 12-17.2-2.5 to the attorney general and to the county office of family and children attorney and the prosecuting attorney in the county where the child care home is located.**

(b) The attorney general or the county ~~department of public welfare~~

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office of family and children attorney may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child care home if there is reasonable cause to believe that:

(A) the child care home is operating without a license required under this article; or

(B) a licensee's noncompliance with this article and the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars ($100) a day for each day a child care home is operating without a license required under this article.

(c) The division may provide for the removal of children from child care homes described in subsection (b).

(d) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

(e) The civil penalties collected under this section shall be deposited in the child care fund.

(f) Section 34 of this chapter does not apply to the civil penalties imposed under this section.

SECTION 7. IC 12-17.2-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. **(a) Except as provided in subsection (b)**, a child care ministry is exempt from licensure under this article if the child care ministry complies with this chapter. However, a child care ministry may apply for licensure.

(b) If a child care ministry:

(1) is closed under an order for emergency closure issued under IC 12-17.2-2.5; or

(2) operates out of compliance with this chapter for more than one (1) quarter;

the child care ministry must obtain a license.

(c) If a license is issued to ~~the~~ **a** child care ministry, the child care ministry shall comply with state laws and rules governing licensure of the type of facility that the ministry operates.

SECTION 8. IC 12-17.2-6-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 16. (a) The division shall investigate a report of an unlicensed or unregistered child care ministry and report the division's findings to the attorney general and to the county office of family and children attorney and the**

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prosecuting attorney in the county where the child care ministry is located. The division shall also report the issuance of an order for emergency closure of a child care ministry under IC 12-17.2-2.5 to the attorney general and to the county office of family and children attorney and the prosecuting attorney in the county where the child care ministry is located.

(b) The attorney general or the county office of family and children attorney may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child care ministry if there is reasonable cause to believe that:

(A) the child care ministry is operating without a license or registration required under this article; or

(B) a licensee's or registered child care ministry's noncompliance with this article and the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars ($100) a day for each day a child care ministry is operating without a license or registration required under this article.

(c) The division may provide for the removal of children from child care ministries described in subsection (b).

(d) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

(e) The civil penalties collected under this section shall be deposited in the child care fund.

SECTION 9. IC 12-17.4-3-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) The division shall investigate a report of an unlicensed child caring institution and report the division's findings to the attorney general and to the county ~~department of public welfare~~ **office of family and children** attorney and the prosecuting attorney in the county where the institution is located. **The division shall also report the issuance of an order for emergency closure of a child caring institution under IC 12-17.4-3.5 to the attorney general and to the county office of family and children attorney and the prosecuting attorney in the county where the child caring institution is located.**

(b) The attorney general or the county ~~department of public welfare~~

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office of family and children attorney may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child caring institution if there is reasonable cause to believe that the child caring institution is operating without a license required under this article.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars ($100) a day for each day a child caring institution is operating without a license required under this article.

(c) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

(d) The civil penalties collected under this section shall be deposited in the child care fund.

SECTION 10. IC 12-17.4-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 3.5. Emergency Closure of Child Caring Institutions

Sec. 1. This chapter does not apply to a child caring institution that does not receive any state or federal funds, either:

(1) directly from the state or federal government; or

(2) by assignment from the:

(A) parent;

(B) guardian; or

(C) custodian;

of a child who is residing in the child caring institution.

Sec. 2. (a) The division may issue an order for emergency closure of a child caring institution if:

(1) the child caring institution is operating with a probationary license;

(2) the division determines that:

(A) the child caring institution is not in compliance with this article; and

(B) there is reasonable cause to suspect that the health or safety of a child residing in the child caring institution is in imminent danger; and

(3) a supervisor of the division has reviewed and concurred with the inspector's determination that an order for emergency closure of the child caring institution should be issued.

(b) An order for emergency closure issued under this section must include the following information:

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(1) The date and time of emergency closure.

(2) Each reason for emergency closure.

(3) Any condition that the child caring institution must remedy immediately.

(4) The right of the child caring institution to request an administrative hearing under section 8 of this chapter.

Sec. 3. An order for emergency closure issued under this chapter shall take effect immediately upon notice to the child caring institution.

Sec. 4. A child caring institution may not operate during the time that an order for emergency closure is in effect.

Sec. 5. (a) The child caring institution may request an informal meeting with the division within five (5) days after the order for emergency closure is issued.

(b) The division shall grant a request made under subsection (a).

Sec. 6. An order for emergency closure issued under this chapter remains in effect until the earliest of the following:

(1) The child caring institution takes the action required by the division to address the reason for emergency closure.

(2) The division determines through an investigation that the required reasonable cause no longer exists.

(3) Fourteen (14) days after the date of issuance of the order.

Sec. 7. After issuing an order for emergency closure of a child caring institution under this chapter, the division shall:

(1) require a plan of corrective action for emergency protection of the children; and

(2) assist in obtaining appropriate child care for any child who had been enrolled in the child caring institution.

Sec. 8. (a) Subject to the requirements of this section, the division shall provide an administrative hearing concerning the issuance of an order for emergency closure.

(b) The child caring institution must make a written request for an administrative hearing under this section within ten (10) days after the date the division issued the order for emergency closure. This request must be made separately from a request for an informal meeting under section 5 of this chapter.

(c) The division shall hold an administrative hearing within ten (10) days after receiving a written request under subsection (b).

(d) The division shall issue a decision not more than ten (10) days after the conclusion of the hearing.

SECTION 11. IC 16-36-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this

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chapter, "appropriate facility" has the meaning set forth in ~~IC 12-7-2-82(3).~~ **IC 12-7-2-82(4).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred House Bill 1745, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 8, delete "IC 12-17.2-2.5-1" and insert "**IC 12-17.2-2.5-2**".

Page 2, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 3. IC 12-7-2-111.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 111.5. "Imminent danger", for purposes of IC 12-17.2 and IC 12-17.4, means a:**

(1) condition;
(2) practice; or
(3) violation of:
(A) IC 12-17.2;
(B) IC 12-17.4; or
(C) a rule adopted under:
(i) IC 12-17.2; or
(ii) IC 12-17.4;

that could reasonably be expected to cause substantial physical harm to a child enrolled in a child care facility before the condition, practice, or violation is abated.".

Page 2, delete lines 27 through 42, begin a new paragraph and insert:

"**Sec. 1. This chapter does not apply to a facility that does not receive any state or federal funds, either:**

(1) directly from the state or federal government; or
(2) by assignment from the:
(A) parent;
(B) guardian; or
(C) custodian;

of a child who is cared for at the facility.

Sec. 2. As used in this chapter, "facility" means a:

(1) child care center;
(2) child care home; or
(3) child care ministry;

that is required to be licensed or registered under this article.

Sec. 3. (a) The division may issue an order for emergency closure of a facility that is or is required to be licensed if:

(1) the facility is operating:
(A) without the required license; or

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(B) with a probationary license;

(2) the division determines that:

(A) the facility is not in compliance with this article, including operating without the required license; and

(B) there is reasonable cause to suspect that the health or safety of a child enrolled in the facility is in imminent danger; and

(3) a supervisor of the division has reviewed and concurred with the inspector's determination that an order for emergency closure of the facility should be issued.

(b) The division may issue an order for emergency closure of a facility that is or is required to be registered if:

(1) the facility is not in compliance with IC 12-17.2-6;

(2) the division has issued an order to the facility to correct any noncompliance within ten (10) days of the date of the order;

(3) the facility has failed to comply with an order issued under subdivision (2);

(4) the division determines that there is reasonable cause to suspect that the health or safety of a child enrolled in the facility is in imminent danger; and

(5) a supervisor of the division has reviewed and concurred with the inspector's determination that an order for emergency closure of the facility should be issued.

(c) An order for emergency closure issued under this section must include the following information:

(1) The date and time of emergency closure.

(2) Each reason for emergency closure.

(3) Any condition that the facility must remedy immediately.

(4) The right of the facility to request an administrative hearing under section 9 of this chapter.

Sec. 4. An order for emergency closure issued under this chapter takes effect immediately upon notice to the facility.

Sec. 5. A facility may not operate during the time that an order for emergency closure is in effect.

Sec. 6. (a) The facility may request an informal meeting with the division within five (5) days after the order for emergency closure is issued.

(b) The division shall grant a request made under subsection (a).

Sec. 7. An order for emergency closure issued under this chapter remains in effect until the earliest of the following:

(1) The facility takes the action required by the division to

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address the reason for emergency closure.

(2) The division determines through an investigation that the required reasonable cause no longer exists.

(3) Fourteen (14) days after the date of issuance of the order.

Sec. 8. After issuing an order for emergency closure of a facility under this chapter, the division shall:

(1) require a plan of corrective action for emergency protection of the children; and

(2) assist in obtaining appropriate child care for any child who had been enrolled in the facility.

Sec. 9. (a) Subject to the requirements of this section, the division shall provide an administrative hearing concerning the issuance of an order for emergency closure.

(b) The facility must make a written request for an administrative hearing under this section within ten (10) days after the date the division issued the order for emergency closure. This request must be made separately from a request for an informal meeting under section 6 of this chapter.

(c) The division shall hold an administrative hearing within ten (10) days after receiving a written request under subsection (b).

(d) The division shall issue a decision not more than ten (10) days after the conclusion of the hearing.".

Page 3, delete lines 1 through 38.

Page 6, line 35, strike "department of public welfare" and insert "**office of family and children**".

Page 6, line 42, strike "department of public welfare" and insert "**office of family and children**".

Page 7, delete lines 19 through 42, begin a new paragraph and insert:

"**Sec. 1. This chapter does not apply to a child caring institution that does not receive any state or federal funds, either:**

(1) directly from the state or federal government; or

(2) by assignment from the:

(A) parent;

(B) guardian; or

(C) custodian;

of a child who is residing in the child caring institution.

Sec. 2. (a) The division may issue an order for emergency closure of a child caring institution if:

(1) the child caring institution is operating with a probationary license;

(2) the division determines that:

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(A) the child caring institution is not in compliance with this article; and

(B) there is reasonable cause to suspect that the health or safety of a child residing in the child caring institution is in imminent danger; and

(3) a supervisor of the division has reviewed and concurred with the inspector's determination that an order for emergency closure of the child caring institution should be issued.

(b) An order for emergency closure issued under this section must include the following information:

(1) The date and time of emergency closure.

(2) Each reason for emergency closure.

(3) Any condition that the child caring institution must remedy immediately.

(4) The right of the child caring institution to request an administrative hearing under section 8 of this chapter.

Sec. 3. An order for emergency closure issued under this chapter shall take effect immediately upon notice to the child caring institution.

Sec. 4. A child caring institution may not operate during the time that an order for emergency closure is in effect.

Sec. 5. (a) The child caring institution may request an informal meeting with the division within five (5) days after the order for emergency closure is issued.

(b) The division shall grant a request made under subsection (a).

Sec. 6. An order for emergency closure issued under this chapter remains in effect until the earliest of the following:

(1) The child caring institution takes the action required by the division to address the reason for emergency closure.

(2) The division determines through an investigation that the required reasonable cause no longer exists.

(3) Fourteen (14) days after the date of issuance of the order.

Sec. 7. After issuing an order for emergency closure of a child caring institution under this chapter, the division shall:

(1) require a plan of corrective action for emergency protection of the children; and

(2) assist in obtaining appropriate child care for any child who had been enrolled in the child caring institution.

Sec. 8. (a) Subject to the requirements of this section, the division shall provide an administrative hearing concerning the issuance of an order for emergency closure.

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(b) The child caring institution must make a written request for an administrative hearing under this section within ten (10) days after the date the division issued the order for emergency closure. This request must be made separately from a request for an informal meeting under section 5 of this chapter.

(c) The division shall hold an administrative hearing within ten (10) days after receiving a written request under subsection (b).

(d) The division shall issue a decision not more than ten (10) days after the conclusion of the hearing.".

Page 8, delete lines 1 through 28.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1745 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 9, nays 2.

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