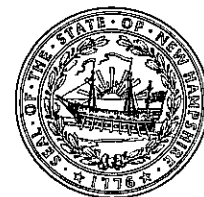




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 10, 2009

The Honorable Anne-Marie Irwin
House Executive Departments and Administration Committee
Legislative Office Building Room 306
Concord, New Hampshire 03301

Re: HB 297, an act relative to relative to the adoption of agency forms and other rules under the administrative procedures act

Dear Chairman Irwin:


Thank you for the opportunity to comment on HB 297, relative to the adoption of agency forms and other rules under the administrative procedures act. The Department of Environmental Services (DES) generally supports this bill, but has two concerns and one suggested correction.

First, DES is concerned that the bill appears to eliminate the option previously available to agencies to identify the information that must be submitted on (or with) a form without attaching the actual form. This option gave the agency the flexibility to wait until the rules were finalized before creating the actual form and to adjust the format of a form for which the substantive requirements had not changed without going through any formal procedures. Under the introductory language of proposed RSA 541-A:19-b (page 1, lines 21 - 27), it appears that an agency will be required to either include the actual, complete form in the rule or incorporate it by reference. If editorial changes are made after that, the bill is silent on how the change is effected. DES suggests amending the bill to clarify that an agency may adopt the substance of a form without having to submit the actual form, by inserting the phrase "*by identifying the requirements for completing and submitting the form in narrative form in its rules or*" between "adopt a form" and "by incorporation ..." in line 21 (page 1) of the bill.

Next, DES believes the intent of section 4 of the bill (on page 3) could be accomplished in a much simpler and clearer way by simply deleting the references to the specific paragraphs of RSA 541-A:16, I in lines 3 and 11, rather than by adding the language shown in the bill as introduced. (The language would appear in the bill as follows: RSA 541-A:16, I [(a), (b)(2), (b)(3), (c), and (d)] .) In this way, any organizational or procedural rule adopted pursuant to RSA 541-A:16 would not expire, subject to the stated conditions. DES is concerned that adding the language shown would lead to an expectation that all agencies would have to adopt rules for all of the listed topics, which is unlikely to add value to all agency rules, and would result in some procedural rules still expiring because they are not specifically identified.

Finally, DES believes the statutory reference on page 2, line 26 of the bill should be to RSA 541-A:3.

Thank you again for the opportunity to comment on this bill. If you have any questions, please call me at 271-3449 or Gretchen Hamel, Legal Unit Administrator, at 271-3137.

Sincerely,

for Thomas S. Burack
Commissioner

cc: Representative Patten
Representative Pilotte