Bill as Introduced

HB 1295 – AS INTRODUCED

2001 SESSION

01-2100
06/09

HOUSE BILL ***1295***

AN ACT establishing an environmental services review commission.

SPONSORS: Rep. Bruno, Hills 4

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes a commission to review the administrative rules of the department of environmental services and to adopt a plan for a mediation board to arbitrate noncompliance issues.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01-2100
06/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT establishing an environmental services review commission.

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

1 Commission Established. There is established a commission to review administrative rules established by the department of environmental services and adopt a plan for a mediation board.

2 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house.

(b) Three members of the senate, appointed by the president of the senate.

(c) The commissioner of environmental services, or designee.

(d) The state geologist.

(e) Nine members of the public, none of whom shall be employees of the department of environmental services, appointed by the governor as follows:

(1) An environmental advocate.

(2) A member of a municipal conservation commission.

(3) A person engaged in an environmental business or industry.

(4) A person with expertise in biology.

(5) A person with expertise in low-temperature geochemistry.

(6) A person with expertise in organic chemistry.

(7) A person with expertise in geology.

(8) A representative of municipal government, nominated by the New Hampshire Municipal Association.

(9) A representative of county government, nominated by the New Hampshire Association of Counties.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The duties of the commission shall include but not be limited to:

I. Review of department administrative rules with respect to the New Hampshire Revised Statutes Annotated (RSAs).

II. Review of compliance and noncompliance statistics from the department, including all issuance of administrative orders during the last 5 years.

III. Compilation of the relativity of the department's rules with respect to intentions of the general court as promulgated through the RSAs.

IV. Review of the efficiency with which the department is able to enforce existing rules, and to what extent that efficiency is relative to the RSAs.

V. Adopt a plan for a mediation board independent of the department to which the public can, without cost, refer noncompliance issues from the department for arbitration. The commission's plan would be reviewed by the general court and used as a model for legislation establishing such mediation board.

VI. Review current guidelines for lobbying activities relative to pending legislation in order to recommend rules to limit advocacy related to agency lobbying, in order that agency testimony focus on providing expert information.

VII. Review and report changes and tangible results of agency response to "1999 USEPA Final Review of the State of New Hampshire's Environmental Enforcement Programs and Assistance and Pollution Prevention Programs."

4 Chairperson. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003.

6 Effective Date. This act shall take effect upon its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1295 Date JAN 29, 2002

Committee E D+A

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
Gary Abbott	Bow NH	225-2701	Assoc. General Contractors	X	
Boaty					

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 1295

BILL TITLE: establishing an environmental services review commission.

DATE: January 29, 2002

LOB ROOM: 100 SH **Time Public Hearing Called to Order:** 10:17 AM

Time Adjourned: 11:36 AM

(please circle if present)

Committee Members: Reps. Peterson, Dyer, Langer, Goulet, Hamel, Zolla, Allan, Cummings, Dexter, C. Hall, Robertson, O'Neil, Lent, Landers, Andosca, Clayton, Pawlek, Schulze and Drabinowicz.

Bill Sponsors: Rep. Bruno, Hills 4

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Bruno, sponsor. Within the realm of environmental services, there is always a little bias and there is always latitude in writing rules. Receives many complaints when environmental rules are written. People ought to think about the best way to write environmental rules. Bill is trying to determine how environmental services operate. Now, the scientists are inside trying to discover how things are operating outside. A geologist is involved in determining resources of the state and how they inter-react with the other parts of the overall picture.
*Gretchen Rule, representing Dept. of Environmental Services. 271-3503. Has concerns about the intent of the bill. Department welcomes any questions of this type. It is not fair to set up an overseeing board to review their programs as they are going through. There are a lot of existing avenues to create review by the legislature. Lines 26 and lines 30/31 overlap each other. Most rules are usually drafted by their technical staff and then have to go through JALCAR.

Respectfully submitted,

Ray T. Langer

Rep. Ray Langer, Clerk

Testimony

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867

January 29, 2002

Representative Andrew Peterson, Chairman
Executive Departments and Administration Committee
State House 100
Concord, NH 03301

Re: HB 1295, an act establishing an environmental services review commission

Dear Representative Peterson and Members of the Committee:

Thank you for the opportunity to comment on HB 1295, which would establish an environmental services review commission. While the Department of Environmental Services ("DES") welcomes the Legislature's oversight of DES's programs, we question whether a "commission" is the best way for the Legislature to exercise its oversight responsibilities. We respect the bill's intent, but believe that its purpose may be better served through the work of the four policy committees that routinely review matters within DES's purview[1], along with the ongoing review of our work by the Joint Legislative Committee on Administrative Rules and the Joint Fiscal Committee.

DES strongly supports open government and welcomes inquiries regarding its activities. We also actively solicit input on our policies and practices, going beyond what is required by law. For example, in 1997 when the U.S. Environmental Protection Agency ("EPA") began its review of certain DES programs (which resulted in the 1999 report noted on page 2, lines 10-12 of the bill), DES established an Enforcement and Compliance Assistance Stakeholder Work Group to provide input and review EPA's report and DES's response thereto. We have established similar advisory groups over the years on issues like sludge management, shoreline structures, wetlands permits-by-notification, exotic species, and solid waste management. We also are in the process of creating an Environmental Stakeholders Advisory Committee, which we hope will work with DES on an on-going basis to provide input on strategic planning and developing better ways to measure compliance and the effectiveness of the agency's activities, among other things. Finally, we note that DES's enabling legislation, RSA 21-O, establishes four DES Councils[2] with which DES works closely on policy issues and rules.

With respect to the specifics of HB 1295, we do have a few concerns. Initially, we note that the composition of the commission does not explicitly include a representative of the State's business and industry community. (The "person engaged in an environmental business or industry" would appear to represent consulting enterprises, not regulated entities directly.) As business/industrial entities are likely to be regulated in some way by DES, we believe that such representation would be important should the commission be established. The membership of the commission also seems to be weighted heavily towards the "pure" sciences (*e.g.*, biology,

[1] House Environment & Agriculture; House Resources, Recreation & Development; House Science, Technology & Energy; and Senate Environment.
[2] Air Resources Council, Waste Management Council, Water Council, and Wetlands Council.

organic chemistry), whereas most of the work undertaken by DES involves applied sciences such as wetlands delineation and environmental engineering.

Next, the first and third duties assigned to the commission ("[r]eview of department rules with respect to the New Hampshire Revised Statutes Annotated (RSAs)" and "[c]ompilation of the relativity of the department's rules with respect to the intentions of the general court as promulgated through the RSAs" appear to overlap each other and also the responsibilities of the Joint Legislative Committee on Administrative Rules.

Finally, we are concerned that some of the commission's duties seem to be foregone conclusions. For example, the commission is charged with adopting a plan for a mediation board to which "noncompliance issues" can be referred, not for investigating whether such a board would be of benefit. The duties also seem to require the commission to recommend limiting agency advocacy on legislation to providing expert testimony, not to investigate whether there have been any problems with the agency's testimony going beyond appropriate bounds or whether other agencies are similarly limited.

We will be happy to provide this Committee with any additional information that would be helpful. If you have any questions regarding this testimony, please contact me or Gretchen Rule of my staff at 271-3503 or by e-mail at dbisbee@des.state.nh.us or grule@des.state.nh.us.

Sincerely,

George Dana Bisbee
Assistant Commissioner

cc: Representative Pierre Bruno
Representative George Musler
Representative Charles Royce
Representative Jeb Bradley
Senator Carl Johnson

Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 1295

BILL TITLE: **establishing an environmental services review commission.**

DATE: 1-13-2002

LOB ROOM: 100 SH

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep. Schultz

Seconded by Rep. Cummings

Vote: 14-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

NO

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Ray F. Langer, Clerk

OFFICE OF THE HOUSE CLERK 2001 SESSION

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: HB1295 Title: _____

PH Date: ____/____/____ Exec Session Date: 2/13/2002

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Peterson. Andrew R. Chairman		
Dver. Merton S. V Chairman		
Langer. Rav F. Clerk	1	
Goulet. Maurice E	2	
Hamel. Albert W	3	
Zolla. William R	4	
Allan. Nelson S	5	
Cummings. Ravmond C	6	
Dexter. Judson K	7	
Hall. Charles Q	8	
Robertson. Carl G	9	
O'Neil. Michael	10	
Lent. Donald R	11	
Landers. Dana L		
Andosca. Marv L		
Clavton. William K		
Pawlek. Marion J	12	
Schulze. Joan H	13	
Drabinowicz. A Theresa	14	
	14-0	

TOTAL VOTE:
Printed: 12/5/2001

Committee Report

COMMITTEE REPORT

COMMITTEE: **Executive Departments and Administration**

BILL NUMBER: **HB 1295**

TITLE: establishing an environmental services review commission.

DATE: February 14, 2002 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The bill would have established a commission to review the administrative rules of the department of environmental services and adopt a plan for a mediation board to arbitrate non-compliance issues. The committee felt that there is already an effective system in place, the Joint Legislative Committee on Administrative Rules (JLCAR). The new commission would be redundant. The committee also heard HB 1183 on the conformity of administrative rules to statutory authority, which we have recommended for interim study. The committee felt that it would be appropriate to include the issues contained within HB 1295 as well as HB 1204 and HB 1416 in this study.

Vote 14-0.

Rep. Joan H. Schulze
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Executive Departments and Administration

HB 1295, establishing an environmental services review commission. **INEXPEDIENT TO LEGISLATE**

Rep. Joan H. Schulze for Executive Departments and Administration: The bill would have established a commission to review the administrative rules of the department of environmental services and adopt a plan for a mediation board to arbitrate non-compliance issues. The committee felt that there is already an effective system in place, the Joint Legislative Committee on Administrative Rules (JLCAR). The new commission would be redundant. The committee also heard HB 1183 on the conformity of administrative rules to statutory authority, which we have recommended for interim study. The committee felt that it would be appropriate to include the issues contained within HB 1295 as well as HB 1204 and HB 1416 in this study. **Vote 14-0.**

COMMITTEE REPORT

COMMITTEE: (RULES) ED + A

BILL NUMBER: HB 1295

TITLE: Establishing an Environmental Services Review Commission

DATE: 2-14-02 CONSENT CALENDAR YES ___ NO ___

___ OUGHT TO PASS

___ OUGHT TO PASS WITH AMENDMENT

X INEXPEDIENT TO LEGISLATE

___ RE-REFER

___ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The bill would have established a commission to review the administrative rules of the department of environmental services and adopt a plan for a mediation board to arbitrate non-compliance issues. The committee felt that there is already an effective system in place, LCAR. This new commission would be redundant. The committee also heard HB 1183 which would establish a →

Vote. 14-0

Rep. Joan Schulze
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT