Bill as Introduced

HB 635-FN-A-LOCAL - AS INTRODUCED

2003 SESSION

03-0435
10/01

HOUSE BILL ***635-FN-A-LOCAL***

AN ACT creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies.

SPONSORS: Rep. Marple, Merr 37; Rep. Albert, Straf 67

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes a legislative committee to review rules which must be codified as a result of the repeal of RSA 541-A, and to determine the effective date for the repeal. The bill also institutes a moratorium on rulemaking by agencies under RSA 541-A.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 635-FN-A-LOCAL - AS INTRODUCED

03-0435
10/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies.

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

1 Findings and Intent.

I. The general court finds that the self executing language enumerated in Article 2, Part II of the New Hampshire Constitution granting "supreme legislative power" has been overlooked by previous legislatures. The general court also finds that its delegation of such power has resulted in the proliferation of rules and regulations that create a significant and unnecessary burden on the people and businesses of New Hampshire. Rules issued under the delegated rulemaking authority in many cases conflict with Article 5, Part II of the New Hampshire Constitution which states that such power "be not repugnant or contrary to this constitution."

II. While the general court recognizes that responsible rules are an important component of sustaining New Hampshire's natural resources and other historic and cultural assets, the economic impact of such rulemaking authority on the people and businesses of New Hampshire has become a disincentive for businesses to locate in this state. Additionally, the enforcement of certain rules by some agencies has caused significant hardship for an increasing number of New Hampshire residents, families, and businesses.

2 Moratorium on Rulemaking. Notwithstanding any provision of law, no agency shall file a notice of rulemaking and proposed rule under RSA 541-A:6 and 10 on or after the effective date of this section.

3 Committee Established. There is established a committee to identify what rules presently adopted and administered through RSA 541-A will need to be codified as a result of the repeal of the chapter.

4 Membership and Compensation.

I. The members of the committee 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.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

5 Duties. The committee shall conduct a thorough review of all references within the RSAs to administrative rulemaking, identifying those areas where rules shall need to be codified as a result of the repeal of RSA 541-A, the administrative procedures act. The committee shall also identify

those RSA sections requiring amendment upon repeal of RSA 541-A. The committee in its final report shall identify the date that appropriate legislation under this act is adopted. Such date shall be the effective date for the repeal of RSA 541-A.

6 Chairperson; Quorum. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

7 Report. The committee 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 each year on November 1 until RSA 541-A is repealed.

8 Repeal. RSA 541-A, relative to administrative rulemaking and the administrative procedures act, is repealed.

9 Effective Date.

I. Section 8 of this act shall take effect on the date determined by the committee established in this act as certified to the secretary of state and the director of legislative services.

II. The remainder of this act shall take effect upon its passage.

LBAO
03-0435
1/27/03

HB 635-FN-A-LOCAL - FISCAL NOTE

AN ACT creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 635-FN-A-L

BILL TITLE: creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies.

DATE: March 5, 2003

LOB ROOM: 100 SH **Time Public Hearing Called to Order:** 11:35 AM

Time Adjourned: 12:15 PM

(please circle if present)

Committee Members: Reps. O'Neil, Hamel, Langer, Goulet, Zolla, N. Allan, Dexter, Hall, C. Robertson, Bergin, LaFlamme, Milligan, W. Field, Fitzgerald, Maybeck, Clayton, Schulze, DeJoie, Irwin, Pilotte and F. Sullivan.

Bill Sponsors: Rep. Marple, Merr 37; Rep. Albert, Straf 67

TESTIMONY

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

Rep. Marple, sponsor. Article 2, part 2, quoted limited as article 5, art 2. See the bill. No way the supreme power of the legislature can be delegated to a few members of the legislature. (which it has done) Page 40 of the Constitution instruction book.
Gretchen Rule, representing Dept. of Environmental Services. Opposes bill. If the legislature has not approved laws that do not conform to requirements of the federal government, they would have to act on changes every session.
Wilfred R. Mott-Smith, representing Rules and Procedures, D.A.S. Annex, 271-7885. Opposes bill. The committee is authorized by the legislature to allow the adoption of rules and procedures. This committee in JALCAR. But this is just what Rep. Marple says that under the Constitution can not be done.
Carol Holahan, Director, Office of Legislature Services. Opposes bill. The NH Supreme Court has ruled that such a delegation of power is OK
Hon Merton S. Dyer, Peterborough. Opposes bill. Defended the action that created JALCAR. Passing bill would cause havoc.

Respectfully submitted,

Ray L Langer

Rep. Ray Langer, Clerk

Testimony

TeleCheck Services, Inc.
5251 Westheimer (77056-5404)
P.O. Box 4514
Houston, Texas 77210-4514
(713) 331-7600

TeleCheck®
A First Data Company

February 26, 2003

Dear TeleCheck Subscriber:

As many of you may already know, the New Hampshire legislature recently enacted NH ST. 263:12X. This new law (which became effective January 1, 2003) appears to generally prohibit the recording, storage or transmission of information taken directly from a New Hampshire consumer's driver's license.

This prohibition, on its face, would appear to extinguish a merchant's ability to use a consumer's driver's license for critically necessary purposes such as fraud prevention, identity authentication and transaction processing. However, on December 31, 2002, the New Hampshire Department of Public Safety adopted rules for enforcing 263:12X (PART Saf-C 5606, et seq.) that appear to provide exceptions to this general prohibition and set forth specific circumstances and uses under which certain entities may continue to record, store, retain or transmit information from NH consumers' driver's licenses.

Based on its meeting with various members of the Department, including Commissioner Richard Flynn, TeleCheck believes that its current procedures should be compliant. We are, however, asking all of our New Hampshire merchants to make sure other payment options are offered to those consumers who do not wish to provide driver's license information when presenting their check at the point of sale.

While TeleCheck cannot provide its merchants with legal advice, we recognize that you may have compliance concerns within, and also that may extend beyond, the scope of payment processing transactions. For these reasons, we strongly encourage you to obtain guidance from your own legal counsel regarding the impact of this new legislation on all of your business's activities.

We thank you for your attention to this important matter. Should you have further questions, please contact the TeleCheck Merchant Services Department at 1-800-366-1054.

Sincerely,

Greg Halligan

Greg Halligan, District Manager
TeleCheck Services, Inc. – New England

Submitted by Rep. Dick Marple

HB 635-FN-A-L Executive Departments and Administration Room #100 State house 3/5/03 11:15 A.M.

This document is submitted as evidence of what RSA 541-A permits as "rule making" by unelected bureaucrats and attendent costs to private enterprise!

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

March 5, 2003

Representative Michael O'Neil, Chairman
Executive Departments and Administration Committee
State House 100
Concord, NH 03301

Re: HB 635-FN-A-Local, an act creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies

Dear Representative O'Neil and Members of the Committee:

Thank you for the opportunity to comment on HB 635-FN-A-Local. The Department of Environmental Services ("DES") fully supports legislative review of rulemaking authority but questions whether legislation could ever be sufficiently detailed for agencies to not need any rules or policies, and opposes the moratorium on rulemaking contained in section 2 of the bill.

In order for there to be no need for legislative delegations of rulemaking authority, statutes will have to contain all of the details now found in rules. If the statutes are not sufficiently detailed, agencies of necessity will develop policies – whether formal or informal – to be able to consistently implement the programs they are charged with implementing. In essence, agencies will operate the way they did prior to 1973 when the rulemaking provisions of RSA 541-A were first enacted. Further, many state agencies (including DES) receive substantial amounts of federal money to implement federal programs at the state level. For environmental programs (and presumably for the others as well), receipt of federal authorization and the funds that go with such authorization is contingent on state requirements being at least as stringent as federal requirements. Since federal requirements are quite detailed and can change with some frequency, the Legislature would have to be prepared to deal each session with a substantial number of bills designed to update provisions of statutes which address programs that are analogous to federal programs.

Also, RSA 541-A contains provisions that establish basic due process requirements for administrative hearings in addition to the formal rulemaking process provisions. However, the bill as written appears to require those provisions to be repealed as well, which will at best create uncertainty for all who participate in such hearings. Finally, implementing an immediate moratorium on rulemaking will interfere with current efforts to bring state requirements into conformity with federal requirements and will terminate current efforts to simplify processes such as are currently underway at DES for the wetlands program, among others.

If you have any questions regarding this testimony, please contact Gretchen Rule of the Department at the telephone number listed above or by e-mail at grule@des.state.nh.us.

Sincerely,

Robert Monaco
Acting Commissioner

cc: Representative Richard Marple
Representative Russell Albert

Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 635-FN-A-L

BILL TITLE: **creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies.**

DATE: March 17, 2003

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. Goulet

Seconded by Rep. Allan

Vote: 16-0 (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.)

CONSENT CALENDAR VOTE: 16-0

(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 2003 SESSION

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: HB635 Title: _____

PH Date: 3/5/03 Exec Session Date: 3/17/03

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
O'Neil. Michael. Chairman	16	
Hamel. Albert W. V Chairman	1	
Langer. Ray F	2	
Goulet. Maurice E	3	
Zolla. William R	4	
Allan. Nelson S	5	
Dexter. Judson K	abs	
Hall. Charles Q	6	
Robertson. Carl G	7	
Bergin. Peter F	abs	
LaFlamme. Paul G	8	
Milligan. Robert H	9	
Field. William D	abs	
Fitzgerald. James M	10	
Maybeck. Margie	11	
Clayton. William K	abs	
Schulze. Joan H	12	
DeJoie. John	13	
Irwin. Anne-Marie	14	
Pilotte. Maurice L	15	
Sullivan. Francis B	abs	
	16/0	

TOTAL VOTE:
Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Executive Departments and Administration**

BILL NUMBER: **HB 635-FN-L-A**

TITLE: creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies.

DATE: March 18, 2003 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 committee listened with interest to the sponsor; however, it became clear that establishing a moratorium on rulemaking would create more problems than it could ever prevent. One standing house committee has established an ad hoc committee to review issues regarding administrative rules, which will be an appropriate venue to discuss some of these issues.

Vote 16-0.

Rep. Maurice E. Goulet
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Executive Departments and Administration

HB 635-FN-L-A, creating a legislative committee to review rules and propose legislation for the repeal of RSA 541-A, and instituting a moratorium on the filing of rules by state agencies. **INEXPEDIENT TO LEGISLATE**

Rep. Maurice E. Goulet for Executive Departments and Administration: The committee listened with interest to the sponsor; however, it became clear that establishing a moratorium on rulemaking would create more problems than it could ever prevent. One standing house committee has established an ad hoc committee to review issues regarding administrative rules, which will be an appropriate venue to discuss some of these issues. **Vote 16-0.**

"Blurb" 635 : EN-A-LOCAL

The Committee listened, with interest, to the Sponsor; however, it became clear that establishing a MORATORIUM on Rulemaking would create more problems than it could ever prevent. One standing House Committee has established an Ad Hoc Committee to review issues regarding Administrative Rules which will be an appropriate venue to discuss some of these issues.

Motion: ITL 16-0

Maurice Goulet