Bill as Introduced

HB 624 – AS INTRODUCED

2011 SESSION

11-0591
05/10

HOUSE BILL ***624***

AN ACT relative to the rulemaking authority of state agencies to establish or increase fees and costs.

SPONSORS: Rep. Giuda, Merr 7; Rep. O'Brien, Hills 4; Rep. Bettencourt, Rock 4; Rep. F. Rice, Rock 15; Rep. Hansen, Hills 6; Rep. Pitre, Straf 3; Rep. Laware, Sull 5; Rep. Tamburello, Rock 3; Rep. Donovan, Hills 2; Rep. W. Hutchinson, Hills 9; Sen. Bradley, Dist 3

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill limits the rulemaking authority of state agencies to establish or increase fees, or establish or modify an agency program or responsibility in a manner that increases costs to persons affected by the rule.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 624 – AS INTRODUCED

11-0591
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the rulemaking authority of state agencies to establish or increase fees and costs.

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

1 Legislation Granting Rulemaking Authority. Amend RSA 14:39-a to read as follows:

14:39-a Legislation Granting Rulemaking Authority. Any member of the house of representatives or senate proposing legislation which includes provisions granting rulemaking authority to any agency as defined in RSA 541-A:1, II, shall include an explanation of the intent for the proposal relative to the parameters under which rulemaking authority under RSA 541-A may be used. Rulemaking provisions in proposed legislation shall not grant broad authority for the adoption of rules, including general authority to implement a program ***or to adopt fees***, but shall specify the issues to be addressed by rules ***and the amount of any fee.***

2 Procedure for Adoption of Rules; Legislative Approval for Rules Establishing or Increasing Fees or Costs. Amend RSA 541-A:3, VI and VII to read as follows:

VI. Responding to the committee when required under RSA 541-A:13; [~~and~~]

VII. ***Receiving specific legislative approval for any proposed rule that establishes or increases any fee for service or fee for licensure, or establishes or modifies an agency program or responsibility in a manner that is likely to increase costs to persons affected by the rule; and***

VIII. Adopting and filing a final rule under RSA 541-A:14.

3 New Section; Administrative Procedure Act; Limitation on Rules Establishing Fees or Increasing Program Costs. Amend RSA 541-A by inserting after section 3-b the following new section:

541-A:3-c Limitation on Rules Establishing or Increasing Fees and Costs. No agency may propose or adopt a rule under RSA 541-A:3 or RSA 541-A:19 that establishes or increases any fee for service or fee for licensure, or establishes or modifies an agency program or responsibility in a manner that increases costs to persons affected by the rule, without specific authority in the authorizing legislation or specific legislative approval for such a rule.

4 New Paragraph; Final Adoption of Administrative Rule. Amend RSA 541-A:14 by inserting after paragraph IV the following new paragraph:

V. Notwithstanding the foregoing, no agency may adopt a rule that establishes or increases any fee for service or fee for licensure, or establishes or modifies an agency program or responsibility in a manner that increases costs for persons affected by the rule, without first receiving specific legislative approval for such a rule.

5 New Paragraph; Interim Rules. Amend RSA 541-A:19 by inserting after paragraph X the following new paragraph:

XI. Notwithstanding the foregoing, no agency may adopt a rule that establishes or increases any fee for service or fee for licensure, or establishes or modifies an agency program or responsibility in a manner that increases costs for persons affected by the rule, without first receiving specific legislative approval for such a rule.

6 New Paragraph; Rules Exempt from the Administrative Procedure Act. Amend RSA 541-A:21 by inserting after paragraph VI the following new paragraph:

VII. Notwithstanding the foregoing, no agency may adopt a rule that establishes or increases any fee for service or fee for licensure, or establishes or modifies an agency program or responsibility in a manner that increases costs to persons affected by the rule, without first receiving specific legislative approval for such a rule.

7 Administrative Procedure Act; Validity of Rules. Amend RSA 541-A:22, III(c) to read as follows:

(c) Require fees unless ***the amount of the fee or parameters for determining the fee are*** specifically authorized by a statute enforced or administered by an agency. Specific authorization shall not include the designation of agency fee income in the operating budget when no other statutory authorization exists.

8 New Subparagraph; Administrative Procedure Act; Validity of Rules. Amend RSA 541-A:22, III by inserting after subparagraph (h) the following new subparagraph:

(i) Establish or modify an agency program or responsibility in a manner that increases costs for persons affected by the rule.

9 Effective Date. This act shall take effect July 1, 2011.

Amendments

Rep. C. McGuire, Merr. 8
October 24, 2011
2011-2775h
05/10

Amendment to HB 624

Amend the title of the bill by replacing it with the following:

AN ACT relative to the rulemaking authority of state agencies to establish fees and costs and establishing a committee to study the rulemaking authority of state agencies to establish fees.

Amend the bill by replacing section 1 with the following:

1 Committee Established.

I. There is established a committee to study the rulemaking authority of state agencies to establish fees.

II.(a) The members of the committee shall be as follows:

(1) Seven members of the house of representatives, appointed by the speaker of the house of representatives.

(2) Two members of the senate, appointed by the senate president.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall:

(a) Review statutes that authorize fees to be set in administrative rules.

(b) Review the frequency of changes to fees established by state agencies and boards.

(c) Examine whether establishing statutory or other parameters would positively impact fee changes.

(d) Evaluate the process of setting fees to cover agency expenses or budgets.

(e) Review and recommend policy changes resulting from the study committee.

IV. The members of the study 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 15 days of the effective date of this section. Five members of the committee shall constitute a quorum.

V. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, and the senate clerk on or before October 20, 2012.

Amend the bill by replacing section 9 with the following:

9 Effective Date.

I. Section 1 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect July 10, 2013.

2011-2775h

AMENDED ANALYSIS

This bill:

I. Establishes a committee to study the rulemaking authority of state agencies to establish fees.

II. Limits the rulemaking authority of state agencies to establish or increase fees, or establish or modify an agency program or responsibility in a manner that increases costs to persons affected by the rule.

Rep. C. McGuire, Merr. 8
October 24, 2011
2011-2775h
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Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 624 Date 2/24/11

Committee Exec. Depts. & Adm.

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

Name	Address	Phone	Representing	Pro	Con
Steven Rancourt	7 McGrath Rd Pelham NH	603 635-3269	myself	Y	

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: 2/24/11

LOB ROOM: 306 **Time Public Hearing Called to Order:** 11:10 am

Time Adjourned: 12:00pm

(please circle if present)

Committee Members: Reps. McGuire, Hawkins, Sytek, Day, Gould, Pratt, Vita, Perkins, Winter, Bowers, Hansen, Proulx, Whitehead, P. Schmidt, Pilotte, Jeudy and Sullivan.

Bill Sponsors: Rep. Giuda, Merr 7; Rep. O'Brien, Hills 4; Rep. Bettencourt, Rock 4; Rep. F. Rice, Rock 15; Rep. Hansen, Hills 6; Rep. Pitre, Straf 3; Rep. Laware, Sull 5; Rep. Tamburello, Rock 3; Rep. Donovan, Hills 2; Rep. W. Hutchinson, Hills 9; Sen. Bradley, Dist 3

TESTIMONY

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

Rep. Hansen – Introduced the bill

*Rep. Guida – Sponsor

Rep. Fred Rice – Supports

***Gretchen Hamel** – Department of Environmental Services – Opposes

Michael Holt – DHHS – Opposes

***Sherri Kalloway** – Department of Safety

Frederick Welch – Town of Hampton Supports

B. J. Noel – Pres. Hampton Chamber of Commerce – Supports

Respectfully submitted,

Carol M. Vita

Carol M. Vita, Clerk

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

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TESTIMONY

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REP HANSON - INTROD.
*REP GUIDA - SPONSOR
S REP FRED RICE
*O GRETCHEN HAMEL - DEPT OF ENV'L SVCS
O MICHAEL HOLT - DHHS
*O SHERI KALLOWAY - DEPT of SAFETY
REP WINTER
FREDERICK WELCH - TOWN OF HAMPTON
S NOEL, B.I. PRES HAMPTON CHAMBER of COMMERCE

Sub-Committee Actions

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: October 26, 2011

Subcommittee Members: Reps. Hansen, Jeudy, Perkins, Pilotte, McGuire, and Brown

Comments and Recommendations:

Amendments:

Sponsor: Rep. C. McGuire	OLS Document #:	2011	2775h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

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

Moved by Rep. Brown

Seconded by Rep. McGuier

Vote: 2-0

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

Moved by Rep. McGuire

Seconded by Rep. Brown

Vote: 2-0

Respectfully submitted,

Rep. Carol McGuire
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: October 26, 2011

Subcommittee Members: Reps. Hansen, Jeudy, Perkins, Pilotte, and (McGuire) +Brown

Comments and Recommendations:

Amendments: 2771

Sponsor: Rep. C. McGuire — OLS Document #:

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

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

Moved by Rep. Brown

Seconded by Rep. McGuire

Vote: 2-0

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

Moved by Rep. McGuire

Seconded by Rep. Brown

Vote: 2-0

Respectfully submitted,

Rep. Carol McGuire
Subcommittee Chairman/Clerk

Rep. C. McGuire, Merr. 8
October 24, 2011
2011-2775h
05/10

Amendment to HB 624

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2011-2775h

AMENDED ANALYSIS

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Sub-Committee Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: June 2, 2011

Subcommittee Members: Reps. Gould, Hansen, Jeudy, Perkins, Pilotte

Comments and Recommendations: More work in August. Perhaps keep Section One and part of Section 7.

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.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Ken Gould
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: June 2, 2011

Subcommittee Members: Reps Gould, Hansen, Jeudy, Perkins, Pilotte

Comments and Recommendations: more work in August. Perhaps keep section one and part of section 7.

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.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

K H Gould

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: September 28, 2011

Subcommittee Members: Reps. Hansen, Jeudy, Perkins, Pilotte, and McGuire

Comments and Recommendations: Met with Prof. Benjamin Cole regarding Dartmouth Public Policy Group working on this bill. Described problem to him. He'll get back to us on it.

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.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Carol McGuire
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

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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.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Carol W McGuire

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: October 4, 2011

Subcommittee Members: Reps. Hansen, Jeudy, Perkins, Pilotte, and McGuire

Comments and Recommendations: Committee met and agreed to amend bill to make it a study committee. OLS will have amendment ready for next subcommittee meeting. Final action at that time.

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.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Peter Hansen
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SUBCOMMITTEE WORK SESSION ON HB 624

BILL TITLE: relative to the rulemaking authority of state agencies to establish or increase fees and costs.

DATE: October 4, 2011

Subcommittee Members: Reps. Hansen, Jeudy, Perkins, Pilotte, and McGuire

Comments and Recommendations: COMMITTEE MET AND AGREED TO AMEND BILL TO MAKE IT A STUDY COMMITTEE. OLS WILL MAKE AMENDMENT READY FOR NEXT SUB-COMMITTEE MEETING. FINAL ACTION AT THAT TIME.

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.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Testimony

The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

February 24, 2011

The Honorable Carol McGuire, Chairman
House Executive Departments and Administration Committee
Legislative Office Building, Room 306
Concord, New Hampshire 03301

Re: HB 624, relative to the rulemaking authority of state agencies to establish or increase fees and costs.

Dear Representative McGuire and members of the Committee:

Thank you for the opportunity to testify on HB 624, relative to the rulemaking authority of state agencies to establish or increase fees and costs. The Department of Environmental Services believes enactment of HB 624 would significantly impair the efficient operation of both the executive and legislative branches of New Hampshire's government, and so opposes the bill.

RSA 541-A establishes a thorough and detailed process by which agencies can propose and adopt rules pursuant to authority delegated by the General Court. Over the years, many efforts have been made to reduce the costs and improve the efficiency of the rulemaking process, while enhancing the opportunities for input from the public and the General Court on proposed rules. HB 624 would impose an additional layer of legislative review on many, if not most, proposed rules. Not only is this additional review unnecessary, the Department believes it would prove burdensome to the General Court, the public, and the agencies charged with implementing statutes, as well as an impediment to the ability of state agencies to comply with their obligations under state and federal law.

A key component of the existing rulemaking process is review of proposed rules by the Joint Legislative Committee on Administrative Rules ("JLCAR"). JLCAR members are appointed from both chambers of the General Court, and are supported by attorneys in the Office of Legislative Services, Administrative Rules ("OLS/Rules") office. These attorneys review all initial proposals and final proposed rules in detail to determine whether the rules present any of the statutory bases for objection. Under RSA 541-A:13, IV, the JLCAR can object to rules if the rules are beyond the authority of the agency, contrary to legislative intent, determined not to be in the public interest (usually by being incapable of uniform application) or deemed to have a substantial economic impact not recognized in the fiscal impact statement.

Since agencies already are prohibited by RSA 541-A:22, III(c) from adopting fees in rules without specific legislative authority for the fee, the JLCAR review process necessarily scrutinizes any fees in rules. Depending on the totality of the circumstances, the JLCAR can prevent the agency from adopting the rules by voting to sponsor a joint resolution under RSA 541-A:13, VII. Additionally, the JLCAR can seek input from policy committees on final proposals (ref. RSA 541-A:13, V(b)), can make recommendations to agencies to seek legislation as a result of reviewing rules (ref. RSA 541-A:2, IV(e)), and can make recommendations as to how statutory passages granting rulemaking authority should be amended to eliminate confusing, inefficient, or unnecessary statutory language (ref. RSA 541-A:2, IV(b)). HB 624 does not

eliminate or reduce the role of the JLCAR. Instead, it essentially would require the full General Court to duplicate the detailed work the JLCAR performs on every proposed rule.

Repeating the work of the JLCAR is not only unnecessary, it would be excessively burdensome to the General Court, the public, and the agencies. The *Rulemaking Register* published by the OLS/Rules office show that in calendar years 2008 through 2010, the state's agencies, boards, and commissions initiated a total of 722 rulemaking proceedings, for an average of approximately 241 per year. Of the total, 634 were for regular rules and 88 were for interim rules, which are valid for only 180 days. Assuming that only half of those rules would require legislative approval if HB 624 provisions were in place, the General Court would have an additional 120 bills per year to consider and vote on -- and since, under HB 624, the reason the rules would require full legislative approval relates to cost, each bill likely would have had to go to two committees in each chamber. This would be a burden not only on legislators, but also on the public and agency staff who would testify at the extra hearings.

However, it is likely that more than half of the total number of proposed rules would become subject to these provisions, because HB 624 would prevent an agency from adopting or amending rules "in a manner that increases [any] costs for persons affected by the rule." (§8, p. 2, lines 19-22, emphasis added) Since even the cost of day-to-day living is ever-increasing based on inflation alone, this language could be construed to prevent even a readoption of rules to which no changes are proposed. The language also conflicts with language proposed in §§2 - 6 of the bill, which would allow such rules if legislative approval were obtained. Even then there is some uncertainty, though; §2 would require approval for a rule "that is likely to increase costs ..." (p. 1, lines 12-15, emphasis added), while §§3 - 6 would requires approval for a rule "that increases costs ..." (p. 1, lines 23 and 29; p. 2, lines 5 and 11; emphasis added).)

It is unrealistic to think that the cost of complying with a statutory mandate -- or the rules that implement it -- can be determined as anything other than an educated estimate, especially for new programs. Many rules establish specific standards which must be met but do not specify how to meet them, leaving it to the persons who are subject to the rules to determine the best way to meet them based on their own circumstances. Additionally, many amendments to existing rules may increase some costs and decrease others, and so could result in an increase, decrease, or no net change in costs, depending on the circumstances to which they are applied.

Finally, it is not clear whether "persons affected by the rule" are only those who would be directly responsible for complying with the rules or all persons who are "affected" by the rules. For example, a rule that requires expenditures by one type of business in order to comply with the rule can also be viewed as providing a financial benefit to other businesses which produce the goods or provide the services needed to comply with the rule.

For the past several years, the JLCAR has had one regular meeting each month throughout the year and, in most months, has met a second time to complete its agenda. Because the General Court is not in session year-round, requiring confirmation of rules by the full legislature would prevent many rules from being adopted in at least six months of the year. In the meantime, agencies would be precluded from meeting their legal obligations to implement programs, all of which are intended to benefit the public even if they impose an obligation of some portion of the population. Although the legal obligation to comply with state law might be presumed to be suspended if proposed rules are awaiting full legislative review, legal obligations under federal law would not be so suspended. The state thus would be at risk for federal

sanctions, including the loss of significant amounts of highway funds, if an agency were precluded from timely adoption of rules.

The General Court is not required to delegate any rulemaking authority to an agency, whether such authority is for establishing procedural or substantive aspects of a program or for establishing fees. The General Court already has the authority -- and, under RSA 14:39-a, the obligation -- to specify the limits of any rulemaking authority it does delegate. The General Court thus already has the authority to establish any and all fees or the bases on which such fees will be determined, and, in recent years, it has exercised this authority with some regularity.

The General Court has not undertaken a comprehensive review of older rulemaking authority for fees to determine whether the fees established in rules are appropriate or whether such fees (or a basis for calculating the fees) should be in statute. The proposed effective date for HB 624 (July 1, 2011) would not allow time for agencies to seek legislation to establish specific fees or the parameters for determining the fees for those programs with general authority to establish fees. HB 624 thus would penalize long-standing programs for which the rulemaking authority for fees may be more general, without regard to whether the existing fees or fee structures are reasonable.

The Department understands and agrees with the General Court's concerns about imposing unnecessary costs on the citizens and businesses of the state. However, fiscal notes prepared for proposed legislation do not assess the potential of the proposal for such costs. The first time, and indeed the only time, that an assessment of costs to citizens and businesses is made is when rules are proposed to implement legislative enactments, and so it frequently appears as though the rules are imposing the costs when, in fact, the underlying legislation is what is imposing the costs. The Department respectfully suggests that a significant advance in protecting citizens and businesses from increasing costs would be made if the General Court had better estimates of those costs when proposed legislation is being considered.

In sum, the Department agrees that greater specificity by the General Court relative to rulemaking authority and fees is sound policy. However, HB 624 would impose unnecessary and significant burdens on the General Court and the agencies charged with implementing the laws enacted by the General Court, as well as the public we all serve.

Thank you again for the opportunity to comment on this bill. If you have any questions, please call Gretchen Hamel of my staff at 271-3137, or me at 271-2958.

Sincerely,

Thomas S. Burack

cc: Sponsors (Rep. Giuda, Rep. O'Brien, Rep. Bettencourt, Rep. F. Rice, Rep. Hansen, Rep. Pitre, Rep. Laware, Rep. Tamburello, Rep. Donovan, Rep. W. Hutchinson, Sen. Bradley)
Rep. Betsey Patten, Chair, JLCAR
Sen. Amanda Merrill, Vice-Chair, JLCAR

State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES
129 PLEASANT STREET, CONCORD, NH 03301-3857
603-271-4688 FAX: 603-271-4912 TDD ACCESS: 1-800-735-2964

NICHOLAS A. TOUMPAS
COMMISSIONER

Kathleen

February 24, 2011

The Honorable Carol McGuire, Chair
House Executive Departments and Administration Committee
Legislative Office Building, Room 306
Concord, NH 03301

Re: HB 624

Dear Representative McGuire and Committee Members:

The Department of Health and Human Services (Department) appreciates the opportunity to provide comment on HB 624, relative to the rulemaking authority of State agencies to establish or increase fees and costs. The Department does not support this bill.

The Department recognizes the responsibility of the Legislature to oversee its delegation of rulemaking authority and particularly the authority to establish fees and increase costs through rules. The Department is also aware of current law [RSA 541-A:22, III(c)], which prohibits agencies from requiring fees by rule unless specifically authorized by a statute.

HB 624 would have a significant fiscal impact to the Department and the State general fund by restricting revenue to the State general fund and negatively impacting legislatively mandated programs which are partially or entirely fee-funded.

HB 624 would require specific legislative approval of any rule that establishes or increases a fee or establishes or modifies an agency program or responsibility that is likely to increase costs to persons affected by the rule, and it would also prevent the adoption of any rule that did not receive such approval.

- This bill would create additional burdens for agencies and extend an already lengthy rulemaking process to include the passage of legislation. Because the general court is not in session year round, requiring specific legislative approval of a fee or other cost increase could potentially delay the adoption of a necessary rule by 6 months or more. This bill removes the Department's ability to be responsive to ever-changing fiscal realities.

- This bill would create burdens for the legislature itself, requiring additional legislation and requiring the legislature as a whole to expend a significant amount of time at a high level of detail on matters that are presently overseen by the Joint Legislative Committee on Administrative Rules (JLCAR) review process.

- It is the purview of the JLCAR to be protective of the public interest with regard to increased costs to State citizens, businesses and others affected by a rule. Each proposed rule requires a fiscal impact statement (FIS) to be prepared by the Legislative Budget Assistant, which includes an assessment of the costs and benefits to citizens and independently owned businesses. This assessment is broader and more specific than that for legislative fiscal notes, which do not necessarily assess the costs to citizens or businesses. The JLCAR may object to a rule if a substantial economic impact is not identified in the rule's FIS [RSA 541-A:13, IV(d)], if there is no specific grant of authority for a fee [RSA 541-A:22, III(c)], or if a rule is determined to be not in the public interest [RSA 541-A:13, IV(c)]. This bill would replace a fundamental function of the JLCAR and their seasoned discretion by placing oversight of such matters on the Legislature as a whole.

- Sections 1 and 7 of this bill create uncertainty with regard to existing rulemaking authority that grants fee setting authority but does not include the specific amount of the fee, and it calls into question the validity of rules currently adopted under such authority.

- Section 8 is of great concern in that it outright prohibits a rule from establishing or modifying an agency program or responsibility in a manner that increases costs for persons affected by the rule, regardless of legislative approval. This would create barriers for an agency to implement legislative intent.

- This bill would also have a significant fiscal impact on professional licensing boards throughout the State, which are required to generate revenue through fees set in rule at 125% of their operating budget.

Thank you again for the opportunity to comment on HB 624.

Sincerely,

Nicholas A. Toumpas
Commissioner

Gridley
6/24

Constitution of New Hampshire

First Part – Bill of Rights

[Art.] 28. [Taxes, by Whom Levied.] No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body.

FILING OF PROPOSED AND ADOPTED RULES WITH THE OFFICE OF LEGISLATIVE SERVICES
(and Comparison with Volume of Chapter Laws)

YEAR	Proposed Regular Rules Notices Filed	Adopted Regular Rules Filed	Proposed Interim Rules Filed	Adopted Interim Rules Filed	Emergency Rules Filed	Total Adopted Rule Pages Filed Under RSA 541-A	Total Adopted Rule Pages Exempt From RSA 541-A	Compare with Legislative Chapter Law Pages
1985	235	---	N/A	N/A	36	---	---	975
1986	242	---	N/A	N/A	22	---	---	498
1987	184	---	2	---	9	1,264	---	591
1988	228	---	7	---	8	1,812	---	500
1989	220	---	12	---	2	1,356	---	764
1990	376	301	24	15	4	3,919	0	553
1991	268	249	10	6	5	2,954	77	695
1992	273	231	15	12	5	3,247	54	639
1993	194	202	12	11	3	2,374	158	655
1994	200	178	14	13	2	2,831	190	647
1995	174	160	21	19	4	2199	31	649
1996	*236	220	41	27	4	3431	**123	665
1997	202	206	42	37	3	4198	1306	658

FILING OF PROPOSED AND ADOPTED RULES WITH THE OFFICE OF LEGISLATIVE SERVICES
(and Comparison with Volume of Chapter Laws)

YEAR	Proposed Regular Rules Notices Filed	Adopted Regular Rules Filed	Proposed Interim Rules Filed	Adopted Interim Rules Filed	Emergency Rules Filed	Total Adopted Rule Pages Filed Under RSA 541-A	Total Adopted Rule Pages Exempt From RSA 541-A	Compare with Legislative Chapter Law Pages
1998	***222	199	27	24	21	3040	151	552
1999	215	193	42	42	3	2986	129	575
2000	224	206	22	22	3	2241	179	539
2001	179	164	10	10	5	2304	161	671
2002	193	155	10	10	4	1759	182	516
2003	175	76	19	16	2	2185	236	809
2004	213	171	41	40	3	2863	131	584
2005	236	240	33	31	3	4582	165	721
2006	202	176	47	46	9	3226	155	752
2007	221	220	33	26	2	3984	127	664
2008	264	228	47	44	6	3690	203	796
2009	223	233	25	28	5	3262	108	642
2010	159	176	19	17	4	2200	116	--

*Includes 19 proposed rules filed in 1996 under RSA 126-A:16, III (1995, 310:1) by Commissioner of Dept. of Health and Human Services.

**Does not include 5 of 15 adopted rule filings under RSA 126-A:16, III (1995, 310:1) that the OLS Director did not record as valid.

*** Includes one proposed rule filed in 1998 under RSA 126-A:16, III (1995, 310:1) by Commissioner of Department of Health and Human Services



Blueprint for Environmental Regulatory Reform

BY RUSS HARDING

Competition between the states for attracting jobs significantly intensifies during a down economy. While business taxes and labor policy receive much attention, the environmental regulatory system may be the most important factor in a state's ability to attract jobs. Most businesses desiring to locate or expand in a state must enter through the regulatory gate before they can invest and create jobs. A state's tax or labor policy makes little difference if a business cannot obtain an operating permit or license in a timely fashion. When a state's environmental regulatory system does not work properly, the gate becomes a barrier.

PRINCIPLES

The following principles are recommended in legislating and administrating state regulatory requirements:

- Environmental protection and economic development are not mutually exclusive, and both goals can be accomplished by utilizing sound conservation principles.
- State government should perform only core regulatory functions—specifically, making final permit and enforcement decisions, rather than conducting routine administrative tasks that can be performed by the private sector.
- All state regulatory procedures should ensure that law-abiding parties are treated fairly and promptly, rather than being subjected to arbitrary, belated or open-ended decisions by state regulators.
- State regulatory requirements should be set by elected officials—not by state administrative personnel who are not accountable to voters.

PROPOSALS

No Regulation Without Representation

When a state legislature passes a bill, it often omits many of the details needed to make the bill complete. To address this shortcoming, the state environmental agency writes regulations to supplement the bill's language.

These regulations are effectively laws, but have never been voted on by the people's representatives in the legislature.

Legislatures should end this unresponsive and undemocratic process for all regulations—not just environmental rules—in the following ways:

1. Legislative approval of regulatory proposals

Legislatures should pass a statue that strips the agencies of the power to propose binding regulations. Instead, the agencies should be directed to draft proposed legislation specifying the details necessary to supplement the original bill. The proposed legislation would then be reviewed, amended and approved—or rejected—by the legislature.

2. Periodic review and sunset of regulations

All regulations that have been promulgated by agencies should include a provision that they will sunset in five years unless they are reviewed and specifically reauthorized by the legislature prior to the expiration date. All existing regulations should be reviewed on a rotating basis to determine if they have achieved their intended results and have been cost-effective.

3. No more stringent than federal requirements

If legislators cannot agree on legislative approval of regulatory proposals, they should at least pass a law that prevents state agencies from promulgating regulations more stringent than federal requirements without approval of the legislature. State regulators frequently generate rules that exceed federal restrictions with little or no oversight from elected officials. While it may be appropriate in certain instances to adopt regulations more stringent than federal law in order to protect human health or the environment, this should be done only with explicit authorization from the legislature and not be left to the discretion of unelected regulators.

4. Establish permit issuance deadlines

Legislatures should impose permit issuance deadlines. Agencies should be required to issue permits within 30 days for straightforward cases and within 60 to 90 days for the most complex permits. Legislatures should also stipulate that if an agency fails to act within the specified timeframe, permits will be deemed approved and the applicant refunded any permit application fees.

5. Require fiscal note on regulations

A state law should be passed that requires fiscal notes on all proposed regulations similar to what most states require for pending legislation. The notes would estimate the cost of regulatory compliance to business and individuals, thereby making the expense transparent to votes and policymakers.

6. Regulatory Bill of Rights

State law should provide for a regulatory bill of rights. This list should stipulate that if a permit applicant meets the requirements of state law, the permit will be issued in a timely manner by the responsible agency. It should also specify that all permit applicants be treated fairly and their applications be adjudicated without political interference.

7. Single permitting agency

Most states have an environmental or natural resource agency which is responsible for issuing environmental permits. The culture of these agencies often fosters a negligent attitude toward prompt adjudication of permit applications. The mission of protecting the environment often conflicts with the agency's role of fair and timely permitting. Establishment of a single agency responsible for processing all types of permits and licenses would add accountability and transparency to the permitting process. This one-stop permitting agency could be staffed with existing personnel who are responsible for those functions in other state agencies, negating the need to hire additional employees.

8. Privatization opportunities

The private sector should be utilized to assist state agencies in environmental permitting. The state should certify a list of firms approved to prepare and review environmental permit applications to ensure that the applicant meets or exceeds all state and federal regulatory requirements. State officials would still maintain final decision-making authority. Privatization of permit functions would shorten permit review periods, save the state money and provide state officials the flexibility to adapt to changes in future workloads without hiring or laying off employees.

9. State permitting report card

The executive branch of state government should establish a report card that tracks the performance of issuing state-required permits and licenses. Aggressive goals that exceed statutory requirements should be established, tracked and reported to the public on a regular basis.

Cumbersome state regulatory programs that hinder job creation are a serious problem that requires bold action from lawmakers. States that enact serious common-sense regulatory reform will be able to compete much better for future jobs.

A good quality of life requires not just protecting natural resources, but also allowing the state's residents and businesses to prosper as well. In other words, a healthy human environment requires freedom. A state will come closer to that environment by adopting common-sense regulatory reform.



Russ Harding is Senior Environmental Analyst and Director of the Property Rights Network at the Mackinac Center for Public Policy, a research and educational institute headquartered in Midland, Mich. Harding is a member of ALEC's Energy, Environment, and Agriculture Task Force.

Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 624

BILL TITLE: **relative to the rulemaking authority of state agencies to establish or increase fees and costs.**

DATE: 3/2/11

LOB ROOM: 306

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Hawkins

Seconded by Rep. Day

Vote: (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: 15-1

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Carol Vita, Clerk

Rep Carol Vita

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 624

BILL TITLE: **relative to the rulemaking authority of state agencies to establish or increase fees and costs.**

DATE: 3-2-11

LOB ROOM: 306

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Hawkins

Seconded by Rep. DAY

Vote: (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: 15-1

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Carol Vita, Clerk

Rep Carol Vita

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: 624 Title: _____

PH Date: 2/24/11 Exec Session Date: 3/2/11

Motion: _____ Amendment #: _____

MEMBER	YEAS	NAYS
McGuire, Carol M, Chairman	✓	
Hawkins, Kenneth, V Chairman	✓	
Sytek, John J	✓	
Day, Russell C	✓	
Gould, Kenneth H	✓	
Pratt, Calvin D	✓	
Vita, Carol M, Clerk	✓	
Perkins, Lawrence B	✓	
Winter, Steven J	✓	
Bowers, Spec	✓	
Hansen, Peter T	✓	
Proulx, Mark L	A	
Whitehead, Randall A	✓	
Schmidt, Peter B	✓	✓
Pilotte, Maurice L	✓	
Jeudy, Jean L	✓	
Sullivan, Daniel J	✓	

Ken H 1
Russ. D. 2

TOTAL VOTE:	15	1

Printed: 1/28/2011

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 624

BILL TITLE: **relative to the rulemaking authority of state agencies to establish or increase fees and costs.**

DATE: October 27, 2011

LOB ROOM: 306

Amendments:

Sponsor: Rep. C. McGuire	OLS Document #:	2011	2775h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

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

Moved by Rep. McGuire

Seconded by Rep. Winters

Vote: 16-0 (Please attach record of roll call vote.)

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

Moved by Rep. McGuire

Seconded by Rep. Winters

Vote: 16-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Carol Vita, Clerk

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 624

BILL TITLE: **relative to the rulemaking authority of state agencies to establish or increase fees and costs.**

DATE: October 27, 2011

LOB ROOM: 306

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. McGUIRE

Seconded by Rep. WINTERS

Vote: (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,
Carol Vita
Rep. Carol Vita, Clerk

OFFICE OF THE HOUSE CLERK 2011 SESSION

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: HB 624 Title: RULEMAKING AUTH OF STATE AGENCIES TO EST OR INC, FEES + COST

PH Date: 6/2/11 Exec Session Date: 10/27/11

Motion: OTP Amendment #: 2775H

MEMBER	YEAS	NAYS
McGuire, Carol M, Chairman	✓	
Hawkins, Kenneth, V Chairman	✓	
Sytek, John	✓	
Day, Russell C	✓	
Pratt, Calvin D	✓	
Vita, Carol M, Clerk	✓	
Perkins, Lawrence B	✓	
Winter, Steven J	✓	
Bowers, Spec	✓	
Brown, Paul E KAPPLER	✓	
Hansen, Peter T	✓	
Proulx, Mark L	✓	
Whitehead, Randall A	✓	
Schmidt, Peter B	✓	
Pilotte, Maurice L	✓	
Jeudy, Jean L	✓	
Sullivan, Daniel J AB		

TOTAL VOTE: 16

Printed: 10/13/2011

OFFICE OF THE HOUSE CLERK 2011 SESSION

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: HB624 Title: RULEMAKING AUTH. OF STATE AGENCIES TO SET OR INC. FEES-COSTS

PH Date: 6/2/11 Exec Session Date: 10/27/11

Motion: OTP/A Amendment #:

MEMBER	YEAS	NAYS
McGuire, Carol M, Chairman	✓	
Hawkins, Kenneth, V Chairman	✓	
Sytek, John	✓	
Day, Russell C	✓	
Pratt, Calvin D	✓	
Vita, Carol M, Clerk	✓	
Perkins, Lawrence B	✓	
Winter, Steven J	✓	
Bowers, Spec	✓	
Brown, Paul E KAPPLER	✓	
Hansen, Peter T	✓	
Proulx, Mark L	✓	
Whitehead, Randall A	✓	
Schmidt, Peter B	✓	
Pilotte, Maurice L	✓	
Jeudy, Jean L	✓	
Sullivan, Daniel J AB		
TOTAL VOTE:	16	0

Printed: 10/13/2011

Committee Report

CONSENT CALENDAR

November 1, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on EXECUTIVE DEPARTMENTS AND ADMINISTRATION to which was referred HB624,

AN ACT relative to the rulemaking authority of state agencies to establish or increase fees and costs. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Carol M McGuire

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**
Bill Number:	**HB624**
Title:	**relative to the rulemaking authority of state agencies to establish or increase fees and costs.**
Date:	**November 1, 2011**
Consent Calendar:	**YES**
Recommendation:	**OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

This bill changes the administrative rules process to prohibit accepting any fee that does not have specific authorization in statute. Since at this time there is no database of fees set in rules, the committee was unwilling to implement it without knowing which fees would be disallowed. A preliminary search found almost 400 statutes that authorize setting fees in rules, and the Dartmouth Public Policy Research has accepted the challenge of researching all the rules that set fees. The committee amendment creates a study committee to use this research, analyze the statutes and rules that set fees, consider the process of setting fees in statutes, and develop legislative recommendations for next session, specifying in statute the necessary fees now set in rules. The effective date of the process change is moved to July, 2013 to allow the study committee's recommendations to become law.

Vote 16-0.

Rep. Carol M McGuire
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB624, relative to the rulemaking authority of state agencies to establish or increase fees and costs. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Carol M McGuire for EXECUTIVE DEPARTMENTS AND ADMINISTRATION. This bill changes the administrative rules process to prohibit accepting any fee that does not have specific authorization in statute. Since at this time there is no database of fees set in rules, the committee was unwilling to implement it without knowing which fees would be disallowed. A preliminary search found almost 400 statutes that authorize setting fees in rules, and the Dartmouth Public Policy Research has accepted the challenge of researching all the rules that set fees. The committee amendment creates a study committee to use this research, analyze the statutes and rules that set fees, consider the process of setting fees in statutes, and develop legislative recommendations for next session, specifying in statute the necessary fees now set in rules. The effective date of the process change is moved to July, 2013 to allow the study committee's recommendations to become law. **Vote 16-0.**

Original: House Clerk
Cc: Committee Bill File

HB 624

OTP/A

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Carol McGuire



HB 624

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Carol McGuire

HB624

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Rep M'Guire

Ebbs, Heather

From: Carol McGuire [mcguire4house@gmail.com]
Sent: Thursday, October 27, 2011 12:45 PM
To: Ebbs, Heather
Subject: HB624 blurb

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