

Senate Energy and Natural Resources Committee

Joshua Schauer 271-3077

SB 445, relative to adjudicative proceedings where there is a council or board with jurisdiction.

Hearing Date: January 15, 2026

Time Opened: 1:10 p.m.

Time Closed: 1:33 p.m.

Members of the Committee Present: Senators Avard, Pearl, McConkey, Watters and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill changes the process for appeals where there is a council or board with jurisdiction.

Sponsors:

Sen. Pearl
Rep. Slottje

Sen. Gannon
Rep. Thibault

Sen. McGough

Who supports the bill: Senator Pearl, (SD17), **Senator Tim McGough (SD11), Adam Crepeau and Bob Scott (NHDES), Robert Duval (Chair Air Council)**

Summary of testimony presented:

Senator Howard Pearl, District 17

- Senator Pearl introduced the bill and explained that the current process is inefficient and lacks a fair hearing process; because the same agency that makes the initial decision is also responsible for hearing the appeal.
- He raised some concerns regarding the role and effectiveness of environmental councils within the existing decision-making and appeals framework.
- In 2025, the New Hampshire Department of Environmental Services (NHDES) issued six fine actions and six additional enforcement actions, indicating that the bill would not create a significant increase in workload or administrative burden.

Senator Watters asked whether it was accurate to characterize the process as a two-step system in which the commissioner has authority to make certain decisions without first holding a hearing.

Senator Pearl said he was uncertain and forwarded technical and procedural questions to the subject-matter experts for clarification.

Robert Scott Commissioner and Adam Crepeau Asst. Commissioner, NH DES

- One of their functions is to hear appeals. They made changes to the law in the past to staff and operate that function through the Attorney General's office.
- Mr. Scott was concerned with the decisions being made under his signature/department that is under his discretion but then come back for an appeal and the optics are not good. He moved that administrative support responsibility to the AGs Office.
- For licensing action, this is very important to people, they take it very seriously
- The appeal process currently goes through his staff as authorized and that is when a fine is issued or there is a revocation of license. That can be appealed internally and that then will cause a bit of confusion because it sets up a "firewall" between him and his staff that worked on that appeal case because they cannot speak to him about the case. This creates some administrative issues for him and his department.
- Mr. Scott explained that what they are trying to do in the legislation is reassign the function directly to the appeals councils which are the four environmental councils already established. They are not eliminating the due process, they are trying to ensure that the person whom is aggrieved is not going to the same agency that revoked or fined them for the appeal process. This ensures an impartial agent.
- They did have request a language change. He explained that as written, if you're a licensed and DES has moved to take their license. Their license would be taken away until the appeal process is complete. Mr. Scott asked the committee to change that so that the persons license is not revoked until after the appeal process.
- Mr. Crepeau pointed to Section 46 and introduced an amendment to the committee. They said they had quite a few language changes because there is a lot of statutes that are intertwined with RSA:541-A. He clarified that their intent is to streamline the appeals process.
- The amendments introduced clarifies some language and errors that were made during drafting. He explained the appeal process; get a hearing before a fine or license action is taken, then its an appeal which goes to the commissioner. Then if an individual appeals again, it goes to one of the councils. He proceeded to say that they would prefer the appeal to go directly to the councils to avoid expensive legal fees.

Senator Avard asked if other departments were having this problem.

Mr. Crepeau said they were unique in that other agencies do not have an independent council that they can appeal to, whereas DES does. He did not want to speak on behalf of other agencies but did say that they struggle with the internal appeal process.

Senator Pearl said that as chair of the Senate ED&A Committee and with the help of the OPLC, they have adjusted other departments and agencies that are now doing investigations through the OPLC and then going to board for adjudication and this bill is following that process.

Senator Watters said this legislation was a good move in fairness while also saving money and time. He questioned the language on lines 18 and 19, asking about the stricken phrase “after notice and hearing pursuant to RSA 541-A” was included. He sought to confirm whether that language would effectively authorize the commissioner to make a determination without a hearing, with the matter addressed later through an appeal.

Mr. Crepeau confirmed that was correct and if a person wants to appeal, they can appeal it. He added that the amendment clarifies this and another part which makes the appeal process more fair for the people.

Senator Rosenwald asked for clarification regarding the hearings referenced on line 4 of the bill. She asked when they were enacted and for how long have they been in statute?

Mr. Crepeau indicated that he was not certain and would seek clarification for the committee, but assumed it originated with the establishment of RSA 541-A, approximately 30 years ago..

Senator McConkey requested clarification on the use of the term “license” and how it applies to DES license holders. He asked whether this language excludes permits that function similarly to licenses.

Mr. Crepeau explained that permits currently follow the same process. DES issues permits internally within the department, and they may be appealed directly to one of the four environmental councils. Very few permits go through an internal appeals process..

Senator McConkey noted that DES issues permits for water operators and or septic designers and asked whether they are included in this conversation even though they are not formally licensed.

Mr. Crepeau responded that they are included because DES is the licensing authority, and its authority includes issuing permits. By issuing permits, DES grants them the authority to perform the work, and they are therefore subject to the board.

Senator McConkey asked whether that means they are considered “licensed” despite the fact that they are not technically licensed but are identified as permit holders on the certificate.

Mr. Crepeau replied yes. Their purview includes “licenses and certifications”.

Senator Watters followed up on questions raised by Senator McConkey regarding Section 46. Section 46 is understood to reference licensing, including the imposition of fines. Those fines can be appealed, since there is no hearing at that stage, he raised the question about whether there is a provision that also applies to permits. He was concerned that if a fine is paid, it may be treated as a technicality. He claimed that some believe Section 46 does not apply to permits.

Mr. Crepeau stated that the intent was to apply both to fine actions and to licensing certification actions.

Senator Watters said he doesn’t believe this bill does that and asked Mr. Crepeau to look into it and return with language that would address both licenses and permits.

Mr. Crepeau said he would look into that issue and get back to the committee with an answer.

Senator Rosenwald asked how the Section 46 proposal allows the department to assess risks to human health. She referenced a prior asphalt plant proposal in Nashua, noting that human health risks were cited. She raised concern that there appeared to be no coordination between DES and HHS in defining or evaluating those risks. She questioned why the department was relying on human health risks without working with DHHS.

Commissioner Scott responded that the agency has an internal health department, so coordination with HHS is not necessary. There is a lot of back and forth between the public health agency and DES which promotes good coordination. Section 46 is used to promulgate rules and codify public health standards, depending on the application.

Senator Rosenwald asked if they work with a MOU between departments.

Commissioner Scott stated that Public Health is located next door and that the agencies work very closely together. He argued that a memorandum of understanding (MOU) is unnecessary because the two agencies’ missions and responsibilities overlap. He also noted that the internal health department within DES relies on HHS for support when needed.

Robert Duval, Air Resources Council

- He explained that any appeals related to air issues would be directed to the Air Council.
- He expressed support for the legislation and echoed the commissioners’ reasoning for why it is necessary. He added that both the public and the department are better served when appeals are heard by the boards or councils rather than by DES.