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Rep. Schuett, Merr. 20
Rep. Fellows, Graf. 8
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05/10

Amendment to HB 1407

1 Amend the bill by replacing all after the enacting clause with the following:

2
3 1 Administrative Procedure Act; Definition of Form. RSA 541-A:1, VII-a is repealed and
4 reenacted to read as follows:

5 VII-a. "Form" means a document, whether hardcopy or electronic, with blank spaces for
6 insertion of required or optional information, which must be submitted to the agency by persons
7 outside the agency, such as, but not limited to, licensing applications, petitions, or requests. The
8 term does not include a document that is called a form by the agency but which does not have blank
9 spaces for insertion of information by persons outside the agency.

10 2 Public Hearing and Comment. Amend RSA 541-A:11, I(a) to read as follows:

11 I.(a) Each agency shall hold at least one public hearing on all proposed rules filed pursuant
12 to RSA 541-A:3 and shall afford all interested persons reasonable opportunity to testify and to
13 submit data, views, or arguments in writing or, if practicable for the agency, in electronic format, in
14 accordance with the terms of the notice filed pursuant to RSA 541-A:3, I and the provisions of this
15 section. The office of legislative services shall provide oral or written comments on potential bases
16 for committee objection under RSA 541-A:13, IV in a form and manner determined by the director of
17 the office of legislative services. Each agency shall require all materials submitted in writing to be
18 signed by the person who submits them, and the agency shall transfer to hard copy, if practicable for
19 the agency, all materials submitted as diskette, electronic mail, or other electronic format. Copies of
20 the proposed rule ***and of any draft new or amended form, or screenshot, mock-up, or***
21 ***prototype of an electronic-only form, which the rule incorporates by reference or whose***
22 ***requirements are set forth in the rule pursuant to RSA 541-A:19-b***, shall be available to the
23 public under RSA 91-A and at least 5 days prior to the date of the hearing.

24 3 New Paragraph; Filing of Final Proposal. Amend RSA 541-A:12 by inserting after paragraph
25 II the following new paragraph:

26 II-a. The agency shall file with the final proposal a copy of any related new or amended
27 form, or screenshot, mock-up, or prototype of an electronic-only form, which has been incorporated
28 by reference in the final proposed rule or whose requirements are set forth in the final proposed rule
29 pursuant to RSA 541-A:19-b.

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1 4 Review by the Joint Legislative Committee on Administrative Rules; Basis for Objection.
2 Amend RSA 541-A:13, IV(c) to read as follows:

3 (c) Determined not to be in the public interest, ***including the existence of substantive***
4 ***inconsistencies between a form and the rule where the form is incorporated by reference or***
5 ***which sets forth the requirements of the form, pursuant to RSA 541-A:19-b;*** or

6 5 Final Adoption. Amend RSA 541-A:14, III to read as follows:

7 III. The agency shall file ~~[all-adopted-rules]~~ with the director of legislative services ***all***
8 ***adopted rules and any related new or amended form, or screenshot, mock-up, or prototype***
9 ***of an electronic-only form, which the rules incorporate by reference or whose requirements***
10 ***are set forth in the rules pursuant to RSA 541-A:19-b.***

11 6 New Paragraph; Interim Rules. Amend RSA 541-A:19 by inserting after paragraph IV the
12 following new paragraph:

13 IV-a. The agency shall file with the proposed interim rule a copy of any related new or
14 amended form, or screenshot, mock-up, or prototype of an electronic-only form, which has been
15 incorporated by reference in the proposed interim rule or whose requirements are set forth in the
16 proposed interim rule pursuant to RSA 541-A:19-b.

17 7 Interim Rules; Basis for Objection. Amend RSA 541-A:19, VII(c) to read as follows:

18 (c) Determined not to be in the public interest, ***including the existence of substantive***
19 ***inconsistencies between a form and the rule where the form is incorporated by reference or***
20 ***which sets forth the requirements of the form, pursuant to RSA 541-A:19-b;*** or

21 8 Interim Rules. Amend RSA 541-A:19, X to read as follows:

22 X. No proposed interim rule shall be adopted unless the committee has voted to approve the
23 proposed interim rule or conditionally approve the proposed interim rule, provided that the
24 committee legal counsel has sent written confirmation to the agency pursuant to RSA 541-A:19,
25 VIII(b). An adopted interim rule, ***and any new or amended form, or screenshot, mock-up, or***
26 ***prototype of an electronic-only form, which the rule incorporates by reference or the***
27 ***requirements for which are set forth in the rule pursuant to RSA 541-A:19-b,*** shall be filed
28 with the director of legislative services no later than 30 days following committee approval or
29 conditional approval. An interim rule shall be effective under RSA 541-A:16, III on the day after
30 filing with the director of legislative services, or at a later date, provided the agency so specifies in a
31 letter to the director of legislative services and the effective date is within 30 days following
32 committee approval or conditional approval. Interim rules shall be effective for a period not to
33 exceed 180 days. During the time an interim rule shall be in effect, the agency may propose a
34 permanent rule to replace the interim rule once it expires, but it shall not adopt another interim rule
35 to replace the expiring interim rule.

36 9 Adoption of Forms. Amend RSA 541-A:19-b to read as follows:

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541-A:19-b Adoption of Forms. An agency may adopt a form as defined in RSA 541-A:1, VII-a, *either* by incorporating the actual form by reference ***in a rule***, or by setting forth the requirements of the form in rules, adopted according to the procedures in this chapter ***and in compliance with the drafting and procedure manual pursuant to RSA 541-A:8***. ***No new or amended form shall be effective and enforceable pursuant to RSA 541-A:22, I unless the form has been adopted in accordance with this chapter.***

10 Revisions to Forms; Expedited Procedure. Amend RSA 541-A:19-c to read as follows:

541-A:19-c Revisions to Forms; Expedited Procedure.

I. An agency may make editorial changes to a previously adopted form without following the procedures required in RSA 541-A:19-b, in this section, or in RSA 541-A:3, ***but shall notify the office of legislative services of any proposed editorial changes in accordance with the drafting and procedure manual pursuant to RSA 541-A:8.***

II. An agency may revise ~~[a form as defined in RSA 541-A:1, VII-a without meeting the requirements of RSA 541-A:5-7]~~ ***substantively the requirements on a previously adopted form as defined in RSA 541-A:1, VII-a, and amend the relevant provisions in the rule which set forth the requirements of the form or incorporate the form by reference pursuant to RSA 541-A:19-b, without meeting the requirements of RSA 541-A:5, RSA 541-A:6, and RSA 541-A:9-14 [either in accordance with RSA 541-A:19-b or]*** by providing notice and adopting the ***amended*** form in accordance with paragraphs III through VII.

III. Notice of an agency's intent to ~~[adopt a form or amendment to a form]~~ ***amend a form and amend the relevant, affected rule*** shall include:

(a) The name and address of the agency.

(b) The statutory authority for the form.

(c) ***The rule number and title of the affected rule to be amended, and whether the action is an amendment or readoption with amendment of the rule as described in the drafting and procedure manual pursuant to RSA 541-A:8.***

(d) An explanation of the reason for the proposed ~~[adoption or]~~ amendment of a form ***and a summary of the existing, affected rule and the proposed amendment to the form and the rule.***

~~[(d)]~~ (e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed form.

~~[(e)]~~ (f) The deadline for receipt by the agency of written or electronic public comment, which shall be no sooner than the 7th calendar day after the date of publication of the notice in the rulemaking register.

III-a. The amended rule to be filed shall include only those relevant provisions of the rule, as described in the drafting and procedure manual, pursuant to paragraph II,

1 *and neither the amended form nor the amended rule shall have a fiscal impact which*
2 *would otherwise require a fiscal impact statement pursuant to RSA 541-A:5.*

3 IV. *The agency shall file a copy of the amended form, the amended rule including*
4 *an appendix pursuant to RSA 541-A:3-a, and* the notice required by paragraph III ~~[shall be filed]~~
5 with the director of legislative services, ~~[for publication]~~ *who shall publish the notice* in the
6 rulemaking register. ~~[A copy of the form to be adopted shall be filed with the notice.]~~

7 V. If on the basis of public comment the official or the group of individuals with rulemaking
8 authority determines that the form should not be ~~[adopted]~~ *amended*, the agency shall so notify the
9 director of legislative services and the form shall not be ~~[adopted]~~ *amended*.

10 VI. The proposed form *as amended and amended rule* shall be placed on the agenda of
11 the committee for review at the first regularly scheduled or special meeting at least 5 calendar days
12 after the close of the period for written or electronic comment described in subparagraph III(e). The
13 committee may approve or object to the form. The committee may object to the adoption of the form
14 *as amended and the affected rule* if the form is:

15 (a) Beyond the authority of the agency;

16 (b) Contrary to the intent of the legislature; ~~[or]~~

17 (c) *Deemed not to be in the public interest, including the existence of substantive*
18 *inconsistencies between the form and the rule where the form is incorporated by reference*
19 *or which set forth the requirements of the form pursuant to RSA 541-A:19-b; or*

20 (d) Deemed by the committee not to meet the requirements of this section, *including*
21 *due to the existence of a fiscal impact.*

22 VII. Subsequent review and adoption of the form *as amended and the affected rule* shall
23 be as provided in RSA 541-A:13 for final proposed rules.

24 11 Validity of Rules. Amend RSA 541-A:22, I to read as follows:

25 I. No agency rule, *including a form*, is valid or effective against any person or party, nor
26 may it be enforced by the state for any purpose, until it has been filed as required in this chapter and
27 has not expired.

28 12 Effective Date. This act shall take effect 60 days after its passage.