

STATE OF NEW HAMPSHIRE



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

January 28, 2026

RE: Written Testimony in Favor of HB 1261

Dear Chairwoman Layon and Members of the Committee,

I am writing in **support of HB 1261**, revisions to the Administrative Procedure Act. This bill was introduced at the request of the Division of Administrative Rules for the Office of Legislative Services.

HB 1261, as proposed, introduces numerous revisions to the RSA 541-A, the Administrative Procedure Act, with a focus on the administrative rules process. While there are a few substantive changes, the goal is not an overhaul of the system, but reworking the language for clarity, consistency, and to accurately reflect actual practice.

For example, RSA 541-A:13, Review by the Joint Legislative Committee on Administrative Rules (pg. 13-16 of HB 1261 as introduced), is repealed and reenacted because of extensive redrafting of the language. However, despite a complete overhaul of the language, there were very few substantive changes. A good example is RSA 541-A:13, V(a), on pg. 14. What was once a single, massive paragraph of text was divided into manageable subsections for ease of use and understanding, without any change to the requirements or process. For the Committee's convenience, attached to this testimony is a draft revision of RSA 541-A:13 with both the old and new language (Attachment 1).

One substantive change to the APA includes the transfer of authority for processes and procedures concerning administrative rules from the Director of the Office of Legislative Services to the Director of the Division of Administrative Rules. These changes came at the request of Terry Pfaff, COO of OLS, and OLS Director James Vara. For the most part, agencies within the Executive Branch won't notice any difference in workflow, however the APA will accurately reflect what is happening in practice. For example, an agency files proposals with the Division of Administrative Rules, not the Director of OLS. From the agency perspective, they will continue to file proposals through the Agency Portal.

One place agencies will notice a difference is shortened response time in cases where the Director has to make a judgment call. The clearest example is in the approval or denial of agency requests for waivers of timelines. Under the current process, an agency request comes to me, and I consult with the Chair and Vice-Chair of the JLCAR and make a recommendation. Based on that conversation, I communicate the intent of the Chair and Vice-Chair and my recommendation to the Director of OLS, draft the approval or denial letter for the Director to sign, and then, once I have a signed copy of the letter, send that signed letter to the agency. The proposed change would allow me, in my role as Director of the Division of Administrative Rules, to sign that letter and issue it to the agency directly. In some instances, this has the potential to cut back response times to agencies from days to a matter of hours.


Other changes I wanted to highlight, as they came at the request of Senator Lang, the prime sponsor of SB 486, a parity bill in the Senate, are a requirement for agencies to notify the chairperson of the appropriate subcommittee when an agency undertakes rulemaking (RSA 541-A:6, III, pg. 6), and a new process for allowing agencies to utilize the existing Expedited Revision to Forms process when an agency is making a change to a fee that reflects a specific statutory requirement (RSA 541-A:19-c, III-a, pg. 28). The new process may only be used under certain, specified conditions, and strikes a good balance between transparency and an agency's ability to quickly implement a statutorily mandated fee change.

One final matter I want to draw to the attention of the Committee are the only changes in HB 1261 not related to the administrative rules process. Those changes are to the definitions of "Order", "Party", "Presiding Officer", and "Signature" in RSA 541-A:1. The changes are meant for clarity and to reflect actual practice in administrative proceedings.

Once again, I am writing in **support of HB 1261**. Having worked on both sides of the rulemaking process, as an attorney for the Executive Branch and as the Director of the Division of Administrative Rules for the Office of Legislative Services, I believe this bill is a step in the right direction for everyone involved. The proposed changes bring clarity to requirements under the APA, create consistency with terminology, and accurately reflect the administrative rules process.

Thank you for your consideration of this matter.

Very truly yours,



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Division of Administrative Rules
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13 Review by the Joint Legislative Committee on Administrative Rules. Amend RSA 541-A:13 to read as follows:

I. *Within 60 days of the filing of a final proposal pursuant to RSA 541-A:12, the committee shall either approve, conditionally approve, or object to the proposed rule.* [~~The committee shall either approve the rule or enter a conditional approval or objection under paragraph V within 60 days of the filing of a final proposal under RSA 541-A:12, I, unless the deadline is waived for good cause pursuant to RSA 541-A:40. Objections to a rule may be made only once. The committee may not add or amend grounds for objection after a preliminary objection is made under paragraph V unless the agency's response to the objection creates the grounds or the agency requests a revised objection which includes them.~~]

II. (a) *The director of the division of administrative rules for the office of legislative services shall notify an agency of any potential basis for objection prior to committee review in the form of a copy of the final proposal with staff comments.* [~~If an agency has filed a final proposal, the director of legislative services shall notify the agency of any potential bases for committee objection identified by the office of legislative services by forwarding a copy of the final proposal with the counsel's comments noted thereon.~~]

(b) *An agency may amend the language of a final proposal in response to staff comments and file a request for conditional approval with the director, to be reviewed by the committee. The request and the amended final proposal language shall be submitted in writing at least 7 days prior to the meeting for which the final proposal is scheduled to be reviewed by the committee. In lieu of a written request, the committee may, for compelling reasons, accept a request from an agency for conditional approval at the meeting.*

[~~In response to the comments, or for other reasons in lieu of requesting a preliminary objection, an agency may then file a request for conditional approval with the director for review by the committee and request that the committee conditionally approve the rule with an amendment. Both the request and the amendment shall be in writing and shall be filed at least 7 days prior to the regularly scheduled meeting or special meeting for which the final proposal has been placed on the agenda. An agency may request a waiver pursuant to RSA 541-A:40, IV of the 7-day deadline for good cause as established in the drafting and procedure manual under RSA 541-A:8, but the committee may for compelling reasons under the committee's rules pursuant to RSA 541-A:2, II accept a request for a conditional approval in the meeting under paragraph V.~~]

(c) The committee may:

- (1) Approve the [~~rule as originally~~] *final proposal as filed pursuant to RSA 541-A:12; or***
- (2) *Conditionally approve or object to the proposed rule* [~~Act~~] under paragraph V.**

(d) If the committee approves the [~~rule~~] *proposal as filed pursuant to RSA 541-A:12, [~~it~~] the director shall notify the agency [~~in writing of its~~] of the approval in writing.*

(e) Failure *of the committee to act on a proposed rule within* [~~give notice of either approval, conditional approval, or objection at the end of~~] the 60-day period under paragraph I shall be deemed approval.

III. If [~~the rule~~] *a proposal is approved under subparagraph II(c) or (e), [~~the~~] an agency may adopt the proposed rule.*

IV. The committee may object to a proposed rule if the rule is:

- (a) Beyond the authority of the agency;
- (b) Contrary to ~~[the]~~ ***any state or federal statute or regulation, the overall purpose of a statute, this chapter, the drafting and procedural manual, the state or federal constitution, or other applicable controlling authority*** ~~[intent of the legislature];~~
- (c) Determined not to be in the public interest; including the existence of substantive inconsistencies between a form and the rule ~~[where the form is incorporated by reference or which sets forth the requirements of the form, pursuant to RSA 541-A:19-b];~~ or
- (d) Deemed by the committee to have a substantial economic impact not recognized in the fiscal impact statement.

V. The following procedures shall govern committee objections and conditional approvals:

~~(a) [If the committee objects to the final proposal as filed, it shall so inform the agency. In lieu of a preliminary objection, and with or without a written request under subparagraph II(a), the committee may vote to conditionally approve the rule with an amendment, provided that the committee specifies in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its conditional approval. Within 30 days of the meeting, or in the case of a board or commission, 7 days following its next regularly scheduled meeting, the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary objection on the date of the conditional approval. If the office of legislative services determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the office of legislative services shall promptly send written confirmation of compliance to the agency. The agency may then adopt the rule as amended.]~~

The committee may vote to conditionally approve a proposed rule that has been amended after the final proposal is filed by an agency. In such cases:

- (1) The director shall notify the agency of the committee's decision in writing and provide specific details as to the change in the language of the proposed rule required to address any basis for objection.***
- (2) The agency shall file with the director a letter detailing how the text of the proposed rule was changed to meet the conditions of the approval as well as the annotated text of the rule within 30 days of the committee's decision, or in the case of a board or commission, within 7 days following its next regularly scheduled meeting.***
- (3) The letter shall be signed by an individual with rulemaking authority, or a voting member of a body with rulemaking authority, provided that a quorum of the body approved the letter and rule.***
- (4) If the division of administrative rules determines the agency has amended the proposal in accordance with the terms of the conditional approval it shall notify the agency in writing, and the agency may adopt the rule.***
- (5) If the division of administrative rules determines the agency has not amended the rule in accordance with the terms of the conditional approval, the conditional approval shall be deemed a preliminary objection as of the date of the conditional approval.***

(6) Failure to submit the letter and rule text shall result in the conditional approval to be deemed a preliminary objection as of the date of the conditional approval.

~~(b) [If the committee objects to the final proposal as filed or as amended pursuant to paragraph II, the committee shall send the agency a preliminary written objection stating the basis for the objection. A preliminary objection or conditional approval shall require the assent of a majority of the votes cast, a quorum being present. If a preliminary objection is made, the committee may send a copy of the preliminary objection to the appropriate house and senate standing policy committees and, if so, shall give notice to the agency. Within 30 days of the date the preliminary objection was entered, the standing policy committees at properly convened executive sessions shall review the proposed rules and the preliminary objection and shall adopt recommendations or comments relative to the basis for the preliminary objection and shall communicate the same to the committee.]~~

The committee may vote to preliminarily object to a final proposal as filed or as amended pursuant to a request for conditional approval. In such cases:

(1) The director shall notify the agency in writing of the basis for the objection.

(2) Upon request of the committee, the director shall send a copy of the objection to the appropriate house and senate standing policy committees and provide notice to the agency.

(3) If an objection is sent to standing policy committees, the policy committees shall have 30 days from the date of the objection to convene an executive session to review the proposed rules and objection, adopt recommendations or comments relative to the basis for the objection, and communicate said recommendations or comments to the committee.

(4) The committee may only make an objection to a proposal on the same grounds only once, and may not add or amend grounds for an objection unless an agency response to the objection creates new grounds for objection or the agency requests a revised objection.

~~(c) [The agency shall respond to the preliminary objection by withdrawing the rule, by amending the rule to remove the basis for objection, or by making no change. The agency shall respond to a committee objection only once, and shall report its response in writing to the committee within 45 days of the committee's vote to make a preliminary objection. Failure to respond to the committee in accordance with this subparagraph shall mean the rulemaking procedure for that proposed rule is invalid; however, the agency is not precluded from initiating the process over again for a similar rule. After receipt of the agency response, the committee may modify its objections made under paragraph IV or approve the rule.]~~ ***An agency shall respond to a preliminary objection by filing a written response with the director within 45 days of the committee's vote. The agency may withdraw the rule, amend the rule to remove the basis for objection, or make no change. Failure to respond to the committee shall terminate the rulemaking procedure and render the proposed rule invalid. An agency shall not be precluded from filing an initial proposal for a similar rule. If the committee revises its objections based on the agency response, the agency shall have 45 days to file a written response to the revised objections following the procedure outlined above.***

~~(d) [After submitting its preliminary objection response and prior to the final committee vote on the final proposal, and in all cases, prior to the adoption of the rule by the agency, the agency may request that the committee approve the rule with further amendment or issue a revised objection. The committee may approve the rule with further amendment only if the agency submits the request and proposed amendment, in writing to the committee at least 7 days prior to the committee meeting at which the agency presents the rule. Submission of such a request shall not preclude the agency from requesting a revised objection if the committee does not approve the rule as requested.]~~ ***The director shall notify an agency in writing if, after reviewing a filed preliminary***

objection response, the basis for a preliminary objection remains or the agency response creates new basis for objection. In such instances, the agency may request the committee approve the rule with further amendment. The request and the amended preliminary objection response language shall be submitted in writing at least 7 days prior to the meeting for which the preliminary objection response is scheduled to be reviewed by the committee. A request made in this manner shall not preclude the agency from requesting a revised objection if the committee does not approve the rule as requested.

(e) ~~[A revised objection may be made only once by the committee and may be made only at the request of the agency.]~~ *An agency may request a revised objection from the committee, which the committee may provide one time.* The agency shall *have 45 days to file a written response* ~~[respond]~~ and the committee ~~[may]~~ *shall* review the response in the same manner as a preliminary objection. No further amendment may be made by the agency after it responds to the committee except as provided in RSA 541-A:14, II.

(f) If *after* the agency responds ~~[but]~~ the basis for the committee's preliminary or revised objection has not been removed or the response creates a new basis for objection, the committee may, by majority vote of the ~~[entire]~~ committee, *with at least 6 votes in the affirmative, vote to issue* ~~[file]~~ a final objection. The *director shall notify the agency of the final objection in writing, which* ~~[be filed in certified form with the director of legislative services for publication]~~ *be published* in the next issue of the rulemaking register.

VI. ~~[After a final objection by the]~~ *A committee final objection to [a]any provision [in the] of a rule [is filed with the director under subparagraph V(f),] published in the rulemaking register shall shift* the burden of proof ~~[shall be on the agency]~~ in any action for judicial review or for enforcement of the provision *to the adopting agency* to establish that the ~~[part objected to]~~ *provision of the rule* is within the *scope of* authority delegated to the agency; *is consistent with state and federal statutes or regulations, the overall purpose of a statute implemented by the rule, this chapter, the drafting and procedural manual, the state or federal constitution, or other applicable controlling authority;* ~~[, is consistent with the intent of the legislature]~~, is in the public interest;[,] or does not have a substantial economic impact not recognized in the fiscal impact statement. If the agency fails to meet its burden of proof, the court shall declare the whole or a portion of the rule ~~[objected to]~~ invalid. ~~[The failure]~~ *Failure* of the committee to object to a rule shall not be an implied legislative authorization of its substantive or procedural lawfulness.

VII. (a) The provisions of this paragraph may be used by the committee as an alternative ~~[to]~~ or in addition to the final objection procedure employed by the committee in paragraph V.

(b) If an agency responds to a preliminary or revised objection but the basis for objection has not been removed or the response creates a new basis for objection, the committee may, within 50 days from the date on which the objection response was due and by majority vote of the ~~[entire]~~ committee, *with at least 6 votes in the affirmative*, recommend legislative action through sponsorship of a joint resolution ~~[to implement its recommendation]~~. A ~~[Such]~~ *vote to issue a joint resolution* shall prevent *an agency from adopting* the rule ~~[from being adopted and filed by the agency]~~ for the period ~~[of time]~~ specified in subparagraph VII(c).

(c) ~~[If the committee votes to sponsor a joint resolution pursuant to subparagraph VII(b), the]~~ *A joint resolution* shall be introduced in the house of representatives or senate within 20 business days of such vote when the general court is in session and 20 business days of the start of the following legislative session if such vote occurs when the general court is not in session. If a joint

resolution is not introduced within this time frame, the agency may adopt the rule. If a joint resolution is introduced within this time frame, the agency shall be prevented from adopting and filing such rule until final legislative action is taken on the resolution or the passage of 90 consecutive calendar days during which the general court shall have been in session, whichever occurs first. The 90 calendar day period shall commence on the date such joint resolution *is* ~~[has been]~~ introduced. If the session of the general court adjourns prior to the sixtieth calendar day after ~~[such]~~ *the* joint resolution has been introduced, then the agency shall be prevented from adopting and filing such rule until 90 calendar days, beginning with the next session of the general court, have passed.

(d) The provisions of this paragraph shall apply to only the specific portion of ~~[the]~~ *an* agency's rule identified in the joint resolution *and* ~~[-The provisions of this paragraph]~~ shall not prevent an agency from adopting and filing the remainder of the rules in the final proposal ~~[under RSA 541-A]~~ while the committee pursues legislative action under this paragraph~~[- nor shall it prevent the committee from also voting to enter a final objection pursuant to paragraph V].~~

(e) Nothing in this section shall prevent the general court from introducing legislation which addresses any matter included in a joint resolution introduced under the provisions of this section.

(f) Notwithstanding any house or senate rules to the contrary, a joint resolution which the committee votes to sponsor under subparagraph VII(b) may be introduced at any time during the legislative session. It shall be subject to the same rules as any other bill introduced at the beginning of the legislative session.