



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 26, 2013

The Honorable Shannon Chandley, Chair
House Resources, Recreation, and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 663-FN, relative to appeals within the department of environmental services.

Dear Representative Chandley and members of the Committee:

Thank you for the opportunity to testify on HB 663-FN, relative to appeals within the Department of Environmental Services. This bill establishes an Environmental Appeals Board to hear appeals from department decisions as defined in RSA 21-O:14, I. The Department supports consideration of alternatives to the current structure for hearing appeals of its decisions, but has concerns about the bill as drafted.

The existing appeal structure was established in 1986 as part of the legislation that created the Department (Laws of 1986, Chapter 202). That legislation was designed to merge four independent entities, three of which were commissions under the authority of a board, into one. The commissions were converted to councils and were given three primary responsibilities:

- To consult with and advise the Commissioner and/or Division Director on a continuing basis with respect to policies, programs, goals, and operations of the Department/Division as they relate to the area of council jurisdiction, with particular emphasis on long-range planning and education of the public;
- To review all proposed rules of the programs within the area of council jurisdiction prior to the Department filing a rulemaking notice; and
- To hear administrative appeals from Department permitting decisions and administrative orders within the area of council jurisdiction.

The first two responsibilities are collaborative, with the Department and Councils working together to consider the advantages and disadvantages of various policy options, and are significantly enhanced by the range of environmental and business interests represented by the council members. The third responsibility, in which the council sits as a quasi-judicial body to pass judgment on Department decisions and orders, could be seen by some as in conflict with the first two.

There are several alternative appeals processes that should be considered, from other New Hampshire agencies and from other New England States. The study committee formed as part of HB 256 of the 2011 legislative session was charged with reviewing the alternatives and developing a recommendation, but did not have sufficient time to do an in-depth analysis of the

pros and cons of the various processes. It is our hope that HB 663 can be retained so as to provide additional time for this analysis.

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
Commissioner

cc: Representative Ahlgren
Representative Renzullo
Representative Spang
Senator Bradley