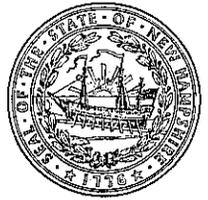




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 14, 2010

The Honorable Anne-Marie Irwin, Chairman
House Executive Departments and Administration Committee
Legislative Office Building, Room 306
Concord, New Hampshire 03301

Re: HB 1296, relative to prohibiting a state agency from establishing a fee without legislative approval

Dear Chairman Irwin and members of the Committee:

Thank you for the opportunity to testify on HB 1296, relative to prohibiting a state agency from establishing a fee without legislative approval. The Department of Environmental Services has concerns about this bill.

Initially, we note that the RSA 541-A:, III(c) already prevents an agency from adopting rules to require fees "unless specifically authorized by a statute enforced or administered by an agency." To the extent the Legislature believes this limitation needs to be clarified, an amendment should be made to this statutory section, not to RSA 14 ("Legislative Officers and Proceedings").

Further, the text of the bill is not clear when applied to existing statutory language. For example, RSA 485:46 requires the Department to adopt fees for laboratory accreditation, which must be "designed to recover the costs associated with the accreditation services." The intent of the Legislature is clear in this case, but this section may still become void if HB 1296 is passed because the language does not establish "the amount of the fee or an acceptable fee range" as required by proposed RSA 14:50, I (section 1 of the bill). Other statutory fee provisions potentially affected by this bill include those in RSA 125-C relative to fees for permit application and review from air pollution sources, RSA 149-M relative to fees for solid waste management/disposal facility permits, and RSA 485-A relative to fees for septage management/disposal permits and for sludge management/disposal permits.

In many cases, the Legislature has delegated the responsibility to establish reasonable fees to the agencies directly responsible for implementing the program. To the extent such fees are viewed as unreasonable, there already are ways to address them. Specifically, the rules can be subject to a joint resolution sponsored by the Joint Legislative Committee on Administrative Rules, or legislation can be otherwise introduced to counter the rules.

In sum, the Department questions whether the bill is necessary and believes, if the Legislature believes clarification is needed, that HB 1296 as introduced will create more problems than it solves.

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

Sincerely,


Thomas S. Burack
Commissioner

cc: Representative Ulery
Representative Itse
Representative Renzullo