



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

Thomas S. Burack, Commissioner



January 28, 2016

The Honorable Andrew Christie, Chair  
House Executive Departments and Administration Committee  
Legislative Office Building, Room 306  
Concord, NH 03301

**RE: HB 1640-FN, An act relative to the expiration of administrative rules.**

Dear Representative Christie and Members of the Committee:

Thank you for the opportunity to comment on HB 1640-FN. This bill would amend RSA 541-A, the Administrative Procedure Act, by replacing the current 10-year life of a “regular” administrative rule with a 2-year life that can be extended to 10 years if the General Court passes legislation to ratify the rules. The New Hampshire Department of Environmental Services (NHDES) opposes this bill.

Requiring standing committees to sponsor legislation for every set of rules adopted by the agencies it oversees will create a tremendous amount of work for those committees, as well as for all members of the General Court who must consider the proposed legislation. Further, legislation often fails for reasons having nothing to do with the merits of the bill. Establishing that administrative rules are effective only for two years unless legislation is passed would, in all probability, result in orders of magnitude more rulemaking than is done currently. Consequently, much more agency time would be spent on rulemaking, which would take time away from the substantive work assigned to the agency by the General Court. A continuous stream of rulemaking also would create a great deal of confusion and uncertainty among those who are obligated to comply with the rules, as they would have to constantly be checking to see if the applicable rules have been amended.

The current procedure by which the Joint Legislative Committee on Administrative Rules (JLCAR) can sponsor a joint resolution was developed as a way for the General Court to exercise “veto authority” over administrative rules without violating the New Hampshire Constitution, as discussed by the New Hampshire Supreme Court in Opinion of the Justices, 121 N.H. 552 (1981). And along with the joint resolution process, any legislator may propose legislation to override agency rules at any time, without adding any authority to the existing statutory framework for adopting rules.



Thank you for your consideration in this matter. If you have questions or need additional information, please contact me at 271-2958 or Gretchen Hamel of my office at 271-3137 or [Gretchen.Hamel@des.nh.gov](mailto:Gretchen.Hamel@des.nh.gov).

Respectfully Submitted,



Thomas S. Burack  
Commissioner

cc: Sponsors of HB 1640: Reps. Hoell, Itse, Ingbretson, Edelblut

