



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



**Robert R. Scott, Commissioner**

February 5, 2020

The Honorable Sharon Carson  
Chair, Senate Executive Departments and Administration Committee  
Legislative Office Building, Room 101  
Concord, NH 03301

Re: SB 544, AN ACT relative to the filing of administrative rules by state agencies

Dear Chair Carson and Members of the Committee:

Thank you for the opportunity to comment on SB 544, an act relative to the filing of administrative rules by state agencies. The New Hampshire Department of Environmental Services (NHDES) has concerns about three sections of this bill.

Section 2 of the bill would replace a fairly objective standard for when the Director of the Office of Legislative Services (OLS) can refuse to publish a Rulemaking Notice with a subjective decision that something doesn't "conform" to the *Drafting and Procedure Manual for Administrative Rules (Manual)*. While some of the changes that have been marked on our Rulemaking Notices are helpful, many of the changes that have been requested are simply a question of style and some would make it more difficult for the agency's stakeholders, whom the agency knows better than OLS, to understand what is being proposed. Rulemaking notices are agency products, not OLS products, so the agency should have the final say, subject to an objective standard.

Section 3 of the bill would allow OLS to make substantive changes to an agency's rulemaking notice with little opportunity for an agency to object. As noted above, Rulemaking Notices are the agency's product, not OLS's. In addition, rulemaking notices should be meaningful to the stakeholder community impacted by the rules and the agency is better qualified and prepared to work with stakeholders in ensuring that the communication is effective. Further, there has been no indication that the process as it currently stands is not working.

Section 4 of the bill would make many initial proposals (IPs) and final proposals (FPs) unnecessarily long. NHDES has many chapters of rules in which one section spans several pages. As it stands now, if we need to adjust one paragraph, we can include just that paragraph. Under the bill as written, we will have to include the entire section even if what we want to change is a comma in one paragraph or one line in a lengthy table. As an example, consider the changes made to the table of Ambient Groundwater Quality Standards (AGQS). Under the proposed statute, NHDES would have had to include the entire table every time one line needed to be changed -- and the entire table would be opened to public comment even though that was not

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our intent. Requiring the entire section to be included will make more work for the agency, for stakeholders, for staff of the OLS Administrative Rules office, and for the Joint Legislative Committee on Administrative Rules (JLCAR) itself. It is in no one's best interests to have to wade through pages of text that isn't changing to try to find what is changing. The change also could have the effect of discouraging agencies from undertaking rulemaking if only a small piece of a long section needs to be changed; instead they may wait until the entire section is going to expire and be tempted to just apply the rule the way it ought to be in the meantime. More importantly, many of the public water systems regulated by NHDES are small systems, often overseen by a small volunteer body. The example given above can cause undue concern and effort upon these citizens since they will be confronted with the full table of standards under the new proposed process. The current process allows NHDES to focus communication on the changes that the public has to address.

Thank you again for the opportunity to comment on SB 544. Should you have questions or need additional information, please feel free to contact either Assistant Commissioner Clark Freise (Clark.Freise@des.nh.gov or 271-8806) or me (Robert.Scott@des.nh.gov or 271-2958).

Sincerely,



Robert R. Scott  
Commissioner

cc: Sponsors of SB 544: Senator Reagan, Representatives Hatch, McGuire, P. Schmidt