



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

January 22, 2020

The Honorable Jeffrey Goley  
Chair, Executive Departments and Administration Committee  
Legislative Office Building, Room 306  
Concord, NH 03301

**RE: HB 1407, An Act relative to adopting rules relative to departmental forms.**

Dear Chair Goley and Members of the Committee:

Thank you for the opportunity to testify on HB 1407. This bill would make changes to how forms are treated under rulemaking. The New Hampshire Department of Environmental Services (NHDES) has concerns about this bill.

In 2009, RSA 541-A was amended to define certain terms -- including the word "form" -- and to establish procedures for adopting forms. The legislation was intended to create two distinct ways to adopt what is commonly thought of as a form: by incorporating the form by reference, in which case the form itself established requirements and so was a rule, or by including all of the requirements in narrative rules, in which case the document provided by the agency to facilitate the submission of the required information was not a rule. Over the past few years, the Office of Legislative Services, Administrative Rules Office seems to have blurred the distinction between these two distinct methods and essentially has asserted that anything with blanks to be filled in is a form. HB 1407 would essentially codify this position.

NHDES recognizes that the General Court can fashion policy as it sees fit. We note, though, that if agencies are allowed to create documents to facilitate the submission of information that do not have to be adopted as rules, then the agencies can be more timely in responding to stakeholder concerns that portions of the documents are not clear. That is, an agency can rearrange items or add explanations to items in a way that clarifies the "form" but does not make any substantive changes to what is required to be submitted. NHDES is concerned that the language being added to RSA 541-A:19-c, I (page 4, lines 3-5) will operate to impede the ability of an agency to be responsive to customers if editorial clarifications are needed.

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Thank you again for the opportunity to comment on HB 1407. Should you have further questions or need additional information, please feel free to contact either Assistant Commissioner Clark Freise ([Clark.Freise@des.nh.gov](mailto:Clark.Freise@des.nh.gov) or 271-8806) or me ([Robert.Scott@des.nh.gov](mailto:Robert.Scott@des.nh.gov) or 271-2958).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Scott", with a long horizontal flourish extending to the right.

Robert R. Scott  
Commissioner

cc: Sponsors of HB 1407: Representatives Hatch, P. Schmidt, McGuire, Senator Reagan