

Bill as Introduced

HB 43 - AS INTRODUCED

2011 SESSION

11-0150

05/10

HOUSE BILL

43

AN ACT relative to the adoption of forms under the administrative procedures act.

SPONSORS: Rep. Pilotte, Hills 16; Rep. Sad, Ches 2; Rep. Millham, Belk 5; Rep. B. Patten, Carr 4

COMMITTEE: Legislative Administration

ANALYSIS

This bill removes the provisions of the administrative procedures act which made forms adopted by agencies to be non-expiring.

This bill is a request of the joint legislative committee on administrative rules.

.....

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the adoption of forms under the administrative procedures act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Administrative Procedures Act; Time Limit; Forms. Amend RSA 541-A:17, II to read as
2 follows:

3 II. Notwithstanding the provisions of paragraph I, any organizational and procedural rules
4 proposed and adopted pursuant to RSA 541-A:16, I and as identified in the drafting and procedure
5 manual~~[-and any forms adopted pursuant to RSA 541-A:19-b or RSA 541-A:19-e]~~ shall not expire,
6 provided that they have been approved by the committee. No changes to such organizational and
7 procedural rules ~~[or forms]~~ may be made by the agency, other than editorial changes not affecting the
8 substance of the procedural rules ~~[or forms]~~, without following the rulemaking procedures in this
9 chapter. However, if the adoption or amendment of a statute governing the agency renders the
10 agency's organizational and procedural rules ~~[or forms]~~ no longer accurate, such rules ~~[or forms]~~
11 shall expire one year after the effective date of the statute that makes such change, unless such
12 organizational and procedural rules ~~[or forms]~~ are amended, superseded, or repealed before such
13 expiration. The agency shall commence rulemaking to amend its rules no later than 90 days after
14 the effective date of such statute. If the agency reorganizes its organization and responsibilities in
15 such a way that the agency's rules under RSA 541-A:16, I(a) describing its organization are no longer
16 accurate, the agency shall amend its rules as soon as is practicable, but shall commence rulemaking
17 not later than 90 days after such changes occur.

18 2 Administrative Procedure Act; Adoption of Forms. Amend RSA 541-A:19-b to read as follows:

19 541-A:19-b Adoption of Forms. An agency may adopt a form as defined in RSA 541-A:1, VII-a by
20 incorporating the actual form by reference or by setting forth the requirements of the form in rules
21 adopted according to the procedures in this chapter. ~~[Such forms shall be non-expiring unless~~
22 ~~required to be revised by statutory change as specified in RSA 541-A:17, II.]~~

23 3 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 89
HB 43 – FINAL VERSION

2011 SESSION

11-0150
05/10

HOUSE BILL **43**

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CHAPTER 89
HB 43 – FINAL VERSION

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22 adopted according to the procedures in this chapter. ~~[Such forms shall be non-expiring unless~~
23 ~~required to be revised by statutory change as specified in RSA 541-A:17, II.]~~

24 89:3 Effective Date. This act shall take effect 60 days after its passage.

25 Approved: May 27, 2011

26 Effective Date: July 26, 2011

Committee Minutes

SENATE CALENDAR NOTICE

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

✓ Senator Sharon Carson Chairman
 ✓ Senator Fenton Groen V Chairman
 Senator Sylvia Larsen
 ✓ Senator Jim Luther
 ✓ Senator Raymond White

For Use by Senate Clerk's
Office ONLY

☐ Bill Status

☐ Docket

☐ Calendar

Proof: ☐ Calendar ☐ Bill Status

Date: April 6, 2011

HEARINGS

Thursday

4/14/2011

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SH 100

9:00 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

9:00 AM	HB43	relative to the adoption of forms under the administrative procedures act.
9:10 AM	HB47	relative to inactive license status for real estate brokers and salespersons.
9:20 AM	HB92	relative to expiration of licenses issued by the board of foresters.
9:30 AM	HB380	exempting the commission on the status of men from repeal on June 30, 2011 and adding a duty to the commission.
9:40 AM	HB503	allowing a master electrician to have 2 apprentice electricians under his or her supervision.
9:50 AM	HB150	relative to benefits of judicial branch employees who transfer from the judicial branch to state service in the executive branch or the legislative branch.
10:10 AM	HB450	relative to the regulatory authority of the board of barbering, cosmetology, and esthetics.

Sponsors:

HB43

Rep. Maurice Pilotte

Rep. Tara Sad

Rep. Alida Millham

Rep. Betsey Patten

HB47

Rep. Benjamin Baroody

HB92

Rep. Kenneth Hawkins

HB380

Rep. William Smith

Rep. Chris Nevins

Rep. Frank Sapareto

Rep. Lawrence Perkins

Rep. Jeffrey Oligny

HB503

Rep. William Infantine

HB150

Rep. Stephen Shurtleff

HB450

Rep. David Bates

Rep. Carol McGuire

Rep. Dan McGuire

Rep. Spec Bowers

Sen. Jim Luther

Sen. Raymond White

Deborah Chroniak 271-1403

Sen. Sharon Carson

Chairman

Executive Dept. and Administration Committee

Hearing Report

TO: Members of the Senate

FROM: Deb Chroniak, Legislative Aide

RE: Hearing report on HB 43 – relative to the adoption of forms under the administrative procedures act.

HEARING DATE: April 14, 2011

MEMBERS OF THE COMMITTEE PRESENT: Senator Sharon Carson, Dist 14; Senator Fenton Groen, Dist 6; Senator Jim Luther, Dist 12; Senator Ray White, Dist 9

MEMBERS OF THE COMMITTEE ABSENT: Senator Sylvia Larsen, Dist 15

Sponsor(s): Rep. Pilotte, Hills 16; Rep. Sad, Ches 2; Rep. Millham, Belk 5; Rep. B. Patten, Carr 4

What the bill does: This bill removes the provisions of the administrative procedures act which made forms adopted by agencies to be non-expiring.

This bill is a request of the joint legislative committee on administrative rules.

Who supports the bill: Rep Maurice Pilotte, House ED & A; Rep. Ken Hawkins, House ED & A; Sheri Kelloway, Department of Safety; Attorney Gretchen Hamel, NH Dept of Environmental Services; Rep Alida Millham, Belk #5

Who opposes the bill: No one

The public hearing on HB 43 opened at 9:00 a.m.

Senator Carson called on the prime sponsor of the bill to testify.

Summary of testimony received:

- Representative Maurice Pilotte (in support) (Hills 16) stated that this legislation was a request of JLCAR. They came before the committee last session, when they looked at forms saying that they had to do things a little different, this being all part of the lien process. So, while looking over forms, which could be described as a two page, or three page, etc. and try to generate one form. This required action by the Legislature because an agency cannot, by statute, incorporate by reference something that it generates. This form they made an exception for. Since forms generally do not change, they were going to make them permanent forms.

- The first idea was incorporation by reference. The second idea was to have permanent forms, which were non-expiring; this created an issue. Some agencies still continued to describe their form in their rule, but because they now are in the corpus of the rules, they do not expire. We have created work for the folks in the Office of Legislative Service. Because, not only did they have to file them separately, they had to record them separately, and that created a problem.

- This did not streamline the process and therefore, they are asking that this section be stricken from the statute, and that forms could still be incorporated by reference, but that they will have the same lifespan as the rule.

- Senator Carson then stated that earlier this session we had a bill that came out of Committee that dealt specifically with forms from the Department of Revenue Administration requiring that they receive legislative approval before they create forms. She then asked if Representative Pilotte believed that this piece of legislation would conflict with the one that previously came through the Senate ED & A Committee.

- Representative Pilotte stated that specific agency statutes calls for specific authority for that particular form to be adopted. The statute comes before the rules, and he does not see this as being a conflict.

- Senator White then asked if Representative Pilotte thought that we may need an amendment to this bill that sites the bill that Senator Carson mentioned, so that there would be no conflict with this legislation.

- Representative Pilotte stated, that he doubted very much that this would be a problem, personally.

- Attorney Gretchen Hamel, (in support) (testimony provided) Commissioner's Office, Department of Environmental Services stated that she participated in the work that was done which caused this problem, which

was not their intent. Their intent was to allow an agency to adopt by reference.

- In 2009, Chapter 232 was enacted to amend RSA 541-A, the Administrative Procedure Act, relative to rulemaking. The amendments clarified when a "form" was a rule (and when it was not), establishing a more efficient way to adopt or amend forms, and exempted forms from expiring.

- The amendments relative to the adoption and expiration of forms have been applied in a way that has been confusing and has caused additional work, both for the Office of Legislative Services and other agencies.

- Repealing the exemption of forms from the normal expiration of rules would address this unintended consequence of the original legislation.

- Attorney Hamel also stated that in her opinion, there would be no conflict between this legislation and the legislation which Senator Carson had previously mentioned.

The public hearing on HB 43 closed at 9:07 a.m.

Funding: None.

Future Action: Pending.

DAC

[file: HB 43 report]
Date: April 15, 2011

Speakers

SENATE EXECUTIVE DEPARTMENTS AND ADMINISTRATION COMMITTEE

Date: April 14, 2011

Time: 9:00 a.m.. Public Hearing on HB 43

HB 43 - relative to the adoption of forms under the administrative procedures act.

Please check box(es) that apply:

Please check if

SPEAKING FAVOR OPPOSED

NAME (Please print)

REPRESENTING

☐☒☐

ALIDA
Caden

WILLIAM
Muller

BELK/OS
Belknap Dist #5

☐☐☐

Testimony



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



April 14, 2011

The Honorable Sharon M. Carson, Chairman
Senate Executive Departments and Administration Committee
State House, Room 100
Concord, New Hampshire 03301

Re: HB 43, relative to the adoption of forms under the administrative procedures act

Dear Senator Carson and members of the Committee:

Thank you for the opportunity to testify on HB 43, relative to the adoption of forms under the administrative procedures act. The Department of Environmental Services supports this bill.

In the 2009 legislative session, the General Court enacted Chapter 232 to amend RSA 541-A, the Administrative Procedure Act, relative to rulemaking. In part, the amendments clarified when a "form" was a rule (and when it was not), established a more efficient way to adopt or amend forms, and exempted forms from expiring. We believed at the time, and continue to believe, that clarification of forms vis-à-vis rules was needed.

Unfortunately, the amendments relative to the adoption and expiration of forms have been applied in a way that has been confusing and caused additional work, both to the Office of Legislative Services and to agencies. Repealing the exemption of forms from the normal expiration of rules would address this unintended consequence of the original legislation.

Thank you again for the opportunity to comment on this bill. If you have any questions, please call me at 271-2958 or Gretchen Hamel of my staff at 271-3137.

Sincerely,

Thomas S. Burack
Commissioner

cc: Representative Pilotte
Representative Sad
Representative Millham
Representative B. Patten

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: April 28, 2011

THE COMMITTEE ON Executive Departments and Administration
to which was referred House Bill 43

AN ACT relative to the adoption of forms under the administrative
 procedures act.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS

BY A VOTE OF: 4-0

AMENDMENT # s

Senator Sharon M. Carson
For the Committee

Deb Chroniak 271-1403

New Hampshire General Court - Bill Status System

Docket of HB43

Docket Abbreviations

Bill Title: relative to the adoption of forms under the administrative procedures act.*Official Docket of HB43:*

Date	Body	Description
12/22/2010	H	Introduced 1/5/2011 and Referred to Legislative Administration; HJ 8 , PG.128
1/26/2011	H	Vacated from Legislative Administration: MA VV; HJ 14 , PG.261
1/26/2011	H	Referred to Executive Departments and Administration; HJ 14 , PG.261
2/2/2011	H	Public Hearing: 2/22/2011 10:30 AM LOB 306
2/24/2011	H	Subcommittee Work Session: 3/1/2011 2:00 PM LOB 306
2/24/2011	H	Executive Session: 3/2/2011 2:00 PM LOB 306
3/3/2011	H	Committee Report: Ought to Pass for Mar 15 (Vote 16-0; CC); HC 22 , PG.530
3/15/2011	H	Ought to Pass: MA VV; HJ 26 , PG.709
3/23/2011	S	Introduced and Referred to Executive Departments and Administration; SJ 11 , Pg.190
4/7/2011	S	Hearing: 4/14/11, Room 100, State House, 9:00 a.m.; SC19
4/28/2011	S	Committee Report: Ought to Pass, 5/4/11; SC22
5/4/2011	S	Ought to Pass, MA, VV; OT3rdg; SJ 15 , Pg.303
5/4/2011	S	Passed by Third Reading Resolution; SJ 15 , Pg.311
5/18/2011	S	Enrolled
5/18/2011	H	Enrolled; HJ 44 , PG.1564
6/1/2011	H	Signed By Governor 05/27/2011; Effective 07/26/2011; Chapter 0089

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 43 ORIGINAL REFERRAL _____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- ☒ DOCKET (Submit only the latest docket found in Bill Status)
- ☒ COMMITTEE REPORT
- ☒ CALENDAR NOTICE
- ☒ HEARING REPORT
- ☒ PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING
- #1
- ☒ SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

____ - AMENDMENT # _____ - AMENDMENT # _____
____ - AMENDMENT # _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

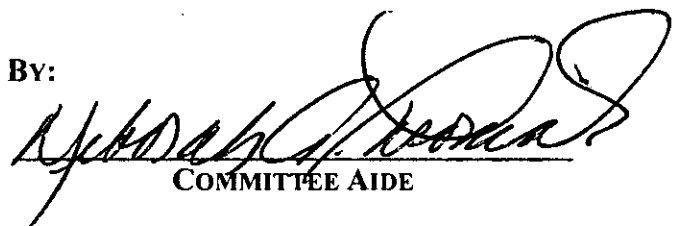
☒ AS INTRODUCED _____ AS AMENDED BY THE HOUSE
☒ FINAL VERSION _____ AS AMENDED BY THE SENATE

____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

DATE DELIVERED TO SENATE CLERK

7/29/01

BY:


COMMITTEE AIDE