

# Bill as Introduced

SB 161-FN – AS INTRODUCED

2011 SESSION

11-0995

10/03

SENATE BILL            ***161-FN***

AN ACT                relative to procedures for adoption of agency rules under the administrative procedures act.

SPONSORS:            Sen. Merrill, Dist 21; Sen. Stiles, Dist 24; Sen. Carson, Dist 14; Rep. P. Schmidt, Straf 4; Rep. Norelli, Rock 16; Rep. Pilotte, Hills 16; Rep. B. Patten, Carr 4; Rep. C. McGuire, Merr 8

COMMITTEE:          Executive Departments and Administration

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ANALYSIS

This bill:

- I. Allows for preregistration for agency public hearings on proposed rules, and cancellation of a public hearing if no persons preregister.
- II. Shortens the public comment period after a public hearing.
- III. Gives the director of legislative services limited discretion in the publication of rulemaking notices.
- IV. Provides for electronic copies of the rulemaking register.
- V. Allows agencies to hold a second public hearing on proposed rules.
- VI. Extends the expiration date of rules to 10 years and allows for extending rules by filing readoption of currently effective rules.
- VII. Allows for incorporation by reference of Internet content.
- VIII. Modifies procedures for interim and emergency rulemaking.
- IX. Requires the director of legislative services to develop a process for expedited readoption of rules.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 161-FN – AS INTRODUCED

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT            relative to procedures for adoption of agency rules under the administrative procedures act.

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

1            1 Procedure for Adopting Rule; Public Hearing. Amend RSA 541-A:3, IV to read as follows:

2            IV. [~~Holding~~] **Scheduling** a public hearing and receiving comments under RSA 541-A:11;

3            2 Notice of Rulemaking Proceedings; Scheduled Public Hearing. Amend RSA 541-A:6, I(e) to  
4 read as follows:

5            (e) The date of the first **scheduled** agency public hearing and the cut-off date for the  
6 submission of written materials to the agency.

7            3 Notice of Rulemaking Proceedings; Substantial Noncompliance Scheduled Public Hearing.  
8 Amend RSA 541-A:6, II and III to read as follows:

9            II. The director of legislative services may refuse to publish a notice if the director  
10 determines that there is significant noncompliance with the requirements of paragraph I. ***In this***  
11 ***paragraph, "significant noncompliance" means one or more errors of such magnitude that***  
12 ***a reasonable person would not be able to discern what rules are the subject of the***  
13 ***rulemaking proceeding and/or what the agency is proposing to do. The term includes the***  
14 ***absence of elements required by paragraph I.***

15            III. The agency shall send notice to the director of legislative services, to all persons  
16 regulated by the proposed rules who hold occupational licenses issued by the agency, and to all  
17 persons who have made timely request for advance notice of rulemaking proceedings. Upon request  
18 the agency shall send notice to the president of the senate, to the speaker of the house of  
19 representatives, to the chairperson of the fiscal committee, and to the chairpersons of the legislative  
20 committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days  
21 before the first **scheduled** agency public hearing required by RSA 541-A:11. Notice to occupational  
22 licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public notice  
23 advertisement in a publication of daily statewide circulation, or in such other manner deemed  
24 sufficient by the committee.

25            4 New Paragraphs; Rulemaking Register; Authority of Director; Date of Publication. Amend  
26 RSA 541-A:9 by inserting after paragraph I the following new paragraph:

27            I-a. Prior to publication, the director of legislative services may correct typographical,  
28 spelling, and punctuation errors, as well as unintentional errors in references and citations in a  
29 submission, provided the corrections do not affect the substance of the notice.

30            5 Rulemaking Register; Electronic Copies. Amend RSA 541-A:9, II and III to read as follows:

1           II. The rulemaking register shall be made available upon request to agencies and officials of  
2 this state free of charge. The director of legislative services shall send a *paper or electronic* copy of  
3 the rulemaking register upon request to the clerk of each municipality in the state and upon request  
4 to any member of the general court free of charge. *Municipalities and members of the general*  
5 *court shall be deemed to have requested an electronic copy unless a paper copy is*  
6 *specifically requested. Paper* copies of the register which are sent to municipalities and to  
7 members of the general court shall be sent by first-class mail.

8           III. *Paper copies of* the register shall also be made available upon request to other persons  
9 at prices fixed by the director of legislative services to cover mailing and publication costs.

10          6 Filing Proposed Rule Text; Establishing and Revising Text of Rules. Amend RSA 541-A:10 to  
11 read as follows:

12          541-A:10 Filing of Proposed Rule Text; *Establishing and Revising Text.*

13           I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the  
14 text of the proposed rule with the director of legislative services. The text *of the proposed rules* as  
15 filed *pursuant to RSA 541-A:3, III* shall not be changed [~~or established as~~] *prior to the hearing*  
16 *scheduled pursuant to RSA 541-A:11, I(a).*

17           II. *The agency shall not establish* the text of the final proposal until after the conclusion  
18 of the public comment period established pursuant to RSA [~~541-A:11~~] *541-A:11, I(b). If the agency*  
19 *elects to solicit comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft*  
20 *final proposal that is annotated to show how the rules as initially proposed are proposed*  
21 *to be changed. In response to comment received, the agency may revise the draft prior to*  
22 *filing the final proposal in accordance with RSA 541-A:12.*

23          7 Public Hearing; Public Comment Period. Amend RSA 541-A:11, I to read as follows:

24           I.(a) Each agency shall [~~hold~~] *schedule* at least one public hearing on all proposed rules  
25 and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or  
26 arguments in writing or, if practicable for the agency, in electronic format, in accordance with the  
27 terms of the notice and the provisions of this section. The office of legislative services shall provide  
28 oral or written comments on potential bases for committee objection under RSA 541-A:13, IV in a  
29 form and manner determined by the director of the office of legislative services. Each agency shall  
30 require all materials submitted in writing to be signed by the person who submits them, and the  
31 agency shall transfer to hard copy, if practicable for the agency, all materials submitted as diskette,  
32 electronic mail, or other electronic format. Copies of the proposed rule shall be available to the  
33 public under RSA 91-A and at least 5 days prior to the *date of the scheduled* hearing.

34           (b) For rules proposed by a board or commission, a period of at least [~~10~~] *5 business*  
35 *days* after the hearing shall be provided for the submission of materials in writing or in electronic  
36 format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice,  
37 the deadline for the submission of such materials shall not be earlier than the scheduled conclusion

1 of the public hearing. For rules proposed by an agency official, a period of at least [10] **5 business**  
2 days after the hearing shall be provided in all instances. If a hearing is continued or postponed as  
3 provided in paragraph III or IV of this section, the period for the submission of materials in writing  
4 or in electronic format shall be extended.

5 **(c) An agency may hold a public hearing or otherwise solicit public comment on**  
6 **a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3,**  
7 **V. Notice of such hearing or comment period shall be provided by such means as are**  
8 **deemed appropriate to reach interested persons, which may include publishing a notice in**  
9 **the rulemaking register.**

10 8 New Paragraph; Public Hearing; Preregistration. Amend RSA 541-A:11 by inserting after  
11 paragraph I the following new paragraph:

12 I-a. For an agency that has adopted preregistration requirements under RSA 541-A:16,  
13 I(b)(3), an agency that receives no preregistration for attendance at a scheduled hearing within 2  
14 business days in advance of the hearing may cancel the hearing upon informing the director of the  
15 office of legislative services of the cancellation. A requirement to preregister to attend the hearing  
16 shall be prominently included in the notice. Cancellation of the public hearing shall not affect the  
17 deadline for submission of comments.

18 9 Filing Final Proposal; Internet Content. Amend RSA 541-A:12, III and IV to read as follows:

19 III. ~~[With the final proposal, the agency shall also file the incorporation by reference~~  
20 ~~statement described by paragraph IV of this section, if the]~~ **An agency [incorporates into] may**  
21 **establish requirements in its rules [any] by citing to a document or to Internet content**  
22 **prepared by [any entity outside the agency] an unrelated third party. If state-enforceable**  
23 **requirements are so established, the agency shall file an incorporation by reference**  
24 **statement as specified in paragraph IV with the final proposal.** ~~[However, the]~~ **No** agency  
25 shall ~~not~~ incorporate by reference any document **or Internet content** prepared by or on behalf of  
26 the agency.

27 IV. Any ~~required~~ incorporation by reference statement **required by paragraph III** shall  
28 include a ~~separately signed~~ statement **signed** by the adopting authority:

29 (a) Certifying that the text of the ~~matter~~ incorporated **document or Internet content**  
30 has been reviewed by the agency, with the name of the reviewing official;

31 (b) Explaining how the text of the ~~matter~~ incorporated **document or Internet content**  
32 can be obtained by the public, and at what cost;

33 (c) Explaining any modifications to the ~~matter~~ incorporated **document or Internet**  
34 **content**;

35 (d) Discussing the comparative desirability of reproducing the incorporated ~~matter~~  
36 **document or Internet content** in full in the text of the rule; and

1 (e) Certifying that the agency has the capability and the intent to enforce the [rule]  
2 *requirements being incorporated.*

3 ***V. If an agency establishes requirements by incorporating undated Internet content***  
4 ***by reference, the agency shall make a read-only copy of the incorporated Internet content***  
5 ***no later than the date of filing the incorporation by reference statement, and make the***  
6 ***dated copy available to the public.***

7 10 New Section; Extension of Currently Effective Rules Pending Readoption. Amend RSA 541-A  
8 by inserting after section 14 the following new section:

9 541-A:14-a Extension of Currently Effective Rules Pending Readoption.

10 I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or  
11 without amendments, the currently effective rules shall continue in effect until the proposed rules  
12 are adopted and effective.

13 II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by  
14 the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-  
15 A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules shall  
16 expire 30 days after such deadline unless the agency has obtained a waiver of the deadline pursuant  
17 to RSA 541-A:40, IV. If the agency has obtained a waiver to a deadline, the existing rules shall  
18 expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the required action  
19 is not taken.

20 III. If rules are extended pursuant to this section, the agency shall:

21 (a) Adopt the proposed rules no later than 30 days after the date on which the agency is  
22 allowed to adopt the rules under RSA 541-A:14, I; and

23 (b) File the rules as required by RSA 541-A:14, III with an effective date that is not more  
24 than 60 days from the date of filing, except that an agency may specify an effective date that is more  
25 than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.

26 11 Agency Rules; Preregistration for Public Hearings. Amend RSA 541-A:16, I(b)(3) to read as  
27 follows:

28 (3) Rules governing public comment hearings for rulemaking, ***including***  
29 ***preregistration procedures.***

30 12 Filing Rules; Effective Date. Amend RSA 541-A:16, III to read as follows:

31 III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted  
32 rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, ***541-A:14-***  
33 ***a, III***, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs before  
34 such effective date and time. ***Except as provided in RSA 541-A:14-a***, a rule adopted under RSA  
35 541-A:14, IV shall expire after the last day of the [~~eighth~~] ***tenth*** year following its becoming effective,  
36 unless sooner amended, readopted, or repealed.

37 13 Time Limit; Effective Period. Amend RSA 541-A:17, I to read as follows:

1 I. No rule shall be effective for a period of longer than ~~[8]~~**10** years *except as extended*  
2 *pursuant to RSA 541-A:14-a*, but the agency may adopt an identical rule under RSA 541-A:5  
3 through RSA ~~[541-A:14]~~ **541-A:14-a**, in conformance with the drafting and procedure manual  
4 adopted under RSA 541-A:8.

5 14 Emergency Rules. Amend RSA 541-A:18, I to read as follows:

6 I. ~~[If an]~~ *An agency may proceed to adopt an emergency rule if it finds either* that an  
7 imminent peril to the public health or safety requires adoption of a rule with less notice than is required  
8 under RSA 541-A:6 *or that substantial fiscal harm to citizens of the state could occur if rules are*  
9 *not adopted with less notice than is required under RSA 541-A:6.* ~~[and states in writing its reasons~~  
10 ~~for that finding, it may proceed to adopt an emergency rule.]~~ The rule may be adopted without having  
11 been filed in proposed or final proposed form and may be adopted after whatever notice and hearing the  
12 agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to  
13 ensure that emergency rules are made known to persons who may be affected by them.

14 15 Emergency Rules; Adoption. Amend RSA 541-A:18, III(e) to read as follows:

15 (e) A signed and dated statement by the adopting authority explaining the nature of the  
16 ~~[imminent peril to the public health or safety]~~ *basis for the emergency rule*, including ~~[a~~  
17 ~~summary]~~ *an explanation* of the effect upon the state if the emergency rule were not adopted.

18 16 Interim Rules; New or Amended Statute. Amend RSA 541-A:19, I(a) to read as follows:

19 (a) Conform with a new or amended state statute, provided, however, that an agency  
20 shall not publish notice of a proposed interim rule more than ~~[90]~~ **120** days after the effective date of  
21 the new or amended statute;

22 17 Expedited Process for Readoption of Rules. The director of legislative services shall develop  
23 an expedited process for readopting rules which contain no changes or contain only minor changes.  
24 Minor changes shall include renumbering, updating internal references, references to documents  
25 incorporated by reference, date and year changes, typographical or grammatical errors, and other  
26 editorial changes. The director shall consult with agency staff as necessary. The director shall  
27 provide a report on an expedited process and any proposals for legislation to the chairperson of the  
28 joint legislative committee on administrative rules not later than November 1, 2011.

29 18 Transition; Application. The provisions of this act shall govern the following on or after the  
30 effective date of this act:

31 I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6 or RSA 541-A:19-c.

32 II. All emergency rules adopted under RSA 541-A:18.

33 III. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.

34 IV. All expedited repeal of rules under RSA 541-A:19-a.

35 V. All notices submitted to the director of legislative services for publication in the rulemaking  
36 register.

37 19 Effective Date. This act shall take effect 60 days after its passage.

LBAO  
11-0995  
02/03/11

**SB 161-FN - FISCAL NOTE**

**AN ACT** relative to procedures for adoption of agency rules under the administrative procedures act.

**FISCAL IMPACT:**

The Department of Administrative Services and the Legislative Branch state this bill may have an indeterminable impact on state expenditures in FY 2012 and in each fiscal year thereafter. There will be no fiscal impact on state revenues, or county and local revenues or expenditures.

**METHODOLOGY:**

The Department of Administrative Services states this bill addresses technical and procedural topics relating to administrative rulemaking. The Department states several sections of this bill may potentially increase or decrease personnel time expended in the rulemaking process. The Department states this bill may increase or decrease certain miscellaneous agency rulemaking expenditures. The Department is unable to determine this bill's overall fiscal impact on state expenditures.

The Legislative Branch states this bill may result in savings in agency staff time and resources due to fewer rulemaking tasks or fewer rulemaking proceedings. The Branch also states this bill may increase state expenditures as it requires amendments to the Office of Legislative Services' (OLS) record keeping and the online rulemaking program made available by OLS. The Branch is unable to determine this bill's overall fiscal impact on state expenditures.



SB 161-FN - AS AMENDED BY THE SENATE

03/16/11 0706s

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SENATE BILL

***161-FN***

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COMMITTEE: Executive Departments and Administration

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ANALYSIS

This bill:

I. Allows for preregistration for agency public hearings on proposed rules, and cancellation of a public hearing if no persons preregister.

II. Shortens the public comment period after a public hearing.

III. Gives the director of legislative services limited discretion in the publication of rulemaking notices.

IV. Provides for electronic copies of the rulemaking register.

V. Allows agencies to hold a second public hearing on proposed rules.

VI. Extends the expiration date of rules to 10 years and allows for extending rules by filing readoption of currently effective rules.

VII. Allows for incorporation by reference of Internet content.

VIII. Modifies procedures for interim and emergency rulemaking.

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

1 1 Procedure for Adopting Rule; Public Hearing. Amend RSA 541-A:3, IV to read as follows:

2 IV. [~~Holding~~] **Scheduling** a public hearing and receiving comments under RSA 541-A:11;

3 2 Notice of Rulemaking Proceedings; Scheduled Public Hearing; Concise Summary. Amend RSA  
4 541-A:6, I(e) and (f) to read as follows:

5 (e) The date of the first **scheduled** agency public hearing and the cut-off date for the  
6 submission of written materials to the agency.

7 (f) ***If existing rules are being amended, readopted, or readopted with***  
8 ***amendment***, a concise summary [~~explaining the effect~~] of the [~~rule~~] ***existing rules and any***  
9 ***proposed amendments, and if the proposed rules are being adopted, a concise summary of***  
10 ***the proposed rules.***

11 3 Notice of Rulemaking Proceedings; Substantial Noncompliance Scheduled Public Hearing.  
12 Amend RSA 541-A:6, II and III to read as follows:

13 II. The director of legislative services may refuse to publish a notice if the director  
14 determines that there is significant noncompliance with the requirements of paragraph I. ***In this***  
15 ***paragraph, "significant noncompliance" means one or more errors of such magnitude that***  
16 ***a reasonable person would not be able to discern what rules are the subject of the***  
17 ***rulemaking proceeding and/or what the agency is proposing to do. The term includes the***  
18 ***absence of elements required by paragraph I.***

19 III. The agency shall send notice to the director of legislative services, to all persons  
20 regulated by the proposed rules who hold occupational licenses issued by the agency, and to all  
21 persons who have made timely request for advance notice of rulemaking proceedings. Upon request  
22 the agency shall send notice to the president of the senate, to the speaker of the house of  
23 representatives, to the chairperson of the fiscal committee, and to the chairpersons of the legislative  
24 committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days  
25 before the first **scheduled** agency public hearing required by RSA 541-A:11, I. Notice to  
26 occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public  
27 notice advertisement in a publication of daily statewide circulation, or in such other manner ***that is***  
28 ***reasonably calculated to inform such licensees of the proposed rulemaking. The committee***  
29 ***may identify additional methods of notifying occupational licensees that are deemed***

1 sufficient ~~[by the committee]~~.

2 4 New Paragraphs; Rulemaking Register; Authority of Director; Date of Publication. Amend  
3 RSA 541-A:9 by inserting after paragraph I the following new paragraphs:

4 I-a. Prior to publication and with prior notice to the agency, the director of legislative  
5 services may correct typographical, spelling, and punctuation errors, as well as unintentional errors  
6 in references and citations in a submission, provided the corrections do not affect the substance of  
7 the notice.

8 I-b. The date of publication of the rulemaking register shall be the date on which the  
9 register is available to the public on the general court information services web site.

10 5 Rulemaking Register; Electronic Copies. Amend RSA 541-A:9, II and III to read as follows:

11 II. The rulemaking register shall be made available upon request to agencies and officials of  
12 this state free of charge. The director of legislative services shall send a *paper or electronic* copy of  
13 the rulemaking register upon request to the clerk of each municipality in the state and upon request  
14 to any member of the general court free of charge. *Municipalities and members of the general  
15 court shall be deemed to have requested an electronic copy unless a paper copy is  
16 specifically requested. Paper* copies of the register which are sent to municipalities and to  
17 members of the general court shall be sent by first-class mail.

18 III. *Paper copies of* the register shall also be made available upon request to other persons  
19 at prices fixed by the director of legislative services to cover mailing and publication costs.

20 6 Filing Proposed Rule Text; Establishing and Revising Text of Rules. Amend RSA 541-A:10 to  
21 read as follows:

22 541-A:10 Filing of Proposed Rule Text; *Establishing and Revising Text.*

23 I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the  
24 text of the proposed rule with the director of legislative services. The text *of the proposed rules* as  
25 filed *pursuant to RSA 541-A:3, III* shall not be changed ~~[or established as]~~ *prior to the hearing  
26 scheduled pursuant to RSA 541-A:11, I(a).*

27 II. *The agency shall not establish* the text of the final proposal until after the conclusion  
28 of the public comment period established pursuant to RSA ~~[541-A:11]~~ *541-A:11, I(b). If the agency  
29 elects to solicit comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft  
30 final proposal that is annotated to show how the rules as initially proposed are proposed  
31 to be changed. In response to comment received, the agency may revise the draft prior to  
32 filing the final proposal in accordance with RSA 541-A:12.*

33 7 Public Hearing; Public Comment Period. Amend RSA 541-A:11, I to read as follows:

34 I.(a) Each agency shall ~~[hold]~~ *schedule* at least one public hearing on all proposed rules  
35 *filed pursuant to RSA 541-A:3* and shall afford all interested persons reasonable opportunity to  
36 testify and to submit data, views, or arguments in writing or, if practicable for the agency, in  
37 electronic format, in accordance with the terms of the notice *filed pursuant to RSA 541-A:3, I* and

1 the provisions of this section. The office of legislative services shall provide oral or written comments  
 2 on potential bases for committee objection under RSA 541-A:13, IV in a form and manner  
 3 determined by the director of the office of legislative services. Each agency shall require all  
 4 materials submitted in writing to be signed by the person who submits them, and the agency shall  
 5 transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic  
 6 mail, or other electronic format. Copies of the proposed rule shall be available to the public under  
 7 RSA 91-A and at least 5 days prior to the *date of the scheduled* hearing.

8 (b) For rules proposed by a board or commission, a period of at least [10] *5 business*  
 9 days after the hearing shall be provided for the submission of materials in writing or in electronic  
 10 format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice,  
 11 the deadline for the submission of such materials shall not be earlier than the scheduled conclusion  
 12 of the public hearing. For rules proposed by an agency official, a period of at least [10] *5 business*  
 13 days after the hearing shall be provided in all instances. If a hearing is continued or postponed as  
 14 provided in paragraph III or IV of this section, the period for the submission of materials in writing  
 15 or in electronic format shall be extended *unless the previously-established deadline meets the*  
 16 *applicable requirement specified above.*

17 (c) *An agency may hold a public hearing or otherwise solicit public comment on*  
 18 *a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3,*  
 19 *V. Notice of such hearing or comment period shall be provided by such means as are*  
 20 *deemed appropriate to reach interested persons, which may include publishing a notice in*  
 21 *the rulemaking register.*

22 8 New Paragraph; Public Hearing; Preregistration. Amend RSA 541-A:11 by inserting after  
 23 paragraph I the following new paragraph:

24 I-a. For an agency that has adopted preregistration requirements under RSA 541-A:16,  
 25 I(b)(3), the agency may cancel a scheduled hearing if the agency:

26 (a) Has a reasonable belief that no member of the public is likely to attend the hearing;

27 (b) Has clearly stated the requirement to preregister for the hearing prominently in the  
 28 notice filed under RSA 541-A:6, I, and in any other information about the rulemaking proceeding the  
 29 agency has distributed to interested persons;

30 (c) Has received no preregistration for attendance at a scheduled hearing as of 2  
 31 business days in advance of the hearing; and

32 (d) Informs the director of legislative services of the cancellation.

33 Cancellation of the public hearing shall not affect the deadline for submission of comments.

34 9 Filing Final Proposal; Incorporation by Reference; Internet Content. Amend RSA 541-A:12, II-  
 35 IV to read as follows:

36 II. The final proposal shall include:

37 (a) A cover sheet listing:

1 (1) The number of the notice and the date the notice appeared in the rulemaking  
2 register;

3 (2) The name and address of the agency;

4 (3) The title and number of the rule; and

5 (4) A citation to the statutory authority for the rule.

6 (b) ~~Two copies~~ **One copy** of the established text of the final proposed rule.

7 (c) ~~A copy of the full text of the statutory authority for the rule.~~

8 ~~(d)~~ If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from  
9 the legislative budget assistant stating that as a result of notice and hearing the rule did change and  
10 explaining how this change affects the original fiscal impact statement.

11 ~~(e)~~ **(d)** A copy of the fixed text of the final proposed rule annotated clearly to show how  
12 the final proposed rule differs from the rule as initially proposed, if the text has changed.

13 III. ~~[With the final proposal, the agency shall also file the incorporation by reference~~  
14 ~~statement described by paragraph IV of this section, if the]~~ **An agency [incorporates into] may**  
15 **establish requirements in** its rules ~~[any]~~ **by citing to a document or to Internet content**  
16 **prepared by [any entity outside the agency] an unrelated third party. If state-enforceable**  
17 **requirements are so established, the agency shall file an incorporation by reference**  
18 **statement as specified in paragraph IV with the final proposal.** ~~[However, the]~~ **No** agency  
19 shall ~~[not]~~ incorporate by reference any document **or Internet content** prepared by or on behalf of  
20 the agency.

21 IV. Any ~~[required]~~ incorporation by reference statement **required by paragraph III** shall  
22 include a ~~[separately signed]~~ statement **signed** by the adopting authority:

23 (a) Certifying that the text of the ~~[matter]~~ incorporated **document or Internet content**  
24 has been reviewed by the agency, with the name of the reviewing official;

25 (b) Explaining how the text of the ~~[matter]~~ incorporated **document or Internet content**  
26 can be obtained by the public, and at what cost;

27 (c) Explaining any modifications to the ~~[matter]~~ incorporated **document or Internet**  
28 **content;**

29 (d) Discussing the comparative desirability of reproducing the incorporated ~~[matter]~~  
30 **document or Internet content** in full in the text of the rule; and

31 (e) Certifying that the agency has the capability and the intent to enforce the ~~[rule]~~  
32 **requirements being incorporated.**

33 V. **If an agency establishes requirements by incorporating undated Internet content**  
34 **by reference, the agency shall make a read-only copy of the incorporated Internet content**  
35 **no later than the date of filing the incorporation by reference statement, and make the**  
36 **dated copy available to the public.**

37 10 New Section; Extension of Currently Effective Rules Pending Reoption. Amend RSA 541-A

1 by inserting after section 14 the following new section:

2 541-A:14-a Extension of Currently Effective Rules Pending Readoption.

3 I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or  
4 without amendments, the currently effective rules in the filing which would otherwise expire prior to  
5 the completion of the readoption of the rules by the agency shall continue in effect until the proposed  
6 rules are adopted and effective.

7 II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by  
8 the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-  
9 A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules  
10 which would otherwise expire prior to the completion of the readoption of the rules by the agency  
11 shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline  
12 pursuant to RSA 541-A:40, IV(a). If the agency has obtained a waiver to a deadline, such existing  
13 rules shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the  
14 required action is not taken.

15 III. If rules are extended pursuant to this section, the agency shall:

16 (a) Adopt the proposed rules no later than 30 days after the date on which the agency is  
17 allowed to adopt the rules under RSA 541-A:14, I; and

18 (b) File the rules as required by RSA 541-A:14, III with an effective date that is not more  
19 than 60 days from the date of filing, except that an agency may specify an effective date that is more  
20 than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.

21 11 Agency Rules; Preregistration for Public Hearings. Amend RSA 541-A:16, I(b)(3) to read as  
22 follows:

23 (3) Rules governing public comment hearings for rulemaking, *including*  
24 *preregistration procedures if the agency intends to require preregistration for any*  
25 *rulemaking hearing.*

26 12 Filing Rules; Effective Date. Amend RSA 541-A:16, III to read as follows:

27 III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted  
28 rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, ***RSA 541-***  
29 ***A:14-a, III***, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs  
30 before such effective date and time. ***Except as provided in RSA 541-A:14-a***, a rule adopted under  
31 RSA 541-A:14, IV shall expire after the last day of the [eighth] *tenth* year following its becoming  
32 effective, unless sooner amended, readopted, or repealed.

33 13 Time Limit; Effective Period. Amend RSA 541-A:17, I to read as follows:

34 I. No rule shall be effective for a period of longer than [8] ***10*** years ***except as extended***  
35 ***pursuant to RSA 541-A:14-a***, but the agency may adopt an identical rule under RSA 541-A:5  
36 through RSA [541-A:14] ***541-A:14-a***, in conformance with the drafting and procedure manual  
37 adopted under RSA 541-A:8.

1 14 Emergency Rules. Amend RSA 541-A:18, I to read as follows:

2 I. ~~[If an]~~ **An agency may proceed to adopt an emergency rule if it finds either** that an  
3 imminent peril to the public health or safety requires adoption of a rule with less notice than is  
4 required under RSA 541-A:6 **or that substantial fiscal harm to the state or its citizens could**  
5 **occur if rules are not adopted with less notice than is required under RSA 541-A:6.** ~~[and~~  
6 ~~states in writing its reasons for that finding, it may proceed to adopt an emergency rule.]~~ The rule  
7 may be adopted without having been filed in proposed or final proposed form and may be adopted  
8 after whatever notice and hearing the agency finds to be practicable under the circumstances. The  
9 agency shall make reasonable efforts to ensure that emergency rules are made known to persons  
10 who may be affected by them.

11 15 Emergency Rules; Adoption. Amend RSA 541-A:18, III(e) to read as follows:

12 (e) A signed and dated statement by the adopting authority explaining the nature of the  
13 ~~[imminent peril to the public health or safety]~~ **basis for the emergency rule**, including ~~[a~~  
14 ~~summary]~~ **an explanation** of the effect upon the state if the emergency rule were not adopted.

15 16 Interim Rules; New or Amended Statute. Amend RSA 541-A:19, I(a) to read as follows:

16 (a) Conform with a new or amended **codified** state statute **or chaptered session law**,  
17 provided, however, that an agency shall not publish notice of a proposed interim rule more than ~~[90]~~  
18 **120** days after the effective date of the new or amended **codified state** statute **or chaptered**  
19 **session law**;

20 17 Expedited Process for Readoption of Rules. The director of legislative services shall develop  
21 an expedited process for readopting rules which contain no changes or contain only minor changes.  
22 Minor changes shall include renumbering, updating internal references, references to documents  
23 incorporated by reference, date and year changes, typographical or grammatical errors, and other  
24 editorial changes. The director shall consult with agency staff as necessary. The director shall  
25 provide a report on an expedited process and any proposals for legislation to the chairperson of the  
26 joint legislative committee on administrative rules not later than November 1, 2011.

27 18 Suspension of Provisions; Waiver. Amend RSA 541-A:40, IV as follows:

28 IV.(a) Notwithstanding any other provision of this chapter, the director of legislative  
29 services **may**, after consultation with the chair and vice-chair of the joint legislative committee on  
30 administrative rules, ~~[may,]~~ **and** for good cause shown, waive any deadline **or otherwise extend**  
31 **any time period** contained in any provision of this chapter **which relates to the rulemaking**  
32 **process**.

33 (b) **If a deadline is waived or a time period is extended, the director shall, after**  
34 **consultation with the chair and the vice-chair of the committee and the agency whose rules**  
35 **are affected, establish a new deadline by which the required action shall be taken.**

36 19 Transition; Application. The provisions of this act shall govern the following on or after the  
37 effective date of this act:

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**- Page 7 -**

- 1 I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6 or RSA 541-  
2 A:19-c.
- 3 II. All emergency rules adopted under RSA 541-A:18.
- 4 III. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.
- 5 IV. All expedited repeal of rules under RSA 541-A:19-a.
- 6 V. All notices submitted to the director of legislative services for publication in the  
7 rulemaking register.
- 8 20 Effective Date. This act shall take effect 60 days after its passage.



LBAO  
11-0995  
02/03/11

**SB 161-FN - FISCAL NOTE**

AN ACT           relative to procedures for adoption of agency rules under the administrative procedures act.

**FISCAL IMPACT:**

The Department of Administrative Services and the Legislative Branch state this bill may have an indeterminable impact on state expenditures in FY 2012 and in each fiscal year thereafter. There will be no fiscal impact on state revenues, or county and local revenues or expenditures.

**METHODOLOGY:**

The Department of Administrative Services states this bill addresses technical and procedural topics relating to administrative rulemaking. The Department states several sections of this bill may potentially increase or decrease personnel time expended in the rulemaking process. The Department states this bill may increase or decrease certain miscellaneous agency rulemaking expenditures. The Department is unable to determine this bill's overall fiscal impact on state expenditures.

The Legislative Branch states this bill may result in savings in agency staff time and resources due to fewer rulemaking tasks or fewer rulemaking proceedings. The Branch also states this bill may increase state expenditures as it requires amendments to the Office of Legislative Services' (OLS) record keeping and the online rulemaking program made available by OLS. The Branch is unable to determine this bill's overall fiscal impact on state expenditures.

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03/16/11 0706s  
03/23/11 1001s  
27Apr2011... 1442h  
06/22/11 2374CofC

2011 SESSION

11-0995  
10/03

SENATE BILL

***161-FN***

AN ACT

relative to procedures for adoption of agency rules under the administrative procedures act.

SPONSORS:

Sen. Merrill, Dist 21; Sen. Stiles, Dist 24; Sen. Carson, Dist 14; Rep. P. Schmidt, Straf 4; Rep. Norelli, Rock 16; Rep. Pilotte, Hills 16; Rep. B. Patten, Carr 4; Rep. C. McGuire, Merr 8

COMMITTEE:

Executive Departments and Administration

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AMENDED ANALYSIS

This bill:

- I. Shortens the public comment period after a public hearing.
- II. Gives the director of legislative services limited discretion in the publication of rulemaking notices.
- III. Provides for electronic copies of the rulemaking register.
- IV. Allows agencies to hold a second public hearing on proposed rules.
- V. Extends the expiration date of rules to 10 years and allows for extending rules by filing readoption of currently effective rules.
- VI. Allows for incorporation by reference of Internet content.
- VII. Modifies procedures for interim and emergency rulemaking.
- VIII. Requires the director of legislative services to develop a process for expedited readoption of rules.
- IX. Extends the date for introduction of a joint resolution by 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.

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03/23/11 1001s  
27Apr2011... 1442h  
06/22/11 2374CofC

11-0995  
10/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT           relative to procedures for adoption of agency rules under the administrative procedures act.

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

1           252:1 Notice of Rulemaking Proceedings; Concise Summary. Amend RSA 541-A:6, I(f) to read as  
2 follows:

3                   (f) *If existing rules are being amended, readopted, or readopted with*  
4 *amendment*, a concise summary [~~explaining the effect~~] of the [~~rule~~] *existing rules and any*  
5 *proposed amendments, and if the proposed rules are being adopted, a concise summary of*  
6 *the proposed rules.*

7           252:2 Notice of Rulemaking Proceedings; Substantial Noncompliance. Amend RSA 541-A:6, II  
8 and III to read as follows:

9           II. The director of legislative services may refuse to publish a notice if the director  
10 determines that there is significant noncompliance with the requirements of paragraph I. *In this*  
11 *paragraph, "significant noncompliance" means one or more errors of such magnitude that*  
12 *a reasonable person would not be able to discern what rules are the subject of the*  
13 *rulemaking proceeding and/or what the agency is proposing to do. The term includes the*  
14 *absence of elements required by paragraph I.*

15           III. The agency shall send notice to the director of legislative services, to all persons  
16 regulated by the proposed rules who hold occupational licenses issued by the agency, and to all  
17 persons who have made timely request for advance notice of rulemaking proceedings. Upon request  
18 the agency shall send notice to the president of the senate, to the speaker of the house of  
19 representatives, to the chairperson of the fiscal committee, and to the chairpersons of the legislative  
20 committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days  
21 before the first agency public hearing required by RSA 541-A:11, I. Notice to occupational licensees  
22 shall be by U.S. Mail, electronically, agency bulletin or newsletter, public notice advertisement in a  
23 publication of daily statewide circulation, or in such other manner *that is reasonably calculated*  
24 *to inform such licensees of the proposed rulemaking. The committee may identify*  
25 *additional methods of notifying occupational licensees that are* deemed sufficient [~~by the~~  
26 ~~committee~~].

27           252:3 New Paragraphs; Rulemaking Register; Authority of Director; Date of Publication.

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1 Amend RSA 541-A:9 by inserting after paragraph I the following new paragraphs:

2 I-a. Prior to publication and with prior notice to the agency, the director of legislative  
3 services may correct typographical, spelling, and punctuation errors, as well as unintentional errors  
4 in references and citations in a submission, provided the corrections do not affect the substance of  
5 the notice.

6 I-b. The date of publication of the rulemaking register shall be the date on which the  
7 register is available to the public on the general court information services web site.

8 252:4 Rulemaking Register; Electronic Copies. Amend RSA 541-A:9, II and III to read as  
9 follows:

10 II. The rulemaking register shall be made available upon request to agencies and officials of  
11 this state free of charge. The director of legislative services shall send a *paper or electronic* copy of  
12 the rulemaking register upon request to the clerk of each municipality in the state and upon request  
13 to any member of the general court free of charge. *Municipalities and members of the general*  
14 *court shall be deemed to have requested an electronic copy unless a paper copy is*  
15 *specifically requested. Paper* copies of the register which are sent to municipalities and to  
16 members of the general court shall be sent by first-class mail.

17 III. *Paper copies* of the register shall also be made available upon request to other persons  
18 at prices fixed by the director of legislative services to cover mailing and publication costs.

19 252:5 Filing Proposed Rule Text; Establishing and Revising Text of Rules. RSA 541-A:10 is  
20 repealed and reenacted to read as follows:

21 541-A:10 Filing of Proposed Rule Text; Establishing and Revising Text.

22 I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the  
23 text of the proposed rule with the director of legislative services. The first time a rule is proposed  
24 under RSA 541-A:3 to implement newly-enacted state authority, the agency shall send an electronic  
25 copy of the notice and proposed rule to the chair of each house and senate standing policy committee,  
26 as defined in RSA 541-A:1, XVI, for distribution to the members of such standing policy committees.  
27 If the newly-enacted state authority was not referred originally to a standing policy committee, the  
28 agency shall send an electronic copy of the notice and proposed rule to the speaker of the house and  
29 senate president for appropriate distribution. If the agency does not have the technology necessary  
30 to send an electronic copy, the agency shall send a paper copy. The members of the standing policy  
31 committees receiving proposed rules may review the proposed rules to determine whether the  
32 proposed rule is consistent with the intent of the authorizing legislation. If a standing policy  
33 committee concludes that the proposed rule is not consistent with the intent of the authorizing  
34 legislation, the standing policy committee shall send written notice to the agency, with a copy to the  
35 director of legislative services, identifying the provision or provisions the committee believes to be  
36 inconsistent with legislative intent. Such written notice may be sent to the agency via e-mail and

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1 shall be delivered so as to be received by the agency no later than the deadline for public comment  
2 specified in the rulemaking notice. If the agency does not receive notice from any standing policy  
3 committee by the end of the public comment period, the agency may proceed on the basis that the  
4 rule is consistent with the intent of the authorizing legislation. The text of the proposed rules as  
5 filed by the agency pursuant to RSA 541-A:3, III shall not be changed prior to the hearing held  
6 pursuant to RSA 541-A:11, I(a).

7 II. The agency shall not establish the text of the final proposal until after the conclusion of  
8 the public comment period established pursuant to RSA 541-A:11, I(b). If the agency elects to solicit  
9 comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft final proposal that is  
10 annotated to show how the rules as initially proposed are proposed to be changed. In response to  
11 comment received, the agency may revise the draft prior to filing the final proposal in accordance  
12 with RSA 541-A:12.

13 252:6 Public Hearing; Public Comment Period. Amend RSA 541-A:11, I to read as follows:

14 I.(a) Each agency shall hold at least one public hearing on all proposed rules *filed*  
15 *pursuant to RSA 541-A:3* and shall afford all interested persons reasonable opportunity to testify  
16 and to submit data, views, or arguments in writing or, if practicable for the agency, in electronic  
17 format, in accordance with the terms of the notice *filed pursuant to RSA 541-A:3, I* and the  
18 provisions of this section. The office of legislative services shall provide oral or written comments on  
19 potential bases for committee objection under RSA 541-A:13, IV in a form and manner determined by  
20 the director of the office of legislative services. Each agency shall require all materials submitted in  
21 writing to be signed by the person who submits them, and the agency shall transfer to hard copy, if  
22 practicable for the agency, all materials submitted as diskette, electronic mail, or other electronic  
23 format. Copies of the proposed rule shall be available to the public under RSA 91-A and at least 5  
24 days prior to the *date of the* hearing.

25 (b) For rules proposed by a board or commission, a period of at least ~~[10]~~ *5 business*  
26 days after the hearing shall be provided for the submission of materials in writing or in electronic  
27 format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice,  
28 the deadline for the submission of such materials shall not be earlier than the scheduled conclusion  
29 of the public hearing. For rules proposed by an agency official, a period of at least ~~[10]~~ *5 business*  
30 days after the hearing shall be provided in all instances. If a hearing is continued or postponed as  
31 provided in paragraph III or IV of this section, the period for the submission of materials in writing  
32 or in electronic format shall be extended *unless the previously-established deadline meets the*  
33 *applicable requirement specified above.*

34 (c) *An agency may hold a public hearing or otherwise solicit public comment on*  
35 *a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3,*  
36 *V. Notice of such hearing or comment period shall be provided by such means as are*

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1 *deemed appropriate to reach interested persons, which may include publishing a notice in*  
2 *the rulemaking register.*

3 252:7 Filing Final Proposal; Incorporation by Reference; Internet Content. Amend RSA 541-  
4 A:12, II-IV to read as follows:

5 II. The final proposal shall include:

6 (a) A cover sheet listing:

7 (1) The number of the notice and the date the notice appeared in the rulemaking  
8 register;

9 (2) The name and address of the agency;

10 (3) The title and number of the rule; and

11 (4) A citation to the statutory authority for the rule.

12 (b) ~~[Two copies]~~ **One copy** of the established text of the final proposed rule.

13 (c) ~~[A copy of the full text of the statutory authority for the rule.]~~

14 ~~(d)]~~ If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from  
15 the legislative budget assistant stating that as a result of notice and hearing the rule did change and  
16 explaining how this change affects the original fiscal impact statement.

17 ~~[(e)]~~ (d) A copy of the fixed text of the final proposed rule annotated clearly to show how  
18 the final proposed rule differs from the rule as initially proposed, if the text has changed.

19 III. ~~[With the final proposal, the agency shall also file the incorporation by reference~~  
20 ~~statement described by paragraph IV of this section, if the]~~ **An agency [incorporates into] may**  
21 **establish requirements in** its rules ~~[any]~~ **by citing to a document or to Internet content**  
22 **prepared by [any entity outside the agency] an unrelated third party. If state-enforceable**  
23 **requirements are so established, the agency shall file an incorporation by reference**  
24 **statement as specified in paragraph IV with the final proposal.** ~~[However, the]~~ **No** agency  
25 shall ~~[not]~~ incorporate by reference any document **or Internet content** prepared by or on behalf of  
26 the agency.

27 IV. Any ~~[required]~~ incorporation by reference statement **required by paragraph III** shall  
28 include a ~~[separately signed]~~ statement **signed** by the adopting authority:

29 (a) Certifying that the text of the ~~[matter]~~ incorporated **document or Internet content**  
30 has been reviewed by the agency, with the name of the reviewing official;

31 (b) Explaining how the text of the ~~[matter]~~ incorporated **document or Internet content**  
32 can be obtained by the public, and at what cost;

33 (c) Explaining any modifications to the ~~[matter]~~ incorporated **document or Internet**  
34 **content**;

35 (d) Discussing the comparative desirability of reproducing the incorporated ~~[matter]~~  
36 **document or Internet content** in full in the text of the rule; and

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1 (e) Certifying that the agency has the capability and the intent to enforce the ~~[rule]~~  
2 *requirements being incorporated.*

3 *V. If an agency establishes requirements by incorporating undated Internet content*  
4 *by reference, the agency shall make a read-only copy of the incorporated Internet content*  
5 *no later than the date of filing the incorporation by reference statement, and make the*  
6 *dated copy available to the public.*

7 252:8 New Section; Extension of Currently Effective Rules Pending Readoption. Amend RSA  
8 541-A by inserting after section 14 the following new section:

9 541-A:14-a Extension of Currently Effective Rules Pending Readoption.

10 I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or  
11 without amendments, the currently effective rules in the filing which would otherwise expire prior to  
12 the completion of the readoption of the rules by the agency shall continue in effect until the proposed  
13 rules are adopted and effective.

14 II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by  
15 the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-  
16 A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules  
17 which would otherwise expire prior to the completion of the readoption of the rules by the agency  
18 shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline  
19 pursuant to RSA 541-A:40, IV(a). If the agency has obtained a waiver to a deadline, such existing  
20 rules shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the  
21 required action is not taken.

22 III. If rules are extended pursuant to this section, the agency shall:

23 (a) Adopt the proposed rules no later than 30 days after the date on which the agency is  
24 allowed to adopt the rules under RSA 541-A:14, I; and

25 (b) File the rules as required by RSA 541-A:14, III with an effective date that is not more  
26 than 60 days from the date of filing, except that an agency may specify an effective date that is more  
27 than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.

28 252:9 Filing Rules; Effective Date. Amend RSA 541-A:16, III to read as follows:

29 III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted  
30 rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, ***RSA 541-***  
31 ***A:14-a, III***, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs  
32 before such effective date and time. ***Except as provided in RSA 541-A:14-a***, a rule adopted under  
33 RSA 541-A:14, IV shall expire after the last day of the ~~[eighth]~~ ***tenth*** year following its becoming  
34 effective, unless sooner amended, readopted, or repealed.

35 252:10 Time Limit; Effective Period. Amend RSA 541-A:17, I to read as follows:

36 I. No rule shall be effective for a period of longer than ~~[8]~~ ***10*** years ***except as extended***

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1 *pursuant to RSA 541-A:14-a*, but the agency may adopt an identical rule under RSA 541-A:5  
2 through RSA ~~[541-A:14]~~ *541-A:14-a*, in conformance with the drafting and procedure manual  
3 adopted under RSA 541-A:8.

4 252:11 Emergency Rules. Amend RSA 541-A:18, I to read as follows:

5 I. ~~[If an]~~ *An agency may proceed to adopt an emergency rule if it finds either that an*  
6 *imminent peril to the public health or safety requires adoption of a rule with less notice than is*  
7 *required under RSA 541-A:6 or that substantial fiscal harm to the state or its citizens could*  
8 *occur if rules are not adopted with less notice than is required under RSA 541-A:6.* ~~[and~~  
9 ~~states in writing its reasons for that finding, it may proceed to adopt an emergency rule.]~~ The rule  
10 may be adopted without having been filed in proposed or final proposed form and may be adopted  
11 after whatever notice and hearing the agency finds to be practicable under the circumstances. The  
12 agency shall make reasonable efforts to ensure that emergency rules are made known to persons  
13 who may be affected by them.

14 252:12 Emergency Rules; Adoption. Amend RSA 541-A:18, III(e) to read as follows:

15 (e) A signed and dated statement by the adopting authority explaining the nature of the  
16 ~~[imminent peril to the public health or safety]~~ *basis for the emergency rule*, including ~~[a~~  
17 ~~summary]~~ *an explanation* of the effect upon the state if the emergency rule were not adopted.

18 252:13 Interim Rules; New or Amended Statute. Amend RSA 541-A:19, I(a) to read as follows:

19 (a) Conform with a new or amended *codified state statute or chaptered session law*,  
20 provided, however, that an agency shall not publish notice of a proposed interim rule more than ~~[90]~~  
21 *120* days after the effective date of the new or amended *codified state statute or chaptered*  
22 *session law*;

23 252:14 Expedited Process for Readoption of Rules. The director of legislative services shall  
24 develop an expedited process for readopting rules which contain no changes or contain only minor  
25 changes. Minor changes shall include renumbering, updating internal references, references to  
26 documents incorporated by reference, date and year changes, typographical or grammatical errors,  
27 and other editorial changes. The director shall consult with agency staff as necessary. The director  
28 shall provide a report on an expedited process and any proposals for legislation to the chairperson of  
29 the joint legislative committee on administrative rules not later than November 1, 2012.

30 252:15 Suspension of Provisions; Waiver. Amend RSA 541-A:40, IV as follows:

31 IV.(a) Notwithstanding any other provision of this chapter, the director of legislative  
32 services *may*, after consultation with the chair and vice-chair of the joint legislative committee on  
33 administrative rules, ~~[may,]~~ *and* for good cause shown, waive any deadline *or otherwise extend*  
34 *any time period* contained in any provision of this chapter *which relates to the rulemaking*  
35 *process*.

36 (b) *If a deadline is waived or a time period is extended, the director shall, after*



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1 *consultation with the chair and the vice-chair of the committee and the agency whose rules*  
2 *are affected, establish a new deadline by which the required action shall be taken.*

3 252:16 Review by the Joint Legislative Committee on Administrative Rules; Introduction of  
4 Joint Resolution. Amend RSA 541-A:13, VII(c) to read as follows:

5 (c) If the committee votes to sponsor a joint resolution pursuant to subparagraph VII(b),  
6 the joint resolution shall be introduced in the house of representatives or senate within ~~[10]~~ 20  
7 business days of such vote when the general court is in session and ~~[10]~~ 20 business days of the start  
8 of the following legislative session if such vote occurs when the general court is not in session. If a  
9 joint resolution is not introduced within this time frame, the agency may adopt the rule. If a joint  
10 resolution is introduced within this time frame, the agency shall be prevented from adopting and  
11 filing such rule until final legislative action is taken on the resolution or the passage of 90  
12 consecutive calendar days during which the general court shall have been in session, whichever  
13 occurs first. The 90 calendar day period shall commence on the date such joint resolution has been  
14 introduced. If the session of the general court adjourns prior to the sixtieth calendar day after such  
15 joint resolution has been introduced, then the agency shall be prevented from adopting and filing  
16 such rule until 90 calendar days, beginning with the next session of the general court, have  
17 passed.252:

18 252:17 Transition; Application. The provisions of this act shall govern the following on or after  
19 the effective date of this act:

20 I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6 or RSA 541-  
21 A:19-c.

22 II. All emergency rules adopted under RSA 541-A:18.

23 III. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.

24 IV. All expedited repeal of rules under RSA 541-A:19-a.

25 V. All notices submitted to the director of legislative services for publication in the  
26 rulemaking register.

27 252:18 Effective Date. This act shall take effect 60 days after its passage.

28 Approved: July 13, 2011

29 Effective Date: September 11, 2011

**SB 161 FISCAL NOTE**

AN ACT           relative to procedures for adoption of agency rules under the administrative procedures act.

**FISCAL IMPACT:**

The Department of Administrative Services and the Legislative Branch state this bill, as amended by the House (Amendment #2011-1442h), may have an indeterminable impact on state expenditures and may increase state revenues by an indeterminable amount in FY 2012 and in each fiscal year thereafter. There will be no fiscal impact on county and local revenues or expenditures.

**METHODOLOGY:**

The Department of Administrative Services states this bill addresses technical and procedural topics relating to administrative rulemaking. The Department states several sections of this bill may potentially increase or decrease personnel time expended in the rulemaking process. The Department states this bill may increase or decrease certain miscellaneous agency rulemaking expenditures. The Department is unable to determine this bill's overall fiscal impact on state expenditures.

The Legislative Branch states this bill may result in savings in agency staff time and resources due to fewer rulemaking tasks or fewer rulemaking proceedings, and by allowing interim rulemaking to address chaptered session law such as the operating budget. The Branch states this bill allows continued operation of a rule pending readoption, potentially increasing state revenues if fees which would otherwise expire remain in effect. The Branch states this bill may increase state general fund expenditures as it requires amendments to OLS record keeping and the online rulemaking program made available by OLS. The Branch also states this bill may decrease state expenditures by an indeterminable amount by allowing agencies to create emergency rules to address potential fiscal harm to the state. The Branch is unable to determine this bill's overall fiscal impact on state expenditures.

# Amendments

Amendment to SB 161-FN

1 Amend the bill by replacing section 4 with the following:

2

3 4 New Paragraphs; Rulemaking Register; Authority of Director; Date of Publication. Amend  
4 RSA 541-A:9 by inserting after paragraph I the following new paragraphs:

5 I-a. Prior to publication and with prior notice to the agency, the director of legislative  
6 services may correct typographical, spelling, and punctuation errors, as well as unintentional errors  
7 in references and citations in a submission, provided the corrections do not affect the substance of  
8 the notice.

9 I-b. The date of publication of the rulemaking register shall be the date on which the  
10 register is available to the public on the general court information services web site.

11

12 Amend the bill by replacing section 9 with the following:

13

14 9 Filing Final Proposal; Internet Content. Amend RSA 541-A:12, II-IV to read as follows:

15 II. The final proposal shall include:

16 (a) A cover sheet listing:

17 (1) The number of the notice and the date the notice appeared in the rulemaking  
18 register;

19 (2) The name and address of the agency;

20 (3) The title and number of the rule; and

21 (4) A citation to the statutory authority for the rule.

22 (b) ~~Two copies~~ **One copy** of the established text of the final proposed rule.

23 (c) ~~A copy of the full text of the statutory authority for the rule.~~

24 ~~(d)~~ If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from  
25 the legislative budget assistant stating that as a result of notice and hearing the rule did change and  
26 explaining how this change affects the original fiscal impact statement.

27 ~~(e)~~ **(d)** A copy of the fixed text of the final proposed rule annotated clearly to show how  
28 the final proposed rule differs from the rule as initially proposed, if the text has changed.

29 III. ~~[With the final proposal, the agency shall also file the incorporation by reference~~  
30 ~~statement described by paragraph IV of this section, if the]~~ **An** agency ~~[incorporates into]~~ **may**  
31 **establish requirements in** its rules ~~[any]~~ **by citing to a document or to Internet content**  
32 prepared by ~~[any entity outside the agency]~~ **an unrelated third party. If state-enforceable**

Amendment to SB 161-FN

- Page 2 -

1 *requirements are so established, the agency shall file an incorporation by reference*  
2 *statement as specified in paragraph IV with the final proposal.* [~~However, the~~] *No* agency  
3 shall [~~not~~] incorporate by reference any document *or Internet content* prepared by or on behalf of  
4 the agency.

5 IV. Any [~~required~~] incorporation by reference statement *required by paragraph III* shall  
6 include a [~~separately signed~~] statement *signed* by the adopting authority:

7 (a) Certifying that the text of the [~~matter~~] incorporated *document or Internet content*  
8 has been reviewed by the agency, with the name of the reviewing official;

9 (b) Explaining how the text of the [~~matter~~] incorporated *document or Internet content*  
10 can be obtained by the public, and at what cost;

11 (c) Explaining any modifications to the [~~matter~~] incorporated *document or Internet*  
12 *content*;

13 (d) Discussing the comparative desirability of reproducing the incorporated [~~matter~~]  
14 *document or Internet content* in full in the text of the rule; and

15 (e) Certifying that the agency has the capability and the intent to enforce the [~~rule~~]  
16 *requirements being incorporated.*

17 V. *If an agency establishes requirements by incorporating undated Internet content*  
18 *by reference, the agency shall make a read-only copy of the incorporated Internet content*  
19 *no later than the date of filing the incorporation by reference statement, and make the*  
20 *dated copy available to the public.*

21  
22 Amend RSA 541-A:14-a as inserted by section 10 of the bill by replacing it with the following:

23  
24 541-A:14-a Extension of Currently Effective Rules Pending Readoption.

25 I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or  
26 without amendments, the currently effective rules in the filing which would otherwise expire prior to  
27 the completion of the readoption of the rules by the agency shall continue in effect until the proposed  
28 rules are adopted and effective.

29 II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by  
30 the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-  
31 A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules  
32 which would otherwise expire prior to the completion of the readoption of the rules by the agency  
33 shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline  
34 pursuant to RSA 541-A:40, IV. If the agency has obtained a waiver to a deadline, such existing rules  
35 shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the required  
36 action is not taken.

37 III. If rules are extended pursuant to this section, the agency shall:

**Amendment to SB 161-FN**

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1 (a) Adopt the proposed rules no later than 30 days after the date on which the agency is  
2 allowed to adopt the rules under RSA 541-A:14, I; and

3 (b) File the rules as required by RSA 541-A:14, III with an effective date that is not more  
4 than 60 days from the date of filing, except that an agency may specify an effective date that is more  
5 than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.  
6

7 Amend the bill by inserting after section 16 the following and renumbering the original sections 17-  
8 19 to read as 19-21, respectively:

9  
10 17 Notice of Rulemaking Proceedings; Concise Summary. Amend RSA 541-A:6, I(f) to read as  
11 follows:

12 (f) *If existing rules are being amended, readopted, or readopted with*  
13 *amendment*, a concise summary [~~explaining the effect~~] of the [rule] *existing rules and any*  
14 *proposed amendments, and if the proposed rules are being adopted, a concise summary of*  
15 *the proposed rules.*

16 18 Suspension of Provisions; Waiver. Amend RSA 541-A:40, IV as follows:

17 IV.(a) Notwithstanding any other provision of this chapter, the director of legislative  
18 services, after consultation with the chair and vice-chair of the joint legislative committee on  
19 administrative rules, may, for good cause shown, waive any deadline *or otherwise extend any time*  
20 *period* contained in any provision of this chapter *which relates to the rulemaking process.*

21 (b) *If a deadline is waived or a time period is extended, the director shall, after*  
22 *consultation with the chair and vice-chair committee and the agency whose rules are*  
23 *affected, establish a new deadline by which the required action shall be taken.*

Amendment to SB 161-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Procedure for Adopting Rule; Public Hearing. Amend RSA 541-A:3, IV to read as follows:

4 IV. ~~[Holding]~~ **Scheduling** a public hearing and receiving comments under RSA 541-A:11;

5 2 Notice of Rulemaking Proceedings; Scheduled Public Hearing; Concise Summary. Amend RSA  
6 541-A:6, I(e) and (f) to read as follows:

7 (e) The date of the first *scheduled* agency public hearing and the cut-off date for the  
8 submission of written materials to the agency.

9 (f) *If existing rules are being amended, readopted, or readopted with*  
10 *amendment*, a concise summary [~~explaining the effect~~] of the [~~rule~~] *existing rules and any*  
11 *proposed amendments, and if the proposed rules are being adopted, a concise summary of*  
12 *the proposed rules.*

13 3 Notice of Rulemaking Proceedings; Substantial Noncompliance Scheduled Public Hearing.  
14 Amend RSA 541-A:6, II and III to read as follows:

15 II. The director of legislative services may refuse to publish a notice if the director  
16 determines that there is significant noncompliance with the requirements of paragraph I. *In this*  
17 *paragraph, "significant noncompliance" means one or more errors of such magnitude that*  
18 *a reasonable person would not be able to discern what rules are the subject of the*  
19 *rulemaking proceeding and/or what the agency is proposing to do. The term includes the*  
20 *absence of elements required by paragraph I.*

21 III. The agency shall send notice to the director of legislative services, to all persons  
22 regulated by the proposed rules who hold occupational licenses issued by the agency, and to all  
23 persons who have made timely request for advance notice of rulemaking proceedings. Upon request  
24 the agency shall send notice to the president of the senate, to the speaker of the house of  
25 representatives, to the chairperson of the fiscal committee, and to the chairpersons of the legislative  
26 committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days  
27 before the first *scheduled* agency public hearing required by RSA 541-A:11, I. Notice to  
28 occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public  
29 notice advertisement in a publication of daily statewide circulation, or in such other manner *that is*  
30 *reasonably calculated to inform such licensees of the proposed rulemaking. The committee*  
31 *may identify additional methods of notifying occupational licensees that are deemed*

Amendment to SB 161-FN

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1 sufficient [~~by the committee~~].

2 4 New Paragraphs; Rulemaking Register; Authority of Director; Date of Publication. Amend  
3 RSA 541-A:9 by inserting after paragraph I the following new paragraphs:

4 I-a. Prior to publication and with prior notice to the agency, the director of legislative  
5 services may correct typographical, spelling, and punctuation errors, as well as unintentional errors  
6 in references and citations in a submission, provided the corrections do not affect the substance of  
7 the notice.

8 I-b. The date of publication of the rulemaking register shall be the date on which the  
9 register is available to the public on the general court information services web site.

10 5 Rulemaking Register; Electronic Copies. Amend RSA 541-A:9, II and III to read as follows:

11 II. The rulemaking register shall be made available upon request to agencies and officials of  
12 this state free of charge. The director of legislative services shall send a *paper or electronic* copy of  
13 the rulemaking register upon request to the clerk of each municipality in the state and upon request  
14 to any member of the general court free of charge. *Municipalities and members of the general  
15 court shall be deemed to have requested an electronic copy unless a paper copy is  
16 specifically requested. Paper* copies of the register which are sent to municipalities and to  
17 members of the general court shall be sent by first-class mail.

18 III. *Paper copies of* the register shall also be made available upon request to other persons  
19 at prices fixed by the director of legislative services to cover mailing and publication costs.

20 6 Filing Proposed Rule Text; Establishing and Revising Text of Rules. Amend RSA 541-A:10 to  
21 read as follows:

22 541-A:10 Filing of Proposed Rule Text; *Establishing and Revising Text.*

23 I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the  
24 text of the proposed rule with the director of legislative services. The text *of the proposed rules* as  
25 filed *pursuant to RSA 541-A:3, III* shall not be changed [~~or established as~~] *prior to the hearing  
26 scheduled pursuant to RSA 541-A:11, I(a).*

27 II. *The agency shall not establish* the text of the final proposal until after the conclusion  
28 of the public comment period established pursuant to RSA [~~541-A:11~~] *541-A:11, I(b). If the agency  
29 elects to solicit comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft  
30 final proposal that is annotated to show how the rules as initially proposed are proposed  
31 to be changed. In response to comment received, the agency may revise the draft prior to  
32 filing the final proposal in accordance with RSA 541-A:12.*

33 7 Public Hearing; Public Comment Period. Amend RSA 541-A:11, I to read as follows:

34 I.(a) Each agency shall [~~hold~~] *schedule* at least one public hearing on all proposed rules  
35 *filed pursuant to RSA 541-A:3* and shall afford all interested persons reasonable opportunity to  
36 testify and to submit data, views, or arguments in writing or, if practicable for the agency, in  
37 electronic format, in accordance with the terms of the notice *filed pursuant to RSA 541-A:3, I* and



1 the provisions of this section. The office of legislative services shall provide oral or written comments  
2 on potential bases for committee objection under RSA 541-A:13, IV in a form and manner  
3 determined by the director of the office of legislative services. Each agency shall require all  
4 materials submitted in writing to be signed by the person who submits them, and the agency shall  
5 transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic  
6 mail, or other electronic format. Copies of the proposed rule shall be available to the public under  
7 RSA 91-A and at least 5 days prior to the *date of the scheduled* hearing.

8 (b) For rules proposed by a board or commission, a period of at least [~~10~~] *5 business*  
9 days after the hearing shall be provided for the submission of materials in writing or in electronic  
10 format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice,  
11 the deadline for the submission of such materials shall not be earlier than the scheduled conclusion  
12 of the public hearing. For rules proposed by an agency official, a period of at least [~~10~~] *5 business*  
13 days after the hearing shall be provided in all instances. If a hearing is continued or postponed as  
14 provided in paragraph III or IV of this section, the period for the submission of materials in writing  
15 or in electronic format shall be extended *unless the previously-established deadline meets the*  
16 *applicable requirement specified above.*

17 (c) *An agency may hold a public hearing or otherwise solicit public comment on*  
18 *a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3,*  
19 *V. Notice of such hearing or comment period shall be provided by such means as are*  
20 *deemed appropriate to reach interested persons, which may include publishing a notice in*  
21 *the rulemaking register.*

22 8 New Paragraph; Public Hearing; Preregistration. Amend RSA 541-A:11 by inserting after  
23 paragraph I the following new paragraph:

24 I-a. For an agency that has adopted preregistration requirements under RSA 541-A:16,  
25 I(b)(3), the agency may cancel a scheduled hearing if the agency:

26 (a) Has a reasonable belief that no member of the public is likely to attend the hearing;

27 (b) Has clearly stated the requirement to preregister for the hearing prominently in the  
28 notice filed under RSA 541-A:6, I, and in any other information about the rulemaking proceeding the  
29 agency has distributed to interested persons;

30 (c) Has received no preregistration for attendance at a scheduled hearing as of 2  
31 business days in advance of the hearing; and

32 (d) Informs the director of legislative services of the cancellation.

33 Cancellation of the public hearing shall not affect the deadline for submission of comments.

34 9 Filing Final Proposal; Incorporation by Reference; Internet Content. Amend RSA 541-A:12, II-  
35 IV to read as follows:

36 II. The final proposal shall include:

37 (a) A cover sheet listing:

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1 (1) The number of the notice and the date the notice appeared in the rulemaking  
2 register;

3 (2) The name and address of the agency;

4 (3) The title and number of the rule; and

5 (4) A citation to the statutory authority for the rule.

6 (b) ~~[Two copies]~~ **One copy** of the established text of the final proposed rule.

7 (c) ~~[A copy of the full text of the statutory authority for the rule.]~~

8 (d) If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from  
9 the legislative budget assistant stating that as a result of notice and hearing the rule did change and  
10 explaining how this change affects the original fiscal impact statement.

11 (e) (d) A copy of the fixed text of the final proposed rule annotated clearly to show how  
12 the final proposed rule differs from the rule as initially proposed, if the text has changed.

13 III. ~~[With the final proposal, the agency shall also file the incorporation by reference~~  
14 ~~statement described by paragraph IV of this section, if the]~~ **An agency [incorporates into] may**  
15 **establish requirements in** its rules ~~[any]~~ **by citing to a document or to Internet content**  
16 **prepared by [any entity outside the agency] an unrelated third party. If state-enforceable**  
17 **requirements are so established, the agency shall file an incorporation by reference**  
18 **statement as specified in paragraph IV with the final proposal.** ~~[However, the]~~ **No** agency  
19 shall ~~[not]~~ incorporate by reference any document **or Internet content** prepared by or on behalf of  
20 the agency.

21 IV. Any ~~[required]~~ incorporation by reference statement **required by paragraph III** shall  
22 include a ~~[separately signed]~~ statement **signed** by the adopting authority:

23 (a) Certifying that the text of the ~~[matter]~~ incorporated **document or Internet content**  
24 has been reviewed by the agency, with the name of the reviewing official;

25 (b) Explaining how the text of the ~~[matter]~~ incorporated **document or Internet content**  
26 can be obtained by the public, and at what cost;

27 (c) Explaining any modifications to the ~~[matter]~~ incorporated **document or Internet**  
28 **content;**

29 (d) Discussing the comparative desirability of reproducing the incorporated ~~[matter]~~  
30 **document or Internet content** in full in the text of the rule; and

31 (e) Certifying that the agency has the capability and the intent to enforce the ~~[rule]~~  
32 **requirements being incorporated.**

33 **V. If an agency establishes requirements by incorporating undated Internet content**  
34 **by reference, the agency shall make a read-only copy of the incorporated Internet content**  
35 **no later than the date of filing the incorporation by reference statement, and make the**  
36 **dated copy available to the public.**

37 10 New Section; Extension of Currently Effective Rules Pending Readoption. Amend RSA 541-A

Amendment to SB 161-FN

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1 by inserting after section 14 the following new section:

2 541-A:14-a Extension of Currently Effective Rules Pending Readoption.

3 I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or  
4 without amendments, the currently effective rules in the filing which would otherwise expire prior to  
5 the completion of the readoption of the rules by the agency shall continue in effect until the proposed  
6 rules are adopted and effective.

7 II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by  
8 the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-  
9 A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules  
10 which would otherwise expire prior to the completion of the readoption of the rules by the agency  
11 shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline  
12 pursuant to RSA 541-A:40, IV(a). If the agency has obtained a waiver to a deadline, such existing  
13 rules shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the  
14 required action is not taken.

15 III. If rules are extended pursuant to this section, the agency shall:

16 (a) Adopt the proposed rules no later than 30 days after the date on which the agency is  
17 allowed to adopt the rules under RSA 541-A:14, I; and

18 (b) File the rules as required by RSA 541-A:14, III with an effective date that is not more  
19 than 60 days from the date of filing, except that an agency may specify an effective date that is more  
20 than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.

21 11 Agency Rules; Preregistration for Public Hearings. Amend RSA 541-A:16, I(b)(3) to read as  
22 follows:

23 (3) Rules governing public comment hearings for rulemaking, *including*  
24 *preregistration procedures if the agency intends to require preregistration for any*  
25 *rulemaking hearing.*

26 12 Filing Rules; Effective Date. Amend RSA 541-A:16, III to read as follows:

27 III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted  
28 rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, *RSA 541-*  
29 *A:14-a, III*, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs  
30 before such effective date and time. *Except as provided in RSA 541-A:14-a*, a rule adopted under  
31 RSA 541-A:14, IV shall expire after the last day of the [eighth] *tenth* year following its becoming  
32 effective, unless sooner amended, readopted, or repealed.

33 13 Time Limit; Effective Period. Amend RSA 541-A:17, I to read as follows:

34 I. No rule shall be effective for a period of longer than [8] *10* years *except as extended*  
35 *pursuant to RSA 541-A:14-a*, but the agency may adopt an identical rule under RSA 541-A:5  
36 through RSA [~~541-A:14~~] *541-A:14-a*, in conformance with the drafting and procedure manual  
37 adopted under RSA 541-A:8.

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1 14 Emergency Rules. Amend RSA 541-A:18, I to read as follows:

2 I. [~~If an~~] *An agency may proceed to adopt an emergency rule if it finds either that an*  
3 *imminent peril to the public health or safety requires adoption of a rule with less notice than is*  
4 *required under RSA 541-A:6 or that substantial fiscal harm to the state or its citizens could*  
5 *occur if rules are not adopted with less notice than is required under RSA 541-A:6.* [~~and~~  
6 ~~states in writing its reasons for that finding, it may proceed to adopt an emergency rule.~~] The rule  
7 may be adopted without having been filed in proposed or final proposed form and may be adopted  
8 after whatever notice and hearing the agency finds to be practicable under the circumstances. The  
9 agency shall make reasonable efforts to ensure that emergency rules are made known to persons  
10 who may be affected by them.

11 15 Emergency Rules; Adoption. Amend RSA 541-A:18, III(e) to read as follows:

12 (e) A signed and dated statement by the adopting authority explaining the nature of the  
13 [~~imminent peril to the public health or safety~~] *basis for the emergency rule*, including [a  
14 ~~summary~~] *an explanation* of the effect upon the state if the emergency rule were not adopted.

15 16 Interim Rules; New or Amended Statute. Amend RSA 541-A:19, I(a) to read as follows:

16 (a) Conform with a new or amended *codified* state statute *or chartered session law*,  
17 provided, however, that an agency shall not publish notice of a proposed interim rule more than [90]  
18 *120* days after the effective date of the new or amended *codified state* statute *or chartered*  
19 *session law*;

20 17 Expedited Process for Readoption of Rules. The director of legislative services shall develop  
21 an expedited process for readopting rules which contain no changes or contain only minor changes.  
22 Minor changes shall include renumbering, updating internal references, references to documents  
23 incorporated by reference, date and year changes, typographical or grammatical errors, and other  
24 editorial changes. The director shall consult with agency staff as necessary. The director shall  
25 provide a report on an expedited process and any proposals for legislation to the chairperson of the  
26 joint legislative committee on administrative rules not later than November 1, 2011.

27 18 Suspension of Provisions; Waiver. Amend RSA 541-A:40, IV as follows:

28 IV.(a) Notwithstanding any other provision of this chapter, the director of legislative  
29 services *may*, after consultation with the chair and vice-chair of the joint legislative committee on  
30 administrative rules, [~~may,~~] *and* for good cause shown, waive any deadline *or otherwise extend*  
31 *any time period* contained in any provision of this chapter *which relates to the rulemaking*  
32 *process*.

33 (b) *If a deadline is waived or a time period is extended, the director shall, after*  
34 *consultation with the chair and vice-chair committee and the agency whose rules are*  
35 *affected, establish a new deadline by which the required action shall be taken.*

36 19 Transition; Application. The provisions of this act shall govern the following on or after the  
37 effective date of this act:

**Amendment to SB 161-FN**

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1 I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6 or RSA 541-  
2 A:19-c.

3 II. All emergency rules adopted under RSA 541-A:18.

4 III. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.

5 IV. All expedited repeal of rules under RSA 541-A:19-a.

6 V. All notices submitted to the director of legislative services for publication in the  
7 rulemaking register.

8 20 Effective Date. This act shall take effect 60 days after its passage.

Amendment to SB 161-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Procedure for Adopting Rule; Public Hearing. Amend RSA 541-A:3, IV to read as follows:

4 IV. ~~[Holding]~~ **Scheduling** a public hearing and receiving comments under RSA 541-A:11;

5 2 Notice of Rulemaking Proceedings; Scheduled Public Hearing; Concise Summary. Amend RSA  
6 541-A:6, I(e) and (f) to read as follows:

7 (e) The date of the first *scheduled* agency public hearing and the cut-off date for the  
8 submission of written materials to the agency.

9 (f) *If existing rules are being amended, readopted, or readopted with*  
10 *amendment*, a concise summary [~~explaining the effect~~] of the [~~rule~~] *existing rules and any*  
11 *proposed amendments, and if the proposed rules are being adopted, a concise summary of*  
12 *the proposed rules.*

13 3 Notice of Rulemaking Proceedings; Substantial Noncompliance Scheduled Public Hearing.  
14 Amend RSA 541-A:6, II and III to read as follows:

15 II. The director of legislative services may refuse to publish a notice if the director  
16 determines that there is significant noncompliance with the requirements of paragraph I. *In this*  
17 *paragraph, "significant noncompliance" means one or more errors of such magnitude that*  
18 *a reasonable person would not be able to discern what rules are the subject of the*  
19 *rulemaking proceeding and/or what the agency is proposing to do. The term includes the*  
20 *absence of elements required by paragraph I.*

21 III. The agency shall send notice to the director of legislative services, to all persons  
22 regulated by the proposed rules who hold occupational licenses issued by the agency, and to all  
23 persons who have made timely request for advance notice of rulemaking proceedings. Upon request  
24 the agency shall send notice to the president of the senate, to the speaker of the house of  
25 representatives, to the chairperson of the fiscal committee, and to the chairpersons of the legislative  
26 committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days  
27 before the first *scheduled* agency public hearing required by RSA 541-A:11, I. Notice to  
28 occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public  
29 notice advertisement in a publication of daily statewide circulation, or in such other manner *that is*  
30 *reasonably calculated to inform such licensees of the proposed rulemaking. The committee*  
31 *may identify additional methods of notifying occupational licensees that are deemed*

Amendment to SB 161-FN

- Page 2 -

1 sufficient [by the committee].

2 4 New Paragraphs; Rulemaking Register; Authority of Director; Date of Publication. Amend  
3 RSA 541-A:9 by inserting after paragraph I the following new paragraphs:

4 I-a. Prior to publication and with prior notice to the agency, the director of legislative  
5 services may correct typographical, spelling, and punctuation errors, as well as unintentional errors  
6 in references and citations in a submission, provided the corrections do not affect the substance of  
7 the notice.

8 I-b. The date of publication of the rulemaking register shall be the date on which the  
9 register is available to the public on the general court information services web site.

10 5 Rulemaking Register; Electronic Copies. Amend RSA 541-A:9, II and III to read as follows:

11 II. The rulemaking register shall be made available upon request to agencies and officials of  
12 this state free of charge. The director of legislative services shall send a *paper or electronic* copy of  
13 the rulemaking register upon request to the clerk of each municipality in the state and upon request  
14 to any member of the general court free of charge. *Municipalities and members of the general  
15 court shall be deemed to have requested an electronic copy unless a paper copy is  
16 specifically requested. Paper* copies of the register which are sent to municipalities and to  
17 members of the general court shall be sent by first-class mail.

18 III. *Paper copies of* the register shall also be made available upon request to other persons  
19 at prices fixed by the director of legislative services to cover mailing and publication costs.

20 6 Filing Proposed Rule Text; Establishing and Revising Text of Rules. Amend RSA 541-A:10 to  
21 read as follows:

22 541-A:10 Filing of Proposed Rule Text; *Establishing and Revising Text.*

23 I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the  
24 text of the proposed rule with the director of legislative services. The text *of the proposed rules* as  
25 filed *pursuant to RSA 541-A:3, III* shall not be changed [~~or established as~~] *prior to the hearing  
26 scheduled pursuant to RSA 541-A:11, I(a).*

27 II. *The agency shall not establish* the text of the final proposal until after the conclusion  
28 of the public comment period established pursuant to RSA [~~541-A:11~~] *541-A:11, I(b). If the agency  
29 elects to solicit comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft  
30 final proposal that is annotated to show how the rules as initially proposed are proposed  
31 to be changed. In response to comment received, the agency may revise the draft prior to  
32 filing the final proposal in accordance with RSA 541-A:12.*

33 7 Public Hearing; Public Comment Period. Amend RSA 541-A:11, I to read as follows:

34 I.(a) Each agency shall [~~hold~~] *schedule* at least one public hearing on all proposed rules  
35 *filed pursuant to RSA 541-A:3* and shall afford all interested persons reasonable opportunity to  
36 testify and to submit data, views, or arguments in writing or, if practicable for the agency, in  
37 electronic format, in accordance with the terms of the notice *filed pursuant to RSA 541-A:3, I* and

1 the provisions of this section. The office of legislative services shall provide oral or written comments  
2 on potential bases for committee objection under RSA 541-A:13, IV in a form and manner  
3 determined by the director of the office of legislative services. Each agency shall require all  
4 materials submitted in writing to be signed by the person who submits them, and the agency shall  
5 transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic  
6 mail, or other electronic format. Copies of the proposed rule shall be available to the public under  
7 RSA 91-A and at least 5 days prior to the *date of the scheduled* hearing.

8 (b) For rules proposed by a board or commission, a period of at least [10] *5 business*  
9 days after the hearing shall be provided for the submission of materials in writing or in electronic  
10 format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice,  
11 the deadline for the submission of such materials shall not be earlier than the scheduled conclusion  
12 of the public hearing. For rules proposed by an agency official, a period of at least [10] *5 business*  
13 days after the hearing shall be provided in all instances. If a hearing is continued or postponed as  
14 provided in paragraph III or IV of this section, the period for the submission of materials in writing  
15 or in electronic format shall be extended *unless the previously-established deadline meets the*  
16 *applicable requirement specified above.*

17 (c) *An agency may hold a public hearing or otherwise solicit public comment on*  
18 *a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3,*  
19 *V. Notice of such hearing or comment period shall be provided by such means as are*  
20 *deemed appropriate to reach interested persons, which may include publishing a notice in*  
21 *the rulemaking register.*

22 8 New Paragraph; Public Hearing; Preregistration. Amend RSA 541-A:11 by inserting after  
23 paragraph I the following new paragraph:

24 I-a. For an agency that has adopted preregistration requirements under RSA 541-A:16,  
25 I(b)(3), the agency may cancel a scheduled hearing if the agency:

26 (a) Has a reasonable belief that no member of the public is likely to attend the hearing;

27 (b) Has clearly stated the requirement to preregister for the hearing prominently in the  
28 notice filed under RSA 541-A:6, I, and in any other information about the rulemaking proceeding the  
29 agency has distributed to interested persons;

30 (c) Has received no preregistration for attendance at a scheduled hearing as of 2  
31 business days in advance of the hearing; and

32 (d) Informs the director of legislative services of the cancellation.

33 Cancellation of the public hearing shall not affect the deadline for submission of comments.

34 9 Filing Final Proposal; Incorporation by Reference; Internet Content. Amend RSA 541-A:12, II-  
35 IV to read as follows:

36 II. The final proposal shall include:

37 (a) A cover sheet listing:



1 (1) The number of the notice and the date the notice appeared in the rulemaking  
2 register;

3 (2) The name and address of the agency;

4 (3) The title and number of the rule; and

5 (4) A citation to the statutory authority for the rule.

6 (b) ~~[Two copies]~~ **One copy** of the established text of the final proposed rule.

7 (c) ~~[A copy of the full text of the statutory authority for the rule.]~~

8 ~~(d)~~ If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from  
9 the legislative budget assistant stating that as a result of notice and hearing the rule did change and  
10 explaining how this change affects the original fiscal impact statement.

11 ~~(e)~~ **(d)** A copy of the fixed text of the final proposed rule annotated clearly to show how  
12 the final proposed rule differs from the rule as initially proposed, if the text has changed.

13 III. ~~[With the final proposal, the agency shall also file the incorporation by reference~~  
14 ~~statement described by paragraph IV of this section, if the]~~ **An agency [incorporates into] may**  
15 **establish requirements in** its rules ~~[any]~~ **by citing to a document or to Internet content**  
16 prepared by ~~[any entity outside the agency]~~ **an unrelated third party. If state-enforceable**  
17 **requirements are so established, the agency shall file an incorporation by reference**  
18 **statement as specified in paragraph IV with the final proposal.** ~~[However, the]~~ **No** agency  
19 shall ~~[not]~~ incorporate by reference any document **or Internet content** prepared by or on behalf of  
20 the agency.

21 IV. Any ~~[required]~~ incorporation by reference statement **required by paragraph III** shall  
22 include a ~~[separately signed]~~ statement **signed** by the adopting authority:

23 (a) Certifying that the text of the ~~[matter]~~ incorporated **document or Internet content**  
24 has been reviewed by the agency, with the name of the reviewing official;

25 (b) Explaining how the text of the ~~[matter]~~ incorporated **document or Internet content**  
26 can be obtained by the public, and at what cost;

27 (c) Explaining any modifications to the ~~[matter]~~ incorporated **document or Internet**  
28 **content;**

29 (d) Discussing the comparative desirability of reproducing the incorporated ~~[matter]~~  
30 **document or Internet content** in full in the text of the rule; and

31 (e) Certifying that the agency has the capability and the intent to enforce the ~~[rule]~~  
32 **requirements being incorporated.**

33 V. **If an agency establishes requirements by incorporating undated Internet content**  
34 **by reference, the agency shall make a read-only copy of the incorporated Internet content**  
35 **no later than the date of filing the incorporation by reference statement, and make the**  
36 **dated copy available to the public.**

37 10 New Section; Extension of Currently Effective Rules Pending Readoption. Amend RSA 541-A

1 by inserting after section 14 the following new section:

2 541-A:14-a Extension of Currently Effective Rules Pending Readoption.

3 I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or  
4 without amendments, the currently effective rules in the filing which would otherwise expire prior to  
5 the completion of the readoption of the rules by the agency shall continue in effect until the proposed  
6 rules are adopted and effective.

7 II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by  
8 the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-  
9 A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules  
10 which would otherwise expire prior to the completion of the readoption of the rules by the agency  
11 shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline  
12 pursuant to RSA 541-A:40, IV(a). If the agency has obtained a waiver to a deadline, such existing  
13 rules shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the  
14 required action is not taken.

15 III. If rules are extended pursuant to this section, the agency shall:

16 (a) Adopt the proposed rules no later than 30 days after the date on which the agency is  
17 allowed to adopt the rules under RSA 541-A:14, I; and

18 (b) File the rules as required by RSA 541-A:14, III with an effective date that is not more  
19 than 60 days from the date of filing, except that an agency may specify an effective date that is more  
20 than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.

21 11 Agency Rules; Preregistration for Public Hearings. Amend RSA 541-A:16, I(b)(3) to read as  
22 follows:

23 (3) Rules governing public comment hearings for rulemaking, *including*  
24 *preregistration procedures if the agency intends to require preregistration for any*  
25 *rulemaking hearing.*

26 12 Filing Rules; Effective Date. Amend RSA 541-A:16, III to read as follows:

27 III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted  
28 rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, *RSA 541-*  
29 *A:14-a, III*, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs  
30 before such effective date and time. *Except as provided in RSA 541-A:14-a*, a rule adopted under  
31 RSA 541-A:14, IV shall expire after the last day of the [~~eighth~~] *tenth* year following its becoming  
32 effective, unless sooner amended, readopted, or repealed.

33 13 Time Limit; Effective Period. Amend RSA 541-A:17, I to read as follows:

34 I. No rule shall be effective for a period of longer than [8]10 years *except as extended*  
35 *pursuant to RSA 541-A:14-a*, but the agency may adopt an identical rule under RSA 541-A:5  
36 through RSA [~~541-A:14~~] *541-A:14-a*, in conformance with the drafting and procedure manual  
37 adopted under RSA 541-A:8.

1 14 Emergency Rules. Amend RSA 541-A:18, I to read as follows:

2 I. ~~[If an]~~ *An agency may proceed to adopt an emergency rule if it finds either that an*  
3 *imminent peril to the public health or safety requires adoption of a rule with less notice than is*  
4 *required under RSA 541-A:6 or that substantial fiscal harm to the state or its citizens could*  
5 *occur if rules are not adopted with less notice than is required under RSA 541-A:6.* ~~[and~~  
6 ~~states in writing its reasons for that finding, it may proceed to adopt an emergency rule.]~~ The rule  
7 may be adopted without having been filed in proposed or final proposed form and may be adopted  
8 after whatever notice and hearing the agency finds to be practicable under the circumstances. The  
9 agency shall make reasonable efforts to ensure that emergency rules are made known to persons  
10 who may be affected by them.

11 15 Emergency Rules; Adoption. Amend RSA 541-A:18, III(e) to read as follows:

12 (e) A signed and dated statement by the adopting authority explaining the nature of the  
13 ~~[imminent peril to the public health or safety]~~ *basis for the emergency rule*, including ~~[a~~  
14 ~~summary]~~ *an explanation* of the effect upon the state if the emergency rule were not adopted.

15 16 Interim Rules; New or Amended Statute. Amend RSA 541-A:19, I(a) to read as follows:

16 (a) Conform with a new or amended *codified* state statute *or chaptered session law*,  
17 provided, however, that an agency shall not publish notice of a proposed interim rule more than [90]  
18 *120* days after the effective date of the new or amended *codified* state statute *or chaptered*  
19 *session law*;

20 17 Expedited Process for Readoption of Rules. The director of legislative services shall develop  
21 an expedited process for readopting rules which contain no changes or contain only minor changes.  
22 Minor changes shall include renumbering, updating internal references, references to documents  
23 incorporated by reference, date and year changes, typographical or grammatical errors, and other  
24 editorial changes. The director shall consult with agency staff as necessary. The director shall  
25 provide a report on an expedited process and any proposals for legislation to the chairperson of the  
26 joint legislative committee on administrative rules not later than November 1, 2011.

27 18 Suspension of Provisions; Waiver. Amend RSA 541-A:40, IV as follows:

28 IV.(a) Notwithstanding any other provision of this chapter, the director of legislative  
29 services *may*, after consultation with the chair and vice-chair of the joint legislative committee on  
30 administrative rules, ~~[may,]~~ *and* for good cause shown, waive any deadline *or otherwise extend*  
31 *any time period* contained in any provision of this chapter *which relates to the rulemaking*  
32 *process*.

33 (b) *If a deadline is waived or a time period is extended, the director shall, after*  
34 *consultation with the chair and the vice-chair of the committee and the agency whose rules*  
35 *are affected, establish a new deadline by which the required action shall be taken.*

36 19 Transition; Application. The provisions of this act shall govern the following on or after the  
37 effective date of this act:

Amendment to SB 161-FN

- Page 7 -

- 1 I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6 or RSA 541-
- 2 A:19-c.
- 3 II. All emergency rules adopted under RSA 541-A:18.
- 4 III. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.
- 5 IV. All expedited repeal of rules under RSA 541-A:19-a.
- 6 V. All notices submitted to the director of legislative services for publication in the
- 7 rulemaking register.
- 8 20 Effective Date. This act shall take effect 60 days after its passage.

# Committee Minutes

**SENATE CALENDAR NOTICE  
EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

Senator Sharon Carson Chairman <sup>10</sup>  
 Senator Fenton Groen V Chairman  
 Senator Sylvia Larsen  
 Senator Jim Luther  
 Senator Raymond White

11:28- 12:13

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/> Bill Status	
<input type="checkbox"/> Docket	
<input type="checkbox"/> Calendar	
Proof: <input type="checkbox"/> Calendar	<input type="checkbox"/> Bill Status

**Date: February 9, 2011**

**HEARINGS**

**Thursday**

**2/17/2011**

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

**SH 100**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM	SB81-FN	relative to powers and duties of commissioners of executive branch agencies.
9:15 AM	SB157-FN	relative to the division of weights and measures and fees for licensing weighing devices and the definition of service technician.
9:45 AM	SB53-FN	relative to the definition of nursing and establishing a nursing assistant registry fund administered by the board of nursing.
10:00 AM	SB161-FN	relative to procedures for adoption of agency rules under the administrative procedures act.
10:20 AM	SB76-FN	relative to the authority of the department of revenue administration to adopt rules and to administer state tax laws.
10:50 AM	SB143-FN	requiring the commissioner of administrative services to develop a proposal for state employees to make monetary contributions to a health savings account or other tax-advantaged account.

**Sponsors:**

**SB81-FN**

Sen. Chuck Morse

**SB157-FN**

Sen. Sharon Carson

Sen. Jeb Bradley

Sen. John Barnes, Jr.

Rep. Betsey Patten

**SB53-FN**

Sen. Lou D'Allesandro

Sen. John Gallus

Sen. Bob Odell

Sen. Sylvia Larsen

Sen. Molly Kelly

Sen. Matthew Houde

Sen. Amanda Merrill

**SB161-FN**

Sen. Amanda Merrill

Sen. Nancy Stiles

Sen. Sharon Carson

Rep. Peter Schmidt

Rep. Terie Norelli

Rep. Maurice Pilotte

Rep. Betsey Patten

Rep. Carol McGuire

**SB76-FN**

Sen. Andy Sanborn

Rep. Thomas Keane

Rep. Seth Cohn

Rep. Dan McGuire

Sen. Raymond White

Sen. Jeb Bradley

Sen. Jim Rausch

Rep. David Bettencourt

Sen. Tom De Blois

Sen. Fenton Groen

Sen. Jim Luther

Sen. James Forsythe

Rep. Jennifer Coffey

Sen. Jeanie Forrester

**SB143-FN**

Sen. Raymond White

Sen. Jeb Bradley

Sen. Andy Sanborn

Rep. Kenneth Hawkins

Rep. Kevin Avard

Rep. John Hunt

# Executive Dept. and Administration Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Deb Chroniak, Legislative Aide

**RE:** Hearing report on SB 161-FN – relative to procedures for adoption of agency rules under the administrative procedures act.

**HEARING DATE:** February 17, 2011

**MEMBERS OF THE COMMITTEE PRESENT, Senator Fenton Groen, Sylvia Larsen, Senator Jim Luther, Senator Raymond White**

**MEMBERS OF THE COMMITTEE ABSENT:** Senator Carson (from 11:28 a.m. until approximately 12:00 noon)

**Sponsor(s):** Sen. Merrill, Dist 21; Sen. Stiles, Dist 24; Sen. Carson, Dist 14; Rep. P. Schmidt, Straf 4; Rep. Norelli, Rock 16; Rep. Pilotte, Hills 16; Rep. B. Patten, Carr 4; Rep. C. McGuire, Merr 8

**What the bill does:** This bill:

I. Allows for preregistration for agency public hearings on proposed rules, and cancellation of a public hearing if no persons preregister.

II. Shortens the public comment period after a public hearing.

III. Gives the director of legislative services limited discretion in the publication of rulemaking notices.

IV. Provides for electronic copies of the rulemaking register.

V. Allows agencies to hold a second public hearing on proposed rules.

VI. Extends the expiration date of rules to 10 years and allows for extending rules by filing readoption of currently effective rules.

VII. Allows for incorporation by reference of Internet content.

VIII. Modifies procedures for interim and emergency rulemaking.

IX. Requires the director of legislative services to develop a process for expedited readoption of rules.

**Who supports the bill:** Sen. Merrill, Dist 21; Sen. Stiles, Dist 24; Sen. Carson, Dist 14; Rep. P. Schmidt, Straf 4; Rep. Norelli, Rock 16; Rep. Pilotte, Hills 16; Rep. B. Patten, Carr 4; Rep. C. McGuire, Merr 8

**Who opposes the bill:** No one.

**Summary of testimony received:**

**The hearing opened at 11:28 a.m.**

- The Vice Chair, Senator Fenton Groen opened the hearing by calling on the prime sponsor, Senator Amanda Merrill to speak to the bill.
- Senator Amanda Merrill said that this bill looks toward efficiency and reduction of waste in the part of this government, which is administrative rulemaking; what happens after bills which are passed leave. She has direct experience having served on JLCAR.

A critical part of what goes on in policymaking is very detailed oriented as it needs to be, with growing interest in making sure that the rulemaking process is as efficient as it can be without jeopardizing due process and public participation.

Last year a project was initiated by then Speaker Teri Norelli, which was called a lean process. The lean process is a way to cut wastes in terms of time, materials, and staff, and increase efficiency, which is done quite often in the manufacturing industry. This is the first time that it is known to have been applied to a legislative function.

Senator Merrill then noted that the recommendations that are being presented come out of, what is known as, the first phase of the lean rulemaking project, which specifically is the initial stage of rulemaking, of the agencies giving authority to write new rules, or changes adopted or promulgation, before the rules get to JLCAR.

Phase II of this lean rulemaking project will be dealing with the JLCAR part, what happens after bills get to JLCAR; what happens at the agency level, the



Administrative Rules Division of Administrative Services, that interaction, and how it could become more efficient.

People involved in this project last year were representatives of agencies, legislative services and legislators. Senator Merrill served on the committee and indicated there were some others who served on the committee who are experts, of not only the process, but also the recommendations requested.

The process of the amendment (2011-0383s), which Senator Merrill brought today, also became very detailed.

- Senator Groen then called on Attorney Marta Modigliani, Hearings Examiner from the Department of Safety.
- Attorney Marta Modigliani (in support – submission of support letter from Commissioner John J. Barthelmes, Department of Safety). Attorney Modigliani was one of the members in the Phase I lean process, and is representing the Department of Safety. She provided a letter of support for this legislation from Commissioner John Barthelmes, Department of Safety. Defer to her colleagues to speak to the bill and answer any questions.
- Attorney Carol Holahan spoke from the audience – indicating that Mike Holt from the Department of Health and Human Services is going to take you through the changes in the bill and answer any questions you may have. Attorney Holahan then went on to state that the position of the Office of Legislative Services on not speaking is in order to avoid the situation of being in favor or opposed to the legislation – but will answer questions if needed.
- Senator Groen then called on Attorney Gretchen Hamel from the Department of Environmental Services.
- Attorney Gretchen Hamel (in support) and was a member of the committee of the lean rulemaking, Phase I process.
- Attorney Hamel was accompanied by Michael Holt, Administrative Rules Division from the Department of Health and Human Service, who was also a member of the lean team.
- Attorney Hamel indicated that she submitted a chart which takes you through the bill with the amendment, and is very detailed.
- Senator Groen asked that she please summarize the changes in each section.
- Attorney Hamel (provided a chart submission, which explained the changes to SB 161, dated February 17, 2011) proceeded to go through

sections of the bill and the amendment detailing these changes. She first went through what the existing rules do and then went through what is being changed. The intention is to provide better information for the public and to other agencies. Many agencies do this now, but by placing this in statute it makes it a more uniformed practice.

- Senator Larsen asked Attorney Hamel if all changes were incorporated in the amendment, or were the shaded parts not in the original bill, nor in the amendment.
- Attorney Hamel indicated that the shaded areas on her chart were not incorporated at all within the bill, and that an additional amendment would be needed to incorporate all the final changes.

Some of the changes that are being made are for clarification; some are notification changes.

The first section of the bill would amend 541-A:3, IV, by changing the word "holding" to the word "scheduling".

One change would give the authority to cancel a meeting in cases where they did not think anyone was likely to attend.

Amendments that are shaded are clarification of text, but not yet in the bill.

- Senator Larsen indicated that where there was the ability to suspend or require preregistration or suspend a hearing process, she did not see language in the summary, nor was there a qualifier if an agency determines this topic is not one gender opposition or discussion. She then asked if there needed to be a qualifier and if that would make sense.
- Attorney Hamel indicated, yes and that it was in some of the language initially drafted in this bill, but it was taken out. She then indicated that the "qualifier" should be laid out in rules and that you would have to adopt rules to explain how to proceed.

Section 3 of the bill, RSA 541-A: 6, II (lines 9-14) of the amendment clarifies the grounds on which the director of Legislative Services may refuse to publish a rulemaking notice filed by an agency.

Section 4 of the bill, RSA 541-A:9 I(a) is Publication of Rulemaking notices in Rulemaking Register. This gives the director of Legislative Services authority to correct rulemaking notices filed for publication. These changes would be typographical, spelling, and punctuation errors, provided the corrections do not affect the substance. Also, these changes would need to

be brought to the attention of the agency it would be affecting, prior to publication.

Section 541-A:9 I(b) is new and indicates that the date of publication of the rulemaking register shall be the date on which the register is available to the public on the general court information services web site.

Section 5 of the bill, under 541-A:9 paragraphs II-III of the amendment relates to the publication of the rulemaking register. The amendment authorizes the director of Legislative Services to publish the register electronically.

Section 6 of the bill, 541-A:10 of the amendment clarifies that the text of the proposed rules cannot be changed prior to the scheduled public hearing and authorizes agencies to prepare a draft final proposal if it decides to hold an additional hearing on a proposed rule prior to filing the final proposal for review by the JLCAR.

Section 7 of the bill, under 541-A:11 I(a) of the amendment the public hearing and comment period, indicates that each agency shall "schedule" (note here, the word "hold" is taken out and replaced with schedule) at least one public hearing on all proposed rules.

Section 8 of the bill under 541-A:11 I(a) of the amendment (new section) public hearing preregistration section the amendment allows an agency to cancel a scheduled hearing if (1) it has adopted preregistration requirements, (2) includes a prominent notice of the preregistration requirement in rulemaking notices, and (3) notified the director of the cancellation. Also some clarification of language is added for consistency. This was one of the most controversial sections in their process.

- Senator White asked if this was across the board or just select.
- Attorney Hamel indicated that it would be determined on an individual rulemaking basis. You would have to adopt the rules in order to explain how they could cancel a meeting before they could do that.

Section 9 of the bill under 541-A:12, II of the amendment, which is the final proposal, the amendment to (b) would eliminate the requirement for agencies filing on paper to file 2 copies of the fixed text final proposed rule, and require "a copy" of the established text of the final proposed rule.

Under the amendment, striking (c) would eliminate the requirement for agencies to file a copy of the RSA authority for the rules (OLS/Admin. Rules staff to obtain their own copies from the internet).

Section 9 of the bill under 541-A:12, III, which is incorporation by reference; incorporating internet content; the amendment clarifies that an incorporation by reference occurs when an agency establishes state-enforceable requirements by citing to a document or internet content; emphasizes that the material so incorporated must be created by an unrelated third party and not by or for the agency.

Section 9 of the bill under 541-A:12, IV, the amendment clarifies the requirements for incorporation by reference statements and reflects inclusion of internet content in III (above).

Section 9 of the bill under 541-A:12, V (new section), the amendment addresses the possibility that undated internet context may change, but the requirements must be fixed, so as to not change without going through rulemaking.

Section 10 of the bill under 541-A:14(a) (new section) extension of currently effective rules pending re adoption. This amends RSA 541-A in agencies rules, if they existed, not to expire; similar to what happens with permits under 541-A – existing permit continues in force until a final decision is made.

Section 11 of the bill under 541-A:16, I(b)(3) is the requirement of, if an agency wants to ever use a preregistration requirement that they adopt rules first, which is the shaded area of the chart submitted.

- Senator White envisioned that this is boiler plate and asked, so you adopt the boiler plate and every agency does their separate thing.
- Attorney Hamel indicated that the Department of Justice has standard rules that is not in this bill, exclusively.

The first agency that does this will come up with something, see how it flies, and if other agencies want to do that, they could.

Section 12 of the bill, 541-A:16, III, Filing Rules, Effective Dates. Amending RSA 541-A:16, III indicating that except as provided in RSA 541-A:14-a, a rule adopted under RSA 541-A:14, IV shall expire after the last day of the “tenth” year following its becoming effective, unless sooner amended, readopted, or repealed; this was eight years prior to the ten year change.

Bill adds in new provision.

Section 13 of the bill under 541-A:17 I, the amendment extends life of regular rules from eight to 10 years to allow agencies, OLS, and Administrative Rules

to focus on rules needing revisions, rather than rules being readopted because they would otherwise expire.

Section 14 of the bill under 541-A:18, I are Emergency Rules – Financial Emergencies, the amendment would allow emergency rules to be adopted to avert substantial fiscal harm to state citizens. This section changes the wording “citizens of the state” to “state or its citizens”.

Section 15 of the bill under 541-A:18, III(e) the amendment reflects inclusion of fiscal emergencies in paragraph I, section 14 of SB 161 – editorial changes.

Section 16 of the bill under 541-A:19, I(a) of the amendment – establishes that an agency shall not publish notice of a proposed interim rule more than 120 days after the effective date of the new or amended statute. Extends the time from 90 to 120 days and adds time for filing without a waiver being needed.

Section 17 of the bill is the expedited process for re-adoption of rules. This now will be in Section 19 and will indicate that language requires the director of the Office of Legislative Services to develop expedited process for re-adopting rules and report on the process. (This clarifies the expedited process.)

Section 18 of the bill under RSA 541-A, 40, IV(a) indicates that the director of the Office of Legislative Services has the right, for good cause shown, to waive any deadline or otherwise extend any time period contained in any provision of this chapter which relates to the rulemaking process.

Section 18 of the bill under RSA 541-A, 40, IV(b) – newly inserted language - IV (b) indicates that if a deadline is waived, the director, after consultation with the chair and vice chair of the committee and the agency whose rules are being affected, shall establish a new deadline (not waived indefinitely).

Section 18 of the bill under RSA 541-A, applicability of statutory changes will now be inserted in Section 20 of the bill and the changes apply to rules – pending vs. future rulemaking proceedings - procedural changes which make it more efficient.

- Representative Maurice Pilotte then spoke and indicated that he previously was a JLCAR Chair.

He wanted to mention a few things – he had question on the preregistration –and thought that it waves a little flag. Representative Pilotte then mentioned the fact that you do not want an agency to know two days before that they can cancel a public hearing.

In Section 10, regarding the internet, there was a question – no agency can incorporate by reference.

Approval by agency – a copy may be dated and put into the file – that would be a dated file – incorporation by reference.

Section 18 – asks you to consider and look at (in favor of this) deadline is waived and time period extended. This worked extremely well in some of our agencies, although the deadlines are a little bit sketchy.

These are the items that Representative Pilotte had and wanted to bring to the Committee's attention.

- Also Representative Pilotte wanted to remind Senator White that in the second half of the year, JLCAR meets on Thursdays and not on Fridays.
- Harriett Cady spoke next (Deerfield, New Hampshire) in favor of the bill. She and others have tried to find legal notices (bothered her as a citizen) and could not find these notices.

Citizens so frequently do not understand this process and end up finding out they are under some rule and they never knew it was adopted.

Ten years – there are questions coming up that should be listened to by the public, and she wanted this particular section of the law looked at and requested that some provisions be made.

The Chair, Senator Sharon Carson, read into the record the following:  
 Senator Nancy Stiles, Rep. Betsey Patten, Rep. Kathleen Hoelzel, Sandy Falicon, New Hampshire Fish and Game, all in favor, but not speaking.  
 The hearing on SB 161-FN closed at 12:13 p.m.

**Funding:** The Department of Administrative Services and the Legislative Branch state this bill may have an indeterminable impact on state expenditures in FY 2012, and in each fiscal year thereafter. There will be no fiscal impact on state revenues, or county and local revenues or expenditures.

**Future Action:** Awaiting final amendment which will incorporate all changes into SB 161-FN. No action was taken at this time.

**DAC**

[file:

SB 161-FN report]

Date: February 28, 2011

# Speakers



# SENATE EXECUTIVE DEPARTMENTS AND ADMINISTRATION COMMITTEE

Date: February 17, 2011 Time: 10:00 a.m.. Public Hearing on SB 161-FN

SB 161-FN - relative to procedures for adoption of agency rules under the administrative procedures act.

Please check box(es) that apply:

Please check if

SPEAKING FAVOR  OPPOSED

NAME (Please print)

REPRESENTING

	SPEAKING FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SENATOR SHARON CARSON	SD #14
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Betsey Patten	Carroll, 4
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Maurice G. Pette	Hills 16
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SENATOR Nancy Stiles	SD #24
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Kathleen Hoelzel	Rock. Dist 2
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	HARRIET Gady	Citizen
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sandy Falicon	NH Fish & Game
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Marta Medigliani	Do Safety
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Gretchen Hamel	Dept. of Env't & Es
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	MIKE HOLT	#HS
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*if possible  
conflict  
with other bill*

# Testimony



# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER  
33 HAZEN DR. CONCORD, NH 03305  
603/271-2791

JOHN J. BARTHELMES  
COMMISSIONER

February 17, 2011

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

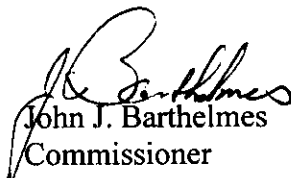
Re: SB 161, relative to procedures for adoption of agency rules under the administrative procedures act.

Dear Senator Carson and members of the Committee:

Last year, the "Lean Rulemaking - Phase I" project was initiated under the sponsorship of Representative Norelli. The project was premised on recognition that the current process for promulgating rules is inefficient and takes too long; that certain statutorily mandated rulemaking requirements place undue burdens and costs on executive agencies, OLS, JLCAR and other stakeholders; and, there are barriers to meaningful public participation in the process. The Director of Legislative Services, staff from the OLS Administrative Rules office, and staff from the Departments of Environmental Services, Health and Human Services, and Safety worked together over the summer and fall to identify specific issues that contribute to these problems and to brainstorm various ways to instill more efficiencies in the rulemaking process while also supporting and encouraging public participation. Some of the possible solutions can be addressed administratively, but many of them require statutory change. SB 161, relative to procedures for adoption of agency rules under the administrative procedures act, results from that process.

As is the case with many collaborative processes, the project participants reached a general consensus on which issues needed to be addressed by legislation but did not reach consensus in all cases on how those issues should be resolved. Nevertheless, we believe that SB 161 provides a solid framework for many of the improvements that are needed and support the enactment of this legislation. Thank you in advance for your thoughtful consideration of this bill.

Sincerely,

  
John J. Barthelmes  
Commissioner



# State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
129 PLEASANT STREET, CONCORD, NH 03301-3857  
603-271-4688 FAX: 603-271-4912 TDD ACCESS: 1-800-735-2964

#2

NICHOLAS A. TOUMPAS  
COMMISSIONER

February 17, 2011

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

**Re: SB 161, relative to procedures for adoption of agency rules under the administrative procedures act.**

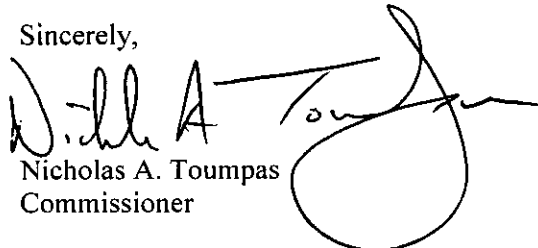
Dear Senator Carson and members of the Committee:

The Department of Health and Human Services (department) appreciates the opportunity to provide comment on SB 161, relative to procedures for adoption of agency rules under the administrative procedures act. The department is in support of this bill.

Last year, the "Lean Rulemaking - Phase I" project was initiated under the sponsorship of Representative Norelli. The project was premised on recognition that the current process for promulgating rules is inefficient and takes too long; that certain statutorily mandated rulemaking requirements place undue burdens and costs on executive agencies, OLS, JLCAR and other stakeholders; and there are barriers to meaningful public participation in the process. The Director of Legislative Services, staff from the OLS Administrative Rules office, and staff from the Departments of Environmental Services, Health and Human Services, and Safety worked together over the summer and fall to identify specific issues that contribute to these problems and to brainstorm various ways to instill more efficiencies in the rulemaking process while also supporting and encouraging public participation. Some of the possible solutions can be addressed administratively, but many of them require statutory changes to RSA 541-A. SB 161, relative to procedures for adoption of agency rules under the administrative procedures act, results from that process.

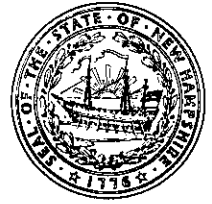
The department believes that SB 161 provides a solid framework for many of the improvements that are needed, and the department supports the enactment of this legislation. Thank you for your thoughtful consideration of this bill.

Sincerely,

  
Nicholas A. Toumpas  
Commissioner



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



**Thomas S. Burack, Commissioner**

February 17, 2011

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

#3

Re: SB 161, relative to procedures for adoption of agency rules under the administrative procedures act.

Dear Senator Carson and members of the Committee:

Last year, the "Lean Rulemaking - Phase I" project was initiated under the sponsorship of Representative Norelli. The project was premised on a recognition that the current process for promulgating rules is inefficient and takes too long; that certain statutorily mandated rulemaking requirements place undue burdens and costs on agencies, OLS, JLCAR and other stakeholders; and that there are barriers to meaningful public participation in the process. The Director of Legislative Services, staff from the OLS Administrative Rules office, and staff from the Departments of Environmental Services, Health and Human Services, and Safety worked together over the summer and fall of 2010 to identify specific issues that contribute to these problems and to brainstorm various ways to instill more efficiencies in the rulemaking process while also supporting and encouraging public participation. Some of the possible solutions can be addressed administratively, but many of them require statutory change. SB 161, relative to procedures for adoption of agency rules under the administrative procedures act, results from that process.

As is the case with many collaborative processes, the project participants reached a general consensus on which issues needed to be addressed by legislation but did not reach consensus in all cases on how those issues should be resolved. Nevertheless, we believe strongly in the value of using continuous process improvement tools and philosophies such as Lean to bring greater efficiencies to the operation of New Hampshire state government, and believe that SB 161 provides a solid framework for many of the improvements that are needed. Accordingly, we urge the Committee to move this bill forward as a demonstration of a joint commitment by the legislative and executive branches to making government more efficient and responsive to the citizens we serve.

Respectfully Submitted,

Thomas S. Burack  
Commissioner

cc: Senator Merrill  
Senator Stiles  
Senator Carson  
Representative P. Schmidt  
Representative Norelli  
Representative Pilotte  
Representative B. Patten  
Representative C. McGuire

#4

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
1	3, IV	<p>Procedure for adopting regular rules</p> <p>Amendment reflects proposed change in §8 relative to allowing hearing to be cancelled if no pre-registrations are received.</p>	<p><b>541-A:3 Procedure for Adoption of Rules.</b> – Except for interim or emergency rules, an agency shall adopt a rule by:</p> <p>I. Filing a notice of the proposed rule under RSA 541-A:6, including a fiscal impact statement and a statement that the proposed rule does not violate the New Hampshire constitution, part I, article 28-a;</p> <p>II. Providing notice to occupational licensees or those who have made timely requests for notice as required by RSA 541-A:6, III;</p> <p>III. Filing the text of a proposed rule under RSA 541-A:10;</p> <p>IV. <del>Holdings</del> <b>Scheduling a public hearing and receiving comments under RSA 541-A:11;</b></p> <p>V. Filing a final proposal under RSA 541-A:12;</p> <p>VI. Responding to the committee when required under RSA 541-A:13; and</p> <p>VII. Adopting and filing a final rule under RSA 541-A:14.</p>
2	6, I(e)	<p>Notice of rulemaking proceedings</p> <p>Amendment reflects proposed change in §8 relative to allowing hearing to be cancelled if no pre-registrations are received.</p>	<p><b>541-A:6 Notice of Rulemaking Proceedings.</b> –</p> <p>I. The agency shall give at least 20 days' notice of its intent to hold a public hearing and shall also give notice of the cut-off date for the submission of written testimony pursuant to RSA 541-A:11, I, on any proposed adoption, amendment, readoption, readoption with amendment, or repeal of a rule. The notice periods shall begin on the day after the date of publication in the rulemaking register. The notice shall be in such form as the director of legislative services shall prescribe and shall include:</p> <p>(a) The name and address of the agency.</p> <p>(b) The statutory authority for the rule.</p> <p>(c) Whether the intended action is an adoption, amendment, repeal, readoption, or readoption with amendment.</p> <p>(d) The rule number and title.</p> <p>(e) The date of the first <i>scheduled</i> agency public hearing and the cut-off date for the submission of written materials to the agency.</p>
17	6, I(f)	<p><u>2011-0383s</u> would establish clear expectations re: description of rulemaking, which will make it easier for people reading the notice to understand what is being proposed.</p> <p><u>Possible additional change</u> would clarify the second part of the sentence (since all proposed rules are “being adopted”)</p>	<p>(f) <u>If existing rules are being amended, readopted, or readopted with amendment(s), a concise summary [explaining the effect] of the [rule] existing rules and any proposed amendments, and if the proposed rules are [being adopted] <del>new</del>, a concise summary of the proposed rules.</u></p> <p>(g) A listing of people, enterprises, and government agencies affected by the rule.</p> <p>(h) The name, address, and telephone number of an individual in the agency able to answer questions on the proposed rule.</p> <p>(i) The fiscal impact statement completed by the legislative budget assistant.</p> <p>(j) A statement, with adequate details and supporting data, that the proposed rule does not violate the New Hampshire constitution, part I, article 28-a.</p>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
3	6, II (lines 9-14)	<p>Notice of rulemaking proceedings</p> <p>Amendment clarifies the grounds on which the Director of Legislative Services may refuse to publish a rulemaking notice filed by an agency.</p>	<p>II. The director of legislative services may refuse to publish a notice if the director determines that there is significant noncompliance with the requirements of paragraph I. <i>In this paragraph, "significant noncompliance" means one or more errors of such magnitude that a reasonable person would not be able to discern what rules are the subject of the rulemaking proceeding and/or what the agency is proposing to do. The term includes the absence of elements required by paragraph I.</i></p>
	6, III (lines 15-24)	<p>Notice of rulemaking proceedings</p> <p>Amendment reflects proposed change in §8 relative to allowing hearing to be cancelled if no pre-registrations are received.</p> <p><b>Possible additional change</b> would clarify what constitutes adequate notice to occupational licensees.</p>	<p>III. The agency shall send notice to the director of legislative services, to all persons regulated by the proposed rules who hold occupational licenses issued by the agency, and to all persons who have made timely request for advance notice of rulemaking proceedings. Upon request the agency shall send notice to the president of the senate, to the speaker of the house of representatives, to the chairperson of the fiscal committee, and to the chairpersons of the legislative committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days before the first <i>scheduled</i> agency public hearing required by RSA 541-A:11. Notice to occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public notice advertisement in a publication of daily statewide circulation, or in such other manner <b>that is reasonably calculated to inform such licensees of the proposed rulemaking. The committee may identify additional methods of notifying occupational licensees that are</b> deemed sufficient <del>by the committee</del>.</p>
4	9, I-a & I-b [new]	<p>Publication of rulemaking notices in <i>Rulemaking Register</i></p> <p>Amendment allows Director of Legislative Services to correct rulemaking notices filed for publication.</p> <p><u>2011-0363s</u> would require the agency to be notified when any changes are made, so that changes which affect substance are not made inadvertently; would specify that the date of publication is the date the Register is available on the GCIS web site.</p>	<p>I-a. Prior to publication <u>and with prior notice to the agency</u>, the director of legislative services may correct typographical, spelling, and punctuation errors, as well as unintentional errors in references and citations in a submission, provided the corrections do not affect the substance of the notice.</p> <p><u>I-b. The date of publication of the rulemaking register shall be the date on which the register is available to the public on the general court information services web site.</u></p>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
5	9, II-III	<p>Publication of <i>Rulemaking Register</i></p> <p>Amendment authorizes the Director of Legislative Services to publish the <i>Rulemaking Register</i> electronically and establishes a presumption in favor of distributing electronic copies.</p>	<p>II. The rulemaking register shall be made available upon request to agencies and officials of this state free of charge. The director of legislative services shall send a <i>paper or electronic</i> copy of the rulemaking register upon request to the clerk of each municipality in the state and upon request to any member of the general court free of charge. <i>Municipalities and members of the general court shall be deemed to have requested an electronic copy unless a paper copy is specifically requested.</i> Paper copies of the register which are sent to municipalities and to members of the general court shall be sent by first-class mail.</p> <p>III. <i>Paper copies</i> of the register shall also be made available upon request to other persons at prices fixed by the director of legislative services to cover mailing and publication costs.</p>
6	10	<p>Filing proposed rule text; establishing and revising text</p> <p>Amendment clarifies that the text of the proposed rules cannot be changed prior to the scheduled public hearing, and authorizes agencies to prepare a draft final proposal if it decides to hold an additional hearing on a proposed rule prior to filing the final proposal for review by the JLCAR.</p>	<p>541-A:10 Filing of Proposed Rule Text; <i>Establishing and Revising Text.</i></p> <p><i>I.</i> At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the text of the proposed rule with the director of legislative services. The text <i>of the proposed rules</i> as filed <i>pursuant to RSA 541-A:3, III</i> shall not be changed [or established as] <i>prior to the hearing scheduled pursuant to RSA 541-A:11, I(a).</i></p> <p><i>II. The agency shall not establish</i> the text of the final proposal until after the conclusion of the public comment period established pursuant to RSA 541-A:11, <i>I(b).</i> <i>If the agency elects to solicit comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft final proposal that is annotated to show how the rules as initially proposed are proposed to be changed. In response to comment received, the agency may revise the draft prior to filing the final proposal in accordance with RSA 541-A:12.</i></p>
7	11, I	<p>Public hearing and comment period</p> <p>Amendment in new (a) reflects proposed change in §8 relative to allowing hearing to be cancelled if no pre-registrations are received.</p> <p><u>Possible additional changes</u> clarify that the provisions apply to regular rules only.</p>	<p><i>I. (a)</i> Each agency shall [hold] <i>schedule</i> at least one public hearing on all proposed rules <u>filed pursuant to RSA 541-A:3</u>, and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or arguments in writing or, if practicable for the agency, in electronic format, in accordance with the terms of the notice <u>filed pursuant to RSA 541-A:3, I</u> and the provisions of this section. The office of legislative services shall provide oral or written comments on potential bases for committee objection under RSA 541-A:13, IV in a form and manner determined by the director of the office of legislative services. Each agency shall require all materials submitted in writing to be signed by the person who submits them, and the agency shall transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic mail, or other electronic format. Copies of the proposed rule shall be available to the public under RSA 91-A and at least 5 days prior to the <i>date of the scheduled</i> hearing.</p>



Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
		<p>Amendment in new (b) reduces the required post-hearing comment period from 10 [calendar] days to 5 business days. (Practical effect is a reduction from 10 to 7 calendar days.)</p> <p><b>Possible additional change</b> would recognize that the original deadline for submitting written comment may still meet the time requirement specified.</p>	<p>(b) For rules proposed by a board or commission, a period of at least [10] <b>5 business</b> days after the hearing shall be provided for the submission of materials in writing or in electronic format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice, the deadline for the submission of such materials shall not be earlier than the scheduled conclusion of the public hearing. For rules proposed by an agency official, a period of at least [10] <b>5 business</b> days after the hearing shall be provided in all instances. If a hearing is continued or postponed as provided in paragraph III or IV of this section, the period for the submission of materials in writing or in electronic format shall be extended <b><u>if necessary</u></b>.</p>
		<p>Amendment (new (c)) allows an agency to conduct a hearing on a draft final proposal prior to filing the final proposal for review by the JLCAR (not allowed under existing statute).</p>	<p><i>(c) An agency may hold a public hearing or otherwise solicit public comment on a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3, V. Notice of such hearing or comment period shall be provided by such means as are deemed appropriate to reach interested persons, which may include publishing a notice in the rulemaking register.</i></p>
8	11, I-a [new]	<p>Public hearing - preregistration</p> <p>Amendment allows an agency to cancel a scheduled hearing if it (1) has adopted preregistration requirements, (2) includes a prominent notice of the preregistration requirement in the rulemaking notices, and (3) notifies the Director of the cancellation.</p> <p><b>Possible additional changes:</b> [receives] <i>has received</i> ... [within] <i>as of</i> - for clarity; [the office of] - for consistency</p>	<p>I-a. For an agency that has adopted pre-registration requirements under RSA 541-A:16, I(b)(3), an agency that [receives] <i>has received</i> no preregistration for attendance at a scheduled hearing [within] <b><u>as of</u></b> 2 business days in advance of the hearing and may cancel the hearing upon informing the director of <b><u>the office of</u></b> legislative services of the cancellation. A requirement to preregister to attend the hearing shall be prominently included in the notice. Cancellation of the public hearing shall not affect the deadline for submission of comments.</p>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text: (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
9	12, II	<p>Final proposal</p> <p>Amendment to (b) would eliminate requirement for agencies filing on paper to file 2 copies of the fixed text final proposed rule.</p> <p>Amendment striking (c) would eliminate the requirement for agencies to file a copy of the RSA authority for the rules (OLS/Admin. Rules staff obtain their own copies from the Internet anyways).</p>	<p>II. The final proposal shall include:</p> <p>(a) A cover sheet listing:</p> <ol style="list-style-type: none"> <li>(1) The number of the notice and the date the notice appeared in the rulemaking register;</li> <li>(2) The name and address of the agency;</li> <li>(3) The title and number of the rule; and</li> <li>(4) A citation to the statutory authority for the rule.</li> </ol> <p>(b) <del>Two copies</del> <u>A copy</u> of the established text of the final proposed rule.</p> <p>(c) <del>A copy of the full text of the statutory authority for the rule.</del></p> <p><del>(d)</del> If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from the legislative budget assistant stating that as a result of notice and hearing the rule did change and explaining how this change affects the original fiscal impact statement.</p> <p><del>(e)</del> <u>(d)</u> A copy of the fixed text of the final proposed rule annotated clearly to show how the final proposed rule differs from the rule as initially proposed, if the text has changed.</p>
9	12, III	<p>Incorporation by reference; incorporating Internet content</p> <p>Amendment clarifies that an incorporation by reference occurs when an agency establishes state-enforceable requirements by citing to a document or Internet content; emphasizes that the material so incorporated must be created by an unrelated third party and not by or for the agency.</p>	<p>III. <del>[With the final proposal, the agency shall also file the incorporation by reference statement described by paragraph IV of this section, if the]</del> <i>An agency [incorporates into] may establish requirements in its rules [any] by citing to a document or to Internet content prepared by [any entity outside the agency] an unrelated third party. If state-enforceable requirements are so established, the agency shall file an incorporation by reference statement as specified in paragraph IV with the final proposal.</i> <del>[However, the]</del> <i>No</i> agency shall <del>[not]</del> incorporate by reference any document <i>or Internet content</i> prepared by or on behalf of the agency.</p>
	12, IV	<p>Amendment clarifies the requirements for incorporation by reference statements and reflects inclusion of Internet content in ¶ III.</p>	<p>IV. Any <del>[required]</del> incorporation by reference statement <i>required by paragraph III</i> shall include a <del>[separately signed]</del> statement <i>signed</i> by the adopting authority:</p> <ol style="list-style-type: none"> <li>(a) Certifying that the text of the <del>[matter]</del> incorporated <i>document or Internet content</i> has been reviewed by the agency, with the name of the reviewing official;</li> <li>(b) Explaining how the text of the <del>[matter]</del> incorporated <i>document or Internet content</i> can be obtained by the public, and at what cost;</li> <li>(c) Explaining any modifications to the <del>[matter]</del> incorporated <i>document or Internet content</i>;</li> <li>(d) Discussing the comparative desirability of reproducing the incorporated <del>[matter]</del> <i>document or Internet content</i> in full in the text of the rule; and</li> <li>(e) Certifying that the agency has the capability and the intent to enforce the <del>[rule]</del> <i>requirements being incorporated.</i></li> </ol>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
	12, V [new]	Amendment addresses the possibility that undated Internet content may change, but the requirements must be fixed so as to not change without going through rulemaking.	<i>V. If an agency establishes requirements by incorporating undated Internet content by reference, the agency shall make a read-only copy of the incorporated Internet content no later than the date of filing the incorporation by reference statement, and make the dated copy available to the public.</i>
10	14-a [new]	<p>Extension of existing rules pending readoption</p> <p>Amendment allows the initiation of a rulemaking proceeding intended to readopt rules to extend the expiration date of rules that would expire prior to the proceeding being completed; deadlines are established to ensure that progress is made on the readoption (similar to RSA 541-A:30, I, for permits).</p> <p>2011-0363s would clarify which rules are extended</p> <p><b>Possible additional change:</b> insert sub¶ (a) designation to distinguish from cite in next sentence; <u>need to include amendment to RSA 541-A:40, IV explained at end of chart (page 8).</u></p>	<p>541-A:14-a Extension of Currently Effective Rules Pending Readoption.</p> <p>I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or without amendments, the currently effective rules <u>in the filing which would otherwise expire prior to the completion of the readoption of the rules by the agency</u> shall continue in effect until the proposed rules are adopted and effective.</p> <p>II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules <u>which would otherwise expire prior to the completion of the readoption of the rules by the agency</u> shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline pursuant to RSA 541-A:40, IV <u>(a)</u>. If the agency has obtained a waiver to a deadline, the existing rules shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the required action is not taken.</p> <p>III. If existing rules are extended pursuant to this section, the agency shall:</p> <p>(a) Adopt the proposed rules no later than 30 days after the date on which the agency is allowed to adopt the rules under RSA 541-A:14, I; and</p> <p>(b) File the rules as required by RSA 541-A:14, III with an effective date that is not more than 60 days from the date of filing, except that an agency may specify an effective date that is more than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.</p>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
11	16, I(b)(3)	<p>Authority for procedural rules; preregistration for public hearings</p> <p>Amendment requires agencies to adopt rules governing preregistration procedures for rulemaking hearings.</p> <p><b>Possible additional change</b> allows agencies who do not anticipate ever using such procedures to not adopt the rules.</p>	<p><b>541-A:16 Rules; Filing Required.</b> –</p> <p>I. In addition to other rulemaking requirements imposed by law, each agency shall:</p> <p>(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods by which the public may obtain information or make submissions or requests.</p> <p>(b) Adopt rules of practice setting forth the nature and requirement of all formal and informal procedures available, including:</p> <p>(1) [Repealed.]</p> <p>(2) Rules governing adjudicative proceedings pursuant to RSA 541-A:30-a; and</p> <p>(3) Rules governing public comment hearings for rulemaking, <b>including preregistration procedures <u>if the agency intends to require preregistration for any rulemaking hearing.</u></b></p> <p>(c) Adopt rules setting the format and procedures for submitting, considering, and disposing of rulemaking petitions under RSA 541-A:4.</p> <p>(d) Adopt rules relating to filing petitions for declaratory rulings and their prompt disposition.</p>
12	16, III	<p>Duration of rules</p> <p>Amendment extends the life of a regular rule from eight years to ten years to allow agencies (and the OLS Administrative Rules office) to focus on rules that need to be changed rather than rules being readopted just because they would otherwise expire; includes cross-reference to new provision re: initiation of rulemaking to readopt rules extends the expiration date of existing rules.</p> <p><b>Possible additional change</b> - for consistency.</p>	<p>III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, <del>RSA 541-A:14-a, III</del>, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs before such effective date and time. <i>Except as provided in RSA 541-A:14-a, [A]</i> a rule adopted under RSA 541-A:14, IV shall expire after the last day of the <del>eightth</del> <i>tenth</i> year following its becoming effective, unless sooner amended, readopted, or repealed.</p>
13	17, I	<p>Duration of rules</p> <p>Amendment extends life of regular rules from 8 to 10 years to allow agencies (and OLS/Administrative Rules) to focus on rules needing revisions rather than rules being readopted because they would otherwise expire; includes cross-reference to new provision re: initiation of rulemaking to readopt rules extends the expiration date.</p>	<p>I. No rule shall be effective for a period of longer than <del>[8]</del> <i>10</i> years, <i>except as extended pursuant to RSA 541-A:14-a</i>, but the agency may adopt an identical rule under RSA 541-A:5 through RSA <del>[541-A:14]</del> <i>541-A:14-a</i>, in conformance with the drafting and procedure manual adopted under RSA 541-A:8.</p>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; <u>shaded text</u> shows possible additional changes; <u>underlined text</u> shows changes made by prime sponsor's amendment 2011-0383s)
14	18, I	<p>Emergency rules - financial emergencies</p> <p>Amendment would allow emergency rules to be adopted to avert substantial fiscal harm to state citizens.</p> <p><u>Possible additional change</u> (from “fiscal harm to citizens of the state” to “fiscal harm to the state or its citizens”) would avoid discussions of whether specific citizens have to be in danger of suffering fiscal harm.</p>	<p>I. [<del>If an</del>] <i>An agency may proceed to adopt an emergency rule if it finds either that an imminent peril to the public health or safety requires adoption of a rule with less notice than is required under RSA 541-A:6 or that substantial fiscal harm to <u>the state or its citizens of the state</u> could occur if rules are not adopted with less notice than is required under RSA 541-A:6. [and states in writing its reasons for that finding, it may proceed to adopt an emergency rule.]</i> The rule may be adopted without having been filed in proposed or final proposed form and may be adopted after whatever notice and hearing the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are made known to persons who may be affected by them.</p>
15	18, III(e)	<p>Emergency rules - financial emergencies</p> <p>Amendment reflects inclusion of fiscal emergencies in ¶ I (§14 of SB 161).</p>	<p>III. Emergency rules adopted under this section shall include:</p> <p>(a) The name and address of the agency.</p> <p>(b) The statutory authority for the rule.</p> <p>(c) Whether the intended action is an adoption, amendment, or repeal.</p> <p>(d) The rule number and title.</p> <p>(e) A signed and dated statement by the adopting authority explaining the nature of the [<del>imminent peril to the public health or safety</del>] <i>basis for the emergency rule</i>, including [a <u>summary</u>] <i>an explanation</i> of the effect upon the state if the emergency rule were not adopted.</p> <p>(f) A listing of people, enterprises, and government agencies affected by the rule.</p> <p>(g) The name, address, and telephone number of an individual in the agency able to answer questions on the emergency rule.</p>
16	19, I(a)	<p>Interim rules - deadline for proposing</p> <p>Amendment extends the time period in which the rulemaking notice must be filed for an interim rule which implements new or amended state statutes.</p> <p><u>Possible additional changes</u> recognize that rules sometimes are required in response to laws that are not codified as statutes (e.g., budget changes required by HB 1, HB 2).</p>	<p>I. An agency may adopt as an interim rule any rule which amends an existing rule, repeals an existing rule, or creates a new rule, and which is designed solely to allow the agency to:</p> <p>(a) Conform with a new or amended state statute <u>or session law</u>, provided, however, that an agency shall not publish notice of a proposed interim rule more than [90] <u>120</u> days after the effective date of the new or amended statute <u>or session law</u>;</p> <p>(b) Conform with a controlling judicial decision;</p> <p>(c) Conform with a federal requirement which must be met sooner than the time periods allowed under RSA 541-A for a rule adopted under the procedures listed in RSA 541-A:3;</p> <p>(d) Continue its rules which would otherwise expire prior to the completion of the readoption of the rules by the agency; or</p> <p>(e) Minimize the time between the expiration of rules and their subsequent readoption... .</p>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; shaded text shows possible additional changes; underlined text shows changes made by prime sponsor's amendment 2011-0383s)
18	40, IV	<p>Suspension of Provisions</p> <p>2011-0363s would explicitly allow time periods to be extended (if no "deadline" is established in the statute) and clarifies that the provision applies only to rulemaking deadlines; new (b) would requires a new deadline for taking the action to be set so that it cannot be postponed indefinitely.</p>	<p>IV. (a) Notwithstanding any other provision of this chapter, the director of legislative services, after consultation with the chair and vice-chair of the joint legislative committee on administrative rules, may, for good cause shown, waive any deadline <i>or otherwise extend any time period</i> contained in any provision of this chapter <i>which relates to the rulemaking process.</i></p> <p><i>(b) If a deadline is waived or a time period is extended, the director shall, after consultation with the chair and vice-chair of the joint legislative committee on administrative rules and the agency whose rules are affected, establish a new deadline by which the required action shall be taken.</i></p>
[17] 19	--	<p>Expedited process for readoption of rules</p> <p>Language requires the Director of OLS to develop expedited process for readopting rules with no changes or minor changes and to report on the process by November 1.</p> <p><b>Possible additional changes:</b></p> <ul style="list-style-type: none"> <li>▪ clarify that the Director may determine that other changes also qualify as minor;</li> <li>▪ delete items that currently are handled as editorial revisions (and so do not go through rulemaking anyways);</li> <li>▪ more clearly distinguish "updating internal references" from "references to documents incorporated by reference"; and</li> <li>▪ clarify that the expedited process would be for non-editorial changes.</li> </ul>	<p>17 Expedited Process for Readoption of Rules. The director of legislative services shall develop an expedited process for readopting rules which contain no changes or contain only minor changes. Minor changes shall include <b>but not be limited to</b> <del>renumbering,</del> updating internal <del>cross</del>-references, references to documents incorporated by reference, date and year changes, <del>typographical or</del> grammatical errors, and other <b>revisions that are not merely</b> editorial <del>changes</del>. The director shall consult with agency staff as necessary. The director shall provide a report on an expedited process and any proposals for legislation to the chairperson of the joint legislative committee on administrative rules not later than November 1, 2011.</p>
[18] 20	--	<p>Applicability of statutory changes</p> <p>Language establishes the point at which the amendments affect pending vs. future rulemaking proceedings.</p>	<p>The provisions of this act shall govern the following on or after the effective date of this act:</p> <p>I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6 or RSA 541-A:19-c.</p> <p>II. All emergency rules adopted under RSA 541-A:18.</p> <p>III. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.</p> <p>IV. All expedited repeal of rules under RSA 541-A:19-a.</p> <p>V. All notices submitted to the director of legislative services for publication in the rulemaking register.</p>

Bill §	541-A §, ¶(s)	Topic and Explanation of amendment	Text (text in gray font shows existing statute not being amended; text in black font shows language from SB 161; <u>shaded text</u> shows possible additional changes; <u>underlined text</u> shows changes made by prime sponsor's amendment 2011-0383s)
[49] <u>21</u>	--	<p>Effective Date</p> <p>The amendments are procedural and do not require a great deal of "lead-in" time -- so an effective date of January 1, 2012 would only delay the implementation of these improvements.</p>	<p>This act shall take effect 60 days after its passage.</p>

# Committee Report



**STATE OF NEW HAMPSHIRE**  
**SENATE**  
**REPORT OF THE COMMITTEE**

Date: March 7, 2011

**THE COMMITTEE ON Executive Departments and Administration**  
to which was referred Senate Bill 161-FN

**AN ACT**                      relative to procedures for adoption of agency rules under  
the administrative procedures act.

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

**OUGHT TO PASS WITH AMENDMENT**

**BY A VOTE OF: 4-0**

**AMENDMENT # 0706s**

Senator Fenton Groen  
For the Committee

Deb Chroniak 271-1403

## New Hampshire General Court - Bill Status System

## Docket of SB161

Docket Abbreviations

**Bill Title:** relative to procedures for adoption of agency rules under the administrative procedures act.

Official Docket of **SB161**:

Date	Body	Description
2/3/2011	S	Introduced and Referred to Executive Departments and Administration, <b>SJ 5</b> , Pg.46
2/9/2011	S	Hearing: 2/17/11, Room 100, State House, 10:00 a.m.; <b>SC11</b>
3/9/2011	S	Committee Report: Ought to Pass with Amendment #2011-0706s, Session Date: 3/16/11; <b>SC15</b>
3/16/2011	S	Committee Amendment 0706s, AA, VV; <b>SJ 9</b> , Pg.134
3/16/2011	S	Ought to Pass with Amendment 0706s, MA, VV; Refer to Finance Rule 4-3; <b>SJ 9</b> , Pg.134
3/17/2011	S	Committee Report: Ought to Pass with Amendment #2011-1001s, 3/23/11; <b>SC16</b>
3/23/2011	S	Committee Amendment 1001s, AA, VV; <b>SJ 10</b> , Pg.182
3/23/2011	S	Ought to Pass with Amendment 1001s, MA, VV; OT3rdg; <b>SJ 10</b> , Pg.182
3/23/2011	S	Passed by Third Reading Resolution; <b>SJ 10</b> , Pg.187
3/28/2011	H	Introduced and Referred to Executive Departments and Administration [3/17/2011]; <b>HJ 30</b> , PG.1037
3/29/2011	H	Public Hearing: 4/5/2011 10:45 AM LOB 306
4/5/2011	H	Rules Subcommittee Work Session: 4/14/2011 1:30 PM LOB 306
4/5/2011	H	Executive Session: 4/19/2011 1:15 PM LOB 306
4/21/2011	H	Committee Report: Ought to Pass with Amendment #1442h (Vote 13-0; CC); <b>HC 33</b> , PG.1067
4/21/2011	H	Proposed Committee Amendment #2011-1442h; <b>HC 33</b> , PG.1083-1084
4/27/2011	H	Amendment #1442h Adopted, VV; <b>HJ 40</b> , PG.1353-1354
4/27/2011	H	Ought to Pass with Amendment #1442h: MA VV; <b>HJ 40</b> , PG.1353-1354
4/27/2011	H	Referred to Finance; <b>HJ 40</b> , PG.1354
4/28/2011	H	Public Hearing: 5/5/2011 11:00 AM LOB 210-211
4/28/2011	H	Full Committee Work Session: 5/5/2011 2:00 PM LOB 210-211
4/28/2011	H	Executive Session: 5/5/2011 LOB 210-211 3:00 PM or immediately following work session
5/11/2011	H	Committee Report: Ought to Pass for May 18 (Vote 24-0; RC); <b>HC 39</b> , PG.1325
5/18/2011	H	Ought to Pass: MA DIV 233-121; <b>HJ 44</b> , PG.1550
5/25/2011	S	Sen. Carson Concurs with House Amendment #1442h, MA, VV; <b>SJ 18</b>
6/1/2011	S	Sen. Merrill Moved Reconsideration on Concurrence with House Amendment #1442h, MA, VV; <b>SJ 19</b> , Pg.535
6/1/2011	S	Sen. Carson Concurs with House Amendment #1442h, MF, VV; <b>SJ 19</b> , Pg.536
6/1/2011	S	Sen. Merrill Moved Nonconcur with House Amendment 1442h; Requests C of C, MA, VV; <b>SJ 19</b> , Pg.536
6/1/2011	S	President Appoints: Senators Merrill, White and Luther; <b>SJ 19</b> , Pg.536

6/8/2011	H	House Accedes to Senate Request for C of C (Rep C.McGuire): MA VV; <b>HJ 51</b> , PG.1714-1715
6/8/2011	H	Speaker Appoints: Reps C.McGuire, Whitehead, Sytek, and Pilotte; <b>HJ 51</b> , PG.1714-1715
6/9/2011	S	Committee of Conference Meeting: 6/14/2011, 3:30 p.m., Room 101, LOB
6/15/2011	H	Conference Committee Report # <b>2011-2374c</b> , House AM + New AM, Filed; <b>HC 49</b> , PG.1675
6/22/2011	H	Conference Committee Report #2374c Adopted, VV
6/22/2011	S	Conference Committee Report 2374c; Adopted, VV
6/22/2011	H	Enrolled
6/22/2011	S	Enrolled
7/13/2011	S	Signed by the Governor on 07/13/2011; Effective 09/11/2011; Chapter 0252

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NH House

NH Senate

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# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB161-FN 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

# 1-4 Testimony

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 03835

- AMENDMENT # 07065

- AMENDMENT # 06695

- 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):

FN-AMENDED 5/11/11

DATE DELIVERED TO SENATE CLERK

7-27-11

By:

Nyborah C. Chroniak  
COMMITTEE AIDE