

# Senate Executive Departments and Administration Committee

*Deb Chroniak 271-1403*

**SB 141**, relative to warnings prior to the imposition of civil fines assessed by state agencies.

**Hearing Date:** February 22, 2017

**Time Opened:** 9:30 a.m.

**Time Closed:** 9:45 a.m.

**Members of the Committee Present:** Senators Carson, Reagan, Gannon and Soucy

**Members of the Committee Absent:** Senator Woodburn

**Bill Analysis:** This bill permits certain state agencies to issue a warning before imposing fines for certain violations.

**Sponsors:**

Sen. Sanborn  
Rep. Pearl

Sen. French  
Rep. Cordelli

Sen. Fuller Clark  
Rep. Vadney

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**Who supports the bill:** Senator Fuller Clark, District 21; Will Anderson, Concord, Self

**Who opposes the bill:** John Williams, Department of Health and Human Services (DHHS); Paul Sanderson, New Hampshire Fish & Game; Jerry Little, Commissioner, New Hampshire Banking Department (NHBD); Emelia Galdieri, Legal Counsel, NHBD; John Beardmore, Commissioner, New Hampshire Department of Revenue Administration; Kathleen Mulchey-Hampsen, New Hampshire Department of Transportation; Robert Berry, DHHS

**Who is neutral on the bill:** No one

**Summary of testimony presented in support:**

**Senator Reagan** introduced SB 141 requesting a motion of “re-refer” on this legislation for prime sponsor, Senator Sanborn.

**John Beardmore, Commissioner, Department of Revenue Administration (DRA) (in opposition) (testimony provided):**

- Supplied to Committee members a letter developed by the Commissioners Group, signed by 10 agency heads opposing this bill.

- Walked through what the bill does and why 10 agency heads are opposed to it.
- Recommendation is "Inexpedient to Legislate".
- Inserts similar language for 10 separate state agencies pertaining to issuing a written warning for a violation of any of the agencies' laws and a fine not to exceed \$2,500.
- Caveat is the warning will not be issued if, in the opinion of the commissioner, such person intends to "cause harm or the violation poses a threat to public safety".
  - This language creates the written warning as the only mechanism of enforcement available to the commissioner (in the first instance).
  - One hand states the commissioner "must warn in writing."
  - The first section of the legislation pertains to the Department of Revenue Administration. Insertion of RSA 21-J:3 ends with the language, "the commissioner shall," an area where there are lots of requirements the department take action. This section would read, "the commissioner shall issue one written warning." This states, upon violation of laws pertaining to the DOA, he would have to issue a written warning. There is not discretion to "not warn" or "to not do so in writing".
  - This language does not allow him to skip a warning if a violation is egregious and the penalty should exceed the \$2,500 penalty noted in this legislation.
  - They would only be limited to warnings in the first instance (according to the language).
  - Letter outlines concerns from other agencies, including the Department of Environmental Services who has delegated enforcement from the federal EPA. The language in this bill would be inconsistent with their delegated enforcement requirements.
  - This legislation could impact the state's ability to engage in enforcement activity, such as what was done on the MBTE settlement or the mortgage fraud settlement (egregious violators of state law).
  - Intent to cause harm would mitigate the requirement to issue a warning.
  - Has discussed this legislation with the prime sponsor, Senator Sanborn.
  - He believes that the Senator is trying to mitigate the heavy enforcement hand of state government.
  - Senator Sanborn, in their discussions, raised the question of, "what happens when someone makes an honest mistake where state government comes and drops a huge fine on them?"
  - In Commissioner Beardmore's experience at the DOA, important laws and fines they have pertain to payment and timely filing of returns relating to taxes. There are due dates, and if you do not file by the due date, there is a penalty, which penalty can be up to 25%.
  - In regard to honest mistakes, they forgive honest mistakes. For example, first time violators, if they write or call their office, in most cases they will not penalize. This is not a written rule and their office handles these cases on a one-by-one instance. There usually is one free pass.
  - Speaking for himself, he would not institute a 25% penalty for a first time tax violation, although their system would generate and send a notice out.
  - When their department does audit work and finds violators who did not, for example, remit meals and rooms tax for an extended period of time, (owing thousands

of dollars) under this legislation, they would only be able to issue them a written warning.

- This bill is a very overly broad approach to a well-intentioned issue. This is better handled by having thoughtful and competent people in state government who understand the state's job is to enforce laws – but not in burdensome overly bureaucratic way.

**Jerry Little, State Bank Commissioner, and Emilia Galdieri, Legal Counsel NH Banking (in opposition):**

- He heard there was a motion of retained. He would prefer to see this legislation “Inexpedient to Legislate”.

- They can support a retained motion (re-refer) and at this time halt their testimony and save the Committee time if they do not need to testify. Came today to discuss how they operate and how the legislation would impact their industry.

**Senator Reagan** asked if this bill could be amended and be helpful. Commissioner Little could not think of any one thing at the time, but stated everyone they regulate and examine gets one free pass and the only time they take action is if something is extremely egregious resulting in significant consumer harm that they identify.

- They examine all their institutions every 18 months and go back in 18 months to make sure they have agreed with them and everything is fixed and done correctly. They double back to make sure they take care of issues.

- They do not send out a lot of penalties or fines.

- They work with their industry trying to be a cooperative regulator.

- Their statutory mission is to protect consumers in the state of New Hampshire.

**Paul Sanderson, Legal Coordinator, Department of Fish and Game (in opposition):**

- They are one of the departments which signed the letter presented to the Committee members.

- Wanted to discuss the special impacts this legislation would have on Fish and Game.

- They are in an unusual situation where under statute, RSA 206-19:a, makes every violation of a Fish and Game statute, as well as a Fish and Game rule, a violation treated under the criminal code.

- He noted that Fish and Game has very few administrative hearings because they do not have linkage between administrative authority and their ability to enforce. Because of this, their department treats “almost” everything as a violation under the criminal code and adjudicated in Circuit Court.

- If this bill were to pass it would significantly impact the study and their ability to adjust their operations in accordance with the study.

**Future Action:** Inexpedient to Legislate

**dac**

Date Hearing Report completed: February 24, 2017  
[SB0141-F]