

HB 1104-FN - AS AMENDED BY THE HOUSE

8Feb2018... 0399h
22Mar2018... 1062h

2018 SESSION

18-2645
05/10

HOUSE BILL ***1104-FN***

AN ACT relative to dredge and fill permit time limits; relative to time limits under the administrative procedure act; and relative to online filing with the secretary of state's office.

SPONSORS: Rep. Hinch, Hills. 21; Rep. Leishman, Hills. 24; Rep. McConkey, Carr. 3; Rep. Avellani, Carr. 5; Sen. Bradley, Dist 3; Sen. Daniels, Dist 11; Sen. Giuda, Dist 2

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill:

- I. Shortens certain time limits related to wetlands permits and terrain alteration.
- II. Establishes a time limit for recommendation on grant of right petitions for excavating and dredging in public waters.
- III. Reduces certain time limits for agency actions on applications under the administrative procedure act.
- IV. Provides that failure of an agency to act within certain proscribed time limits under the administrative procedure act shall be treated as agency approval.
- V. Requires the secretary of state to allow online business and corporate filings.
- VI. Establishes and clarifies certain time limits for agency action on applications, petitions, and requests by the department of health and human services, the public utilities commission, the department of employment security, the insurance department, and the department of environmental services.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
8Feb2018... 0399h
22Mar2018... 1062h 18-2645
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to dredge and fill permit time limits; relative to time limits under the administrative procedure act; and relative to online filing with the secretary of state's office.

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

1 Wetlands and Shorelands Review Fund; Reference Added. Amend RSA 482-A:3, III to read as follows:

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), ~~and~~ XII(c), **and X** are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

2 Reduction of Dredge and Fill Permit Timelines. Amend RSA 482-A:3, XIV to read as follows:

XIV.(a) In processing an application for permits under this chapter, except for a permit by notification, the department shall:

(1) Within ~~[14]~~ 10 days of receipt by the department, issue a notice of administrative completeness or send notice to the applicant, at the address provided on the application, identifying any additional information required to make the application administratively complete and providing the applicant with the name and telephone number of the department employee to whom all correspondence shall be directed by the designated department employee regarding incompleteness of the application. Each receipt of additional information in response to any notice shall re-commence the ~~[14-day]~~ 10-day period until the department issues a notice of administrative completeness. Any notice of incompleteness sent under this subparagraph shall specify that the applicant or authorized agent shall submit such information as soon as practicable and shall notify the applicant or authorized agent that if the requested information is not received within 60 days of the notice, the department shall deny the application.

(2) Within ~~[75]~~ 50 days of the issuance of a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact and ~~[105]~~ 75 days for all other projects, request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary. Such request and technical comments may be sent by electronic means if the applicant or authorized agent has indicated an agreement to accept communications by electronic means, either by so indicating on the application or by a signed statement from the applicant or authorized agent that communicating by electronic means is acceptable. Any request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application. The department ~~[may]~~ shall grant an extension of this 60-day time period upon request of the applicant.

(3) Where the department requests additional information pursuant to subparagraph (a)(2), within 30 days of the department's receipt of a complete response to the department's information request:

(A) Approve the application, in whole or in part, and issue a permit; or

(B) Deny the application and issue written findings in support of the denial; or

(C) Schedule a public hearing within 30 days in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant; or

(4) Where no request for additional information is made pursuant to subparagraph (a)(2), within [75] 50 days from the issuance of the notice of administrative completeness for proposed projects under one acre of jurisdictional impact, or [105] 75 days for all others:

(A) Approve the application, in whole or in part, and issue a permit; or

(B) Deny the application and issue written findings in support of the denial; or

(C) Schedule a public hearing within 30 days in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(5) Where the department has held a public hearing on an application filed under this chapter, within [60] 45 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.

(b)(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (a)(3), (a)(4), and (a)(5), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.

(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:

(A) Approve the application, in whole or in part, and issue a permit; or

(B) Deny the application and issue written findings in support of the denial.

(3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, RSA 485-A relating to water quality, and federal requirements.

(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (b)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, and RSA 485-A relating to water quality, and federal requirements.

(c) If extraordinary circumstances prevent the department from conducting its normal function, time frames prescribed by this paragraph shall be suspended until such condition has ended, as determined by the commissioner.

(d) The time limits prescribed by this paragraph shall not apply to an application filed after the applicant has already undertaken some or all of the work covered by the application, or where the applicant has been adjudicated after final appeal, or otherwise does not contest, the department's designation as a chronic non-complier in accordance with rules adopted pursuant to this chapter.

(e) Any request for a significant amendment to a pending application or an existing permit which changes the footprint of the permitted fill or dredge area shall be deemed a new application subject to the provisions of RSA 482-A:3, I and the time limits prescribed by this paragraph. "Significant amendment" means an amendment which changes the proposed or previously approved acreage of the permitted fill or dredge area by 20 percent or more, relocates the proposed footprint of the permitted fill or dredge area, includes a prime wetland or surface waters of the state, includes a wetland of a different classification as classified by the department, or includes non-wetland areas requiring permits for filling and dredging. This meaning of "significant amendment" shall not apply to an application amendment that is in response to a request from the department.

(f) The department may extend the time for rendering a decision under subparagraphs (a)(3)(D) and (a)(4)(D), without the applicant's agreement, on an application from an applicant who, [previously] within the 5 years preceding the application, has been determined, after the

exhaustion of available appellate remedies, to have failed to comply with this chapter or any rule adopted or permit or approval issued under this chapter, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this chapter, pursuant to an action initiated under RSA 482-A:13, RSA 482-A:14, or RSA 482-A:14-b. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, but shall not exceed ~~[30]~~ 20 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

(g) The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

3 New Paragraph; Excavating and Dredging Permit; Certified Application Preparer Program for Certain Wetlands Applications. Amend RSA 482-A:3 by inserting after paragraph XIX the following new paragraph:

XX.(a) The department shall develop a voluntary certified application preparer program for submission of applications for all qualifying minimum impact projects. The commissioner shall adopt rules to establish the qualifications to become a certified application preparer and to identify qualifying minimum impact projects. The qualifications established shall include that the individual is a permitted septic system designer or is licensed or certified by the office of professional licensure and certification as a certified wetland scientist, certified soil scientist, professional engineer, licensed land surveyor, or any other professional designated by the department, and shall include training and continuing education requirements. Qualifying minimum impact projects shall include, but not necessarily be limited to, all projects which the department has designated as minimum impact projects in its wetlands rules.

(b) Applications for qualifying minimum impact projects submitted by a certified application preparer shall not require technical review by the department and the department shall issue a permit within 10 days of receipt of a complete application.

(c) The department may revoke a certificate for good cause after notification to the certificate holder and opportunity for an adjudicative proceeding under RSA 541-A:31 and rules adopted by the department.

(d) The certification shall be valid for one year from the date of issuance and may be renewed every year. The initial fee for certification shall be \$200 and the fee for renewal shall be \$50. The department shall not issue a certification or a renewal certification if the required fee is not paid. All fees shall be deposited into the wetlands and shoreland review fund established in RSA 482-A:3, III.

4 Administrative Provisions; Extensions for Conservation Commission Action on Wetlands Applications. Amend RSA 482-A:11, III(a) to read as follows:

(a) Upon written notification to the department by a municipal conservation commission that it intends to investigate any notice received by it pursuant to RSA 482-A:3, the department shall not make its decision on the application that is the subject of the notice until it has received and acknowledged receipt of a written report from such commission, or until 40 days from the date of filing with the municipal clerk of such notice, whichever occurs earlier, subject to an extension **of up to 40 days**, as permitted by the ~~[department]~~ **commissioner, for good cause shown**. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of the record of the department. Where the ~~[department]~~ **commissioner** grants an extension, the time limits prescribed

by RSA 482-A:3, XIV(b) shall be suspended [~~until a date~~] **for up to 40 days as** agreed to by the applicant and the department. If a conservation commission makes a recommendation to the department in its report, the department shall specifically consider such recommendation and shall make written findings with respect to each issue raised in such report which is contrary to the decision of the department. If notification by a local conservation commission pursuant to this paragraph is not received by the department within 14 days following the date the notice is filed with the municipal clerk, the department shall not suspend its normal action, but shall proceed as if no notification has been made.

5 Reduction of Dredge and File Retroactive Enforcement Period. Amend RSA 482-A:14-c to read as follows:

482-A:14-c Limitation on Enforcement Action. No person who acquires property, by any means, more than ~~5~~ 2 years after an activity constituting a violation of this chapter has been completed, shall be subject to an enforcement action under this chapter for such violation, provided such person allows restoration of impacted areas, unless the person knew of the existence of the violation at the time that the person acquired the property. Nothing in this section shall limit any enforcement action for violation of this chapter, including injunctive relief requiring restoration of impacted areas, against the person who committed the violation. Nothing in this section shall limit any enforcement action with respect to any violation of this chapter, including injunctive relief requiring restoration of impacted areas, for which written notice of the violation has been provided to the owner by the department prior to January 1, 2013. In addition to any common law remedy, any person who suffers damages as a result of a violation of this chapter committed by another may seek compensation from the person who committed the violation, including diminution in property value and reasonable attorney's fees.

6 Reduction of Time Limits for Agency Action on Application, Petitions, and Requests. Amend RSA 541-A:29 to read as follows:

541-A:29 Agency Action on Applications, Petitions and Requests. In processing an application, petition, or request, in any matter other than rulemaking or a declaratory ruling, in which a response is specifically addressed to the applicant, petitioner, or requester, the agency shall:

I. ~~Within 60~~ 30 days of receipt, examine the application, petition, or request, notify the applicant of any apparent errors or omissions, request any additional information that the agency is permitted by law to require, and notify the applicant of the name, official title, address, and telephone number of an agency official or employee who may be contacted regarding the application.

II. ~~Within a reasonable time, not to exceed 120~~ 60 days, after receipt of the application, petition or request, or of the response to a timely request made by the agency pursuant to paragraph I, the agency shall:

(a) Approve or deny the application, in whole or in part, on the basis of nonadjudicative processes, if disposition of the application by the use of these processes is not precluded by any provision of law; or

(b) Commence an adjudicative proceeding in accordance with this chapter.

III. If the time limits prescribed by this section conflict with specific time limits provided for by other provisions of law, the specific time limits provided for by such other provisions shall control.

IV. An agency may extend the time periods for review provided for in this section or in any other provision of law upon written agreement of the applicant.

7 Time Limit for Recommendation on Grant of Right Petitions. Amend RSA 482-A:22 to read as follows:

482-A:22 Grant of Right. The governor and council, upon petition and upon the recommendation of the department, may, for just consideration, grant to an owner of a shoreline on public waters the right to excavate, remove, or dredge any bank, flat, marsh, swamp or lake bed before the owner's shoreline. Every petition to excavate or dredge said areas shall be filed with the department. The department, after 30 days' notice to abutters **and within 60 days of receipt of a petition**, the local governing body of the municipality in which the property is situate, and the department of health and human services shall hold a public hearing. Notice of the hearing shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general

circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality. Upon appropriate investigation **and within 30 days of a public hearing**, the department shall make its recommendations to the governor and council with regard to such petition. If the department recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to the protection of public rights and to the protection of the rights and privileges of persons owning land in the vicinity of the area to be excavated or dredged by the petitioner.

8 Terrain Alteration; Reduction of Permit Timelines. Amend RSA 485-A:17, II-b(e) and (f) to read as follows:

(e) The time limits under this paragraph shall not apply to an application from an applicant that has [previously] been found in violation of this chapter pursuant to RSA 485-A:22-a **within the 5 years preceding the application** or an application that does not otherwise **substantially** comply with the department's rules relative to the permit application process.

(f) The department may extend the time for rendering a decision under subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an applicant who, [previously] **within the 5 years preceding the application**, has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this section or any rule adopted or permit or approval issued under this section, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this section, pursuant to an action initiated under RSA 485-A:22. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

9 New Section; Failure of Agency to Act. Amend RSA 541-A by inserting after section 29 the following new section:

541-A:29-a Failure of Agency to Act.

I. If an agency fails to take any required action on an application, petition, or request within the time limits prescribed by RSA 541-A:29 or any other provisions of law, the application, petition, or request shall be deemed approved and any permit, approval or other item requested shall be deemed granted to or received by the applicant, petitioner, or requestor.

II. If a permit, approval, or other item has been granted under paragraph I, the applicant may request written confirmation of such grant from an agency. The agency shall provide an applicant written confirmation of such an approval within 14 days of the applicant's request.

III. A permit, approval, or other item shall not be granted by default if an applicant has agreed in writing to extend an agency's time for review pursuant to RSA 541-A:29, IV or any other provision of law.

IV. A grant of a permit, approval, or other item under this section shall not relieve the applicant, petitioner, or requestor from the obligation to comply with all federal, state, and local requirements applicable to activities authorized by the permit, approval, or other item.

10 New Section; Voluntary Corporations and Associations; Online Filing. Amend RSA 292 by inserting after section 5-b the following new section:

292:5-c Online Filing. No later than January 1, 2020, the secretary of state shall provide for and allow the online filing of all forms, certificates, or other documents required under this chapter.

11 New Section; New Hampshire Business Corporations Act; Online Filing. Amend RSA 293-A by inserting after section 1.21 the following new section:

293-A:1.21-a Online Filing. No later than January 1, 2020, the secretary of state shall provide for and allow the online filing of all forms, certificates, or other documents required under this subdivision.

12 New Section; Uniform Partnership Act; Online Filing. Amend RSA 304-A by inserting after section 5 the following new section:

304-A:5-a Online Filing. No later than January 1, 2020, the secretary of state shall provide for and allow the online filing of all forms, certificates, or other documents required under this chapter.

13 New Section; Uniform Limited Partnership Act; Online Filing. Amend RSA 304-B by inserting after section 8 the following new section:

304-B:8-a Online Filing. No later than January 1, 2020, the secretary of state shall provide for and allow the online filing of all forms, certificates, or other documents required under this chapter.

14 New Section; Limited Liability Companies; Online Filing. Amend RSA 304-C by inserting after section 28 the following new section:

304-C:28-a Online Filing. No later than January 1, 2020, the secretary of state shall provide for and allow the online filing of all forms, certificates, or other documents required under this chapter.

15 New Paragraphs; Refunds, Appeals for Redetermination or Reconsideration, Liens, and Distraints; Processing Timelines. Amend RSA 21-J:28-b by inserting after paragraph II the following new paragraphs:

II-a. Within 60 days of receipt of such petition for redetermination or reconsideration, the department shall examine such petition for redetermination or reconsideration, notify the applicant of any errors or omissions, request any additional information that the department is permitted by law to require, and notify the petitioner of the name, official title, address, and telephone number of a department official or employee who may be contacted regarding the petition.

II-b. Within a reasonable time, not to exceed 120 days, after receipt of the petition for redetermination or reconsideration, or of the response to a timely request by the department pursuant to paragraph II-a, the department shall:

(a) Approve or deny the petition for redetermination or reconsideration, in whole or in part, on the basis of nonadjudicative processes, if disposition of the petition for redetermination or reconsideration by the use of these processes is not precluded by any provision of law; or

(b) Commence an adjudicative proceeding in accordance with RSA 541-A.

16 New Paragraph; Department of Health and Human Services; Time Limits for Agency Action on Applications, Petitions, and Requests. Amend RSA 126-A:5 by inserting after paragraph XXX the following new paragraph:

XXXI. The department of health and human services shall comply with the provisions of RSA 541-A:29 for the timely processing of completed applications, petitions, or other administrative requests made of the agency. However, the provisions of RSA 541-A:29-a shall not apply to any federally funded program administered by the department to the extent such default approval conflicts with federal law.

17 The Public Utilities Commission; Appointment, Qualification, Etc. Amend the introductory paragraph of RSA 363:17-b to read as follows:

363:17-b Final Orders. The commission shall issue a final order on all matters presented to it. ***Matters resolved by final order of the commission shall be exempt from RSA 541-A:29 and RSA 541-A:29-a, but shall be subject to federal and state time limitations applicable to specific matters.*** The transcript or minutes of oral deliberations shall not constitute a final order. A final order shall include, but not be limited to:

18 The Public Utilities Commission; Rulemaking Authority. Amend RSA 365:8 to read as follows:
365:8 Rulemaking Authority.

I. The commission shall adopt rules, pursuant to RSA 541-A, relative to:

~~[I.]~~ **(a)** The conduct of its hearings, including alternative processes in hearings and other forms of alternative dispute resolution.

~~[II.]~~ **(b)** Standards and procedures for streamlined review or other alternative processes to enhance the efficiency of the commission and respond to the needs of the utility's ratepayers and shareholders.

~~[III.]~~ **(c)** Standards and procedures for the creation, monitoring and evaluation of alternative forms of regulation.

~~[IV.]~~ **(d)** Standards and procedures for the handling of confidential information, in accordance with RSA 91-A.

~~[V.]~~ **(e)** Standards and procedures for filing requirements for tariffs, engineering, accounting, and other commission matters.

~~[VI.]~~ **(f)** Standards and procedures for franchise terms and conditions, including extended area telephone service.

~~[VII.]~~ **(g)** Standards and procedures for safe and reliable utility service and termination of service subject to RSA 363-B.

~~[VIII.]~~ **(h)** Standards and procedures for matters related to the proper administration of RSA 366 relative to utility relations with affiliates.

~~[IX.]~~ **(i)** Standards and procedures relative to a reasonable amount of the short-term notes, bonds or other evidences of indebtedness based upon the amount of the utility's respective plant investment which each utility shall not exceed without first obtaining the approval of the commission pursuant to RSA 369:7.

~~[X.]~~ **(j)** Standards and procedures for determination and recovery of rate case expenses.

~~[XI.]~~ **(k)** Standards and procedures for the conduct of investigations authorized under this title.

~~[XII.]~~ **(l)** Procedures necessary to provide for the proper administration of and to further the purposes of this title.

~~[XIII.]~~ **(m)** [Repealed.]

~~[XIV.]~~ **(n)** Standards and procedures for public utilities to request protection of routine filings that contain confidential commercial or financial information.

II. Where the commission has adopted rules in conformity with this section, complaints to and proceedings before the commission shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.

19 The Public Utilities Commission; Electric Utility Restructuring; Ratepayer Protection. Amend RSA 374-F:4-b, I to read as follows:

I. Within 60 days of the effective date of this section, the commission shall initiate a proceeding to develop rules to allow residential and small commercial customers to choose how they receive communication from competitive electric suppliers and to implement the provisions of this section. **Where the commission has adopted rules in conformity with this section, complaints to and proceedings before the commission shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.**

20 The Public Utilities Commission; Competitive Electricity Supplier Requirements. Amend RSA 374-F:7, V to read as follows:

V. The commission shall adopt rules, under RSA 541-A, to implement this section. **Where the commission has adopted rules in conformity with this section, complaints to and proceedings before the commission shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.**

21 New Section; Insurance Holding Companies; Time Limits for Agency Action. Amend RSA 401-B by inserting after section 15 the following new section:

401-B:16 Time Limits for Agency Action. The time limits specified in this chapter for the commissioner to act on any holding company application, petition, or request and the provisions in this chapter under which an application, petition, or request may or may not be deemed to be approved when the commissioner does not act after a specified period of time shall control, and RSA 541-A:29 and RSA 541-A:29-a shall not apply.

22 New Sections; Approval of Rates and Forms; Company, Producer, and Adjuster Licensing; Time Limits for Agency Action. Amend RSA 400-A by inserting after section 15-d the following new sections:

400-A:15-e General Provisions Regarding Review of Rate and Form Filings. Unless otherwise provided in specific provisions of title XXXVII or in rules promulgated thereunder, when reviewing a rate or form filing submitted by an insurer, the commissioner shall:

I. Within 30 days of receipt, examine the rate or form filing and notify the insurer of any apparent errors or omissions that render the filing incomplete or request any additional information that the insurance department is permitted by law to require and that is deemed by the commissioner to be relevant to the review process.

II. Within 60 days after receipt of the filing or after receipt of the additional information or corrections timely requested by the commissioner pursuant to paragraph I, the commissioner shall:

(a) Approve or deny the filing, in whole or in part; or

(b) Commence an adjudicative proceeding in accordance with RSA 541-A.

III. In the event that the commissioner returns one or more preliminary objections to the insurer regarding a rate or form filing, the period in paragraph II shall not include the period during which the insurer is preparing its response.

IV. Upon written agreement of the insurer, the commissioner may extend any of the time periods for review provided for in this section.

V. Wherever the general time limits prescribed by this section differ from specific time limits provided for by other provisions of title XXXVII or in rules promulgated thereunder, the specific time limits provided for by such other provisions shall control.

VI. If the commissioner fails to take action on a rate or form filing governed by this section within the time limits prescribed in this section, the filing shall be deemed approved. If at any time after a rate or form has been deemed approved under this paragraph, the commissioner finds that the rate or form does not meet any of the requirements under title XXXVII, the commissioner may, after notice and hearing, order the discontinuance of the rate or form. The order shall provide a reasonable time after which the filing shall be deemed no longer effective. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. However, a policyholder shall have the privilege to cancel the policy containing the nonconforming rate or policy provision without penalty.

VII. RSA 541-A: 29 and RSA 541-A: 29-a shall not apply to insurer rate and form filings under title XXXVII.

400-A:15-f General Provisions Regarding Company, Producer, and Adjuster Licensing. Unless otherwise provided in specific provisions of title XXXVII or in rules promulgated thereunder, when reviewing a license application submitted by a company, producer, or adjuster, the commissioner shall:

I. Within 30 days of receipt, examine the license application and notify the applicant of any apparent errors or omissions that render the application incomplete or request any additional information that the insurance department is permitted by law to require and that is deemed by the commissioner to be relevant to the review process.

II. Within 60 days after receipt of the application or after receipt of the additional information or corrections timely requested by the commissioner pursuant to paragraph I, the commissioner shall:

(a) Approve or deny the application, in whole or with restrictions; or

(b) Commence an adjudicative proceeding in accordance with RSA 541-A.

III. In the event that the commissioner returns one or more preliminary objections to the company, producer, or adjuster regarding a license application, the period in paragraph II shall not include the period during which the applicant is preparing a response.

IV. In the event that the commissioner is conducting an investigation of an applicant pursuant to RSA 400-A:16 of possible violations of insurance laws, the period in paragraph II shall not include the period during which the investigation is pending.

V. Upon written agreement of the applicant, the commissioner may extend any of the time periods for review provided for in this section.

VI. Wherever the general time limits prescribed by this section differ from specific time limits provided for by other provisions of title XXXVII or in rules promulgated thereunder, the specific time limits provided for by such other provisions shall control.

VII. If the commissioner fails to take action on a license application governed by this section within the time limits prescribed in this section, the application shall be deemed approved. If at any time after a license application has been deemed approved under this paragraph, the commissioner finds that the applicant does not meet standards for licensure, the commissioner may, after notice and hearing, order the revocation, suspension, or restriction of the license.

VIII. RSA 541-A: 29 and RSA 541-A: 29-a shall not apply to company, producer, or adjuster license applications under title XXXVII.

23 Department of Environmental Services; Time Limits for Department Action on Applications, Petitions, and Requests. Amend RSA 21-O by inserting after section 1-a the following new section:

21-O:1-b Time Limits for Department Action on Applications, Petitions, and Requests. The provisions of RSA 541-A:29-a shall not apply to any federally funded program administered by the department to the extent a default approval granted under RSA 541-A:29-a would conflict with federal law.

24 New Paragraph; Department of Employment Security; Time Limits for Agency Action on Applications, Petitions, and Requests. Amend RSA 282-A:112 by inserting after paragraph VI the following new paragraph:

VII. The department of employment security shall comply with the provisions of RSA 541-A:29 for the timely processing of completed applications, petitions, and other administrative requests made of the agency. However, the provisions of RSA 541-A:29-a shall not apply to any federally funded program administered by the department to the extent that such default approval conflicts with federal law.

25 Effective Date. This act shall take effect January 1, 2019.

LBAO
18-2645
Amended 4/9/18

HB 1104-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2018-1062h)

AN ACT relative to dredge and fill permit time limits; relative to time limits under the administrative procedure act; and relative to online filing with the secretary of state's office.

FISCAL IMPACT: State County Local None

| STATE: | Estimated Increase / (Decrease) | | | |
|------------------------|---|------------------------------------|----------------------------------|-------------------------------------|
| | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
| Appropriation | \$0 | \$0 | \$0 | \$0 |
| Revenue | Indeterminable | Indeterminable | Indeterminable | Indeterminable |
| Expenditures | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |
| Funding Source: | <input checked="" type="checkbox"/> General | <input type="checkbox"/> Education | <input type="checkbox"/> Highway | <input checked="" type="checkbox"/> |
| | Other - Various Government Funds | | | |

METHODOLOGY:

The Department of Environmental Services indicates section 2 of the bill would cut the Department's time to review wetlands permits from 75 days to 50 days for projects under one acre of jurisdictional impact and from 105 days to 75 days for all other projects. The Department assumes cutting the review time would require an increase in application review staff from the current 7 staff to 9. The bill does not provide revenue to support the additional staff which would be Environmentalist III positions at labor grade 23. The Department estimates the cost for two additional wetlands application review staff would range from \$168,000 in FY 2019 to \$180,000 in FY 2022.

The Secretary of State's Office indicates over the past biennium many of the business filings have been converted from mailed or in-person filings to electronic and online submissions and many of the business filings can now be completed online. The Department indicates the following business filings currently can be done online:

Creating a Domestic Business (12) - Includes automatic delivery of a Certificate of Formation: Trade Name, Limited Liability Company, Professional Limited Liability Company, For-profit Corporation, Nonprofit Corporation, Professional Profit Corporation, Benefit Corporation, Professional Benefit Corporation, Limited Partnership, Limited Liability Partnership, Consumer Cooperative and Investment Trust.

Registration of a Foreign Business in good standing in its place of formation (9): Limited Liability Company, Professional Limited Liability Company, Profit Corporation, Nonprofit Corporation, Professional Profit Corporation, Partnership, Limited Partnership, Limited Liability Partnership and Consumer Cooperative

Additional Business filings (18):

Annual Report / Annual Fee, Benefit Report, Business Amendment, Business Information Change, Business Withdrawal / Dissolve / Cancel, Certificate of Good Standing, Name Reservation, Name Reservation Transfer, Registered Agent Address Change, Registered Agent Address Change – Commercial Agent, Registered Agent Registration, Registered Agent Change, Trade Name Addition in Partnership, Trade Name Discontinuance, Trade Name Forced DBA Renewal, Trade Name Information Change, Trade Name Renewal and Trade Name Withdrawal in Partnership.

The Department identified the following business filings that cannot currently be filed online. In the process of working with the software developer, these filings were intentionally excluded because of their complexity or the fact that there is a very low volume.

Not Currently Filed Online (22):

Mergers (All types), Articles of Merger/Share Exchange, Restated Articles with/without Amendments, Conversions (all filing types), Domestications, Charter Surrender, Reinstatements (all filing types), Late Reinstatements, Articles of Correction, Abandonments (all filing types), Revocation of Dissolution, Name Reservation Cancellation, Foreign Registered Name Registration, Foreign Registered Name Renewal, Certified Copies (all filing types), Business Lists and Customized Business Lists, Trade Mark Filings, Writ Filings, Additional business types for Withdrawal / Dissolve / Cancel, Bank Formations, Insurance Formations and Rural Marketing Formations.

The Department estimates the cost to upgrade the filing system to accept and process each additional filing registration requirement would range between \$10,000 and \$130,000. The cost will vary depending on the complexity of the filing requirement. The Department believes a cost benefit analysis should be completed before committing to on-line capability for filing types that benefit only a few users. Therefore, the Department indicates the cost to develop online filing for the remaining filing types is indeterminable at this time.

The Department of Employment Security indicates section 24 of the bill provides that the default provisions under RSA 541-A:29-a “Failure to Act”, shall not apply to any federally funded program administered by the Department. Therefore, as amended, the bill will not jeopardize the Department’s conformity with federal requirements or result in a fiscal impact to the Department.

The Department Revenue Administration analyzed the fiscal impact of sections 6, 9 and 15 of the bill since those are the only sections which would impact the operations of the Department or programs within the Department’s purview.

- Section 6 amends RSA 541-A:29 to shorten the time limits for agency actions on applications, petitions, and requests under the Administrative Procedures Act (APA), which applies to all executive branch agencies unless a more specific provision is applicable.

- Section 9 provides that if an agency fails to take a required action on an application, petition, or request within the time limits prescribed by the APA, the application, petition, or request will be deemed automatically granted.
- Section 15 amends RSA 21-J:28-b relative to the Department of Revenue Administration appeals, to provide for a specific timeline for response to taxpayer appeals. The Department shall acknowledge receipt of taxpayer appeals within 60 days and approve the appeal or deny the appeal and commence adjudicative proceedings within 120 days. The Department indicates this in line with current practice.

The Department states the bill would have no impact on any revenue stream it administers and the Department can administer the proposed legislation within its existing operating budget.

The Department of Health and Human Services states this bill, as amended by the House, clarifies that default approval would not apply to any federally funded program administered by the Department to the extent such default approval conflicts with federal law. The Department indicates, after review of the Department's current business model, the bill as amended would have no fiscal impact on the Department.

The Office of Professional Licensure and Certification indicates reducing the time lines to respond to applications would increase state expenditures by an indeterminable amount due to the need for additional staff.

The Insurance Department indicates this bill states the timelines the Department must meet in reviewing and responding to certain applications, filings, petitions, and requests. This is already a function of the Department, so there is no requirement to perform additional activities. The Department assumes it can meet the timelines with the current authorized personnel. The Department assumes there would be no fiscal impact on Department expenditures or revenues.

The Department of Administrative Services indicates changes to the Administrative Procedures Act would impact all state agencies and departments. The Department has no information on how the bill might impact the operations of the State's various boards, commission, agencies and departments. Most agencies have their own administrative rules and the changes to the time frames in RSA 541-A would likely require some or most agencies to change their rules. The Department has no information on which to determine the impact on state expenditures or revenues.

The Liquor Commission states, unless the applicant agrees in writing to extend the time limits, the amendment to RSA 541-A:29 would reduce the time the Commission has to review license applications from 60 days to 30 days and reduce the time the Commission has to issue or deny the license application from 120 days to 60 days, and may increase expenditures by an indeterminable amount. The Commission states it has rarely taken applications to the maximum limits in current law, but indicates the bill could lead to a situation where the Commission is unable to responsibly review applications. The Commission issued over 5,100 licenses in FY 2017 and all are subject to the renewal time limits imposed in RSA 541-A:29. In addition, 743 new licenses were issued in FY 2017. The Commission assumes shortening the time limits may require additional personnel to comply with the proposed shorter time limits.

The Public Utilities Commission does not expect the bill would have a fiscal impact on the Commission. The Commission routinely reviews its rules and procedures to promote efficient regulation. Consequently, for requests made of the Commission that are considered by this bill, the Commission is already acting within the proposed new time periods at currently authorized staffing levels.

The Office of Legislative Services Administrative Rules indicates the number of agencies impacted by the proposed change to RSA 541-A:29 is unknown, but could be large as there are approximately 120 rulemaking agencies. Many agencies use the review deadline in RSA 541-A:29 to guide their application processes when their own statutes do not address time limits. The Office indicates the proposed amendment to RSA 541-A:29 would increase the number of rulemaking proceedings by an indeterminable amount. It is unknown if an additional employee, equipment or supplies would be needed due to the increase in proceedings.

AGENCIES CONTACTED:

Departments of Environmental Services, Employment Security, State, Revenue Administration, Health and Human Services, Insurance and Administrative Services; Office of Professional Licensure and Certification; New Hampshire Liquor Commission; Public Utilities Commission, and Office of Legislative Services Administrative Rules