

HB 663-FN – AS INTRODUCED

2013 SESSION

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HOUSE BILL **663-FN**

AN ACT relative to appeals within the department of environmental services.

SPONSORS: Rep. Ahlgren, Carr 6; Rep. Renzullo, Hills 37; Rep. Spang, Straf 6; Sen. Bradley,
Dist 3

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill establishes an appeals board in 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to appeals within the department of environmental services.

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

1 1 New Section; Appeals. Amend RSA 21-O by inserting after section 14 the following new
2 section:

3 21-O:14-a Environmental Appeals Board.

4 I. There is established an environmental appeals board to hear appeals from department
5 decisions as defined in RSA 21-O:14, I.

6 II. The board shall consist of 9 members, as follows:

7 (a) Four members to represent the regulated community, selected one each from the
8 councils established under this chapter;

9 (b) Four members to represent environmental, conservation, or public health interests,
10 selected one each from the councils established under this chapter; and

11 (c) A hearing officer appointed under RSA 21-M:3, VIII, who shall be neutral.

12 III. Members of the board shall be appointed by the governor and council for a term of 2
13 years, except the initial appointments shall be staggered so that no more than 1/2 of the members'
14 terms shall expire in the same year. Each board member shall be a New Hampshire resident. Board
15 members shall not participate in any council discussions during their term on the board, and shall
16 not have any official or contractual relationship with, or receive any significant portion of their
17 income from, any person subject to department permits or enforcement orders. Members shall
18 disclose all potential conflicts of interest, and shall not participate in appeals in which they or any
19 member of their business or employer have a direct interest. At the end of their term on the board,
20 the members shall rejoin their respective councils. Members shall not serve subsequent terms but
21 may be reappointed to the board after one year.

22 IV. As a condition to maintaining eligibility to hear appeals, board members shall complete
23 at least 5 hours annually of training and briefing in the area of environmental law, administrative
24 adjudicative procedure, or related areas, provided by the department. Courses, seminars, or other
25 classes on such topics that are taken to fulfill continuing education requirements for professional
26 licensure or certification shall qualify as acceptable training. The attorney general, or designee,
27 shall have the authority to approve other training. The attorney general shall have the authority to
28 suspend the eligibility of any member of the board who is not in compliance with such annual
29 training requirements, and to reinstate such member's eligibility upon compliance.

30 V. Each appeal from a department decision shall be heard de novo by the board. Decisions
31 of the board shall be made by a quorum of members who are eligible to hear the appeal.

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1 VI. Board proceedings shall be subject to the adjudicative hearing provisions of RSA 541-A.
2 The board shall adopt rules to govern its proceedings under RSA 541-A to the extent needed to
3 supplement the statutory requirements. All board proceedings shall be conducted so as to ensure a
4 fair and impartial hearing and decision.

5 VII. Members of the board shall receive \$50 per diem for each day devoted to the work of the
6 board and shall be reimbursed for necessary travel expenses.

7 2 Per-Diem. Amend RSA 21-O:5-a, II to read as follows:

8 II. [~~The 8 members appointed under subparagraph I(g) shall be entitled to expenses and \$50~~
9 ~~compensation per diem. The other~~] Members of the council **not appointed under subparagraph**
10 **I(g)** shall receive no additional compensation for their service as members of the council, other than
11 their regular salaries from their respective state departments, but shall receive mileage and other
12 expenses paid at the rate set for state employees.

13 3 Repeal. The following are repealed:

14 I. RSA 21-O:5-a, V, relative to the authority of the wetlands council to hear appeals.

15 II. RSA 21-O:7, IV, relative to the authority of the water council to hear appeals.

16 III. RSA 21-O:9, V, relative to the authority of the waste management council to hear
17 appeals.

18 IV. RSA 21-O:11, IV, relative to the authority of the air resources council to hear appeals.

19 V. RSA 21-O:9-a, relative to appeals to the water council.

20 VI. RSA 332-E:9, II relative to appeals to the water council.

21 VII. RSA 147-A:15 relative to appeals to the waste management council.

22 4 Cross Reference Changed. Amend RSA 146-A:16, III to read as follows:

23 III. Appeal of an order issued under this section shall be governed by [~~RSA 21-O:7, IV~~]
24 **RSA 21-O:14-a**. Orders of the department issued upon a finding of an imminent and substantial
25 hazard may be appealed, but shall be immediately effective. The effective date of any other order
26 which is appealed shall be the date of the [~~council's~~] **environmental appeals board's** affirmance of
27 the order. Appeal of the council's affirmance shall not stay or suspend the effectiveness of the order
28 unless the supreme court grants a stay of the order. The attorney general may bring an action for
29 injunctive relief, including a mandatory injunction, to obtain compliance with or enforcement of the
30 order.

31 5 Cross Reference Changed. Amend RSA 482:11, III to read as follows:

32 III. If the department finds that an emergency exists requiring immediate action to protect
33 the public safety, it may issue an order stating that an emergency exists and requiring that such
34 action be taken as necessary to meet the emergency. Any person to whom such an order is directed
35 shall comply immediately, but may appeal to the [~~water council~~] **environmental appeals board**
36 established under [~~RSA 21-O:7~~] **RSA 21-O:14-a**.

37 6 Cross Reference Changed. Amend RSA 485-C:21, VI to read as follows:

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1 VI.(a) Decisions of the department may be appealed in accordance with [~~RSA 21-O:7, IV~~]
2 ***RSA 21-O:14-a.***

3 (b) Any party shall have the right to appeal from the decision of the [~~water council~~]
4 ***environmental appeals board*** to the superior court of the county in which the large groundwater
5 withdrawal is to be made to determine the validity and the reasonableness of the department's
6 action on the permit. The appeal shall be filed within 60 days after the decision of the [~~water~~
7 ~~council~~] ***environmental appeals board***. The appeal shall suspend the decision of the department
8 pending the outcome of a preliminary hearing. The appeal, so far as practicable, shall have
9 precedence over other actions in the same court.

10 7 Cross Reference Changed. Amend RSA 149-M:8 to read as follows:

11 149-M:8 Appeals. Administrative appeals from decisions of the department made under the
12 provisions of this chapter shall be heard by the [~~wasted management council under RSA 21-O:9, V~~]
13 ***environmental appeals board under RSA 21-O:14-a.***

14 8 Cross Reference Changed. Amend RSA 125-C:14 to read as follows:

15 125-C:14 Rehearings and Appeals. Administrative appeals from decisions of the commissioner
16 made under the provisions of this chapter shall be heard by the [~~air resources council~~]
17 ***environmental appeals board*** under [~~RSA 21-O:11, IV~~] ***RSA 21-O:14-a.***

18 9 Effective Date. This act shall take effect January 1, 2014.

HB 663 FISCAL NOTE

AN ACT relative to appeals within the department of environmental services.

FISCAL IMPACT:

The Departments of Justice states this bill, as introduced, will increase state general fund expenditures by an indeterminable amount in FY 2014 and each year thereafter. The Department of Environmental Services states the bill will increase state general fund expenditures by \$600 in FY 2014 and \$1,200 each year thereafter. There will be no impact on state, county, and local revenue, or county and local expenditures.

METHODOLOGY:

The Department of Justice states this bill establishes a nine-member appeals board to hear appeals from decisions made by the Department of Environmental Services. Because the bill does not provide for administrative support from any agency, the Department of Justice anticipates the board will require assistance from an assistant attorney general in the Department's civil bureau to assist with hearings, rulemaking, and general operations. The Department expects this will require 50 to 100% of the time of an assistant attorney general, and 50 to 100% of the time of a paralegal during the first year of operation. Thereafter, the Department anticipates the Board will require 25 to 50% of the time of an assistant attorney general, and 50 to 100% of the time of a paralegal. The Department states these will be new positions. An example of potential yearly costs is as follows (FY 2014 costs are for the first half of the year only, as the bill states it will take effect January 1, 2014):

| | FY 2014 | FY 2015 | FY 2016 | FY 2017 |
|---|-----------------|------------------|-----------------|-----------------|
| Attorney Salary (100% first full year of operation, 50% thereafter) | \$33,475 | \$50,715 | \$34,997 | \$36,046 |
| Attorney Benefits | \$14,707 | \$23,232 | \$16,491 | \$17,534 |
| Paralegal Salary, LG 19 (50% each year) | \$8,717 | \$17,789 | \$18,535 | \$19,310 |
| Paralegal Benefits | \$5,767 | \$12,319 | \$13,235 | \$14,224 |
| Miscellaneous | \$9,900 | \$1,500 | \$1,500 | \$1,500 |
| Total | \$72,566 | \$105,555 | \$84,758 | \$88,614 |

The Department of Environmental Services states the bill eliminates the \$50 per diem currently paid to the eight wetlands council members who are not from other state agencies,

replacing it with a \$50 per diem for members of the environmental appeals board. Two of the eight positions on the wetlands council are currently vacant, leaving a maximum of six members who currently receive the per diem. The Department states an average of five public members attend an average of 12 meetings per year, resulting in a yearly savings of \$3,000 once the per diem is eliminated ($5 * 12 * \$50$). With respect to the newly-created environmental appeals board, the Department assumes seven members will attend an average of 12 hearings per year, for a total expenditure of \$4,200 ($7 * 12 * \50). Therefore, since the bill states it will take effect January 1, 2014, the Department expects the bill to increase state expenditures by \$600 in FY 2014, and \$1,200 in each year thereafter ($\$4,200 - \$3,000$).