

1 H.550

2 Introduced by Representatives Marek of Newfane, French of Randolph, Krebs

3 of South Hero and Myers of Essex

4 Referred to Committee on

5 Date:

6 Subject: Government; administrative rules; emergency rules; incomplete rules

7 Statement of purpose: This bill proposes amendments to the Vermont
8 administrative procedure act. It allows an agency to withdraw an emergency
9 rule following an objection to the rule by the legislative committee on
10 administrative rules. On withdrawal, any agency rules amended by the
11 emergency rule would revert to their original form. Further, this bill proposes
12 a procedure by which the legislative committee on administrative rules may
13 reject an agency's proposed rule for incompleteness.

14 An act relating to the Vermont administrative procedure act

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 ~~Sec. 1. 3 V.S.A. § 844 is amended to read:~~

17 ~~§ 844. EMERGENCY RULES~~

18 ~~***~~

1 ~~(d) Emergency rules adopted under this section shall include:~~

2 (1) as much of the information required for the filing of a proposed rule
3 as is practicable under the circumstances; and

4 (2) a signed and dated statement by the adopting authority explaining
5 the nature of the imminent peril to the public health, safety, or welfare and
6 approving of the contents of the rules.

7 (e)(1) On a majority vote of the entire committee, the committee may
8 object under this subsection if an emergency rule is:

9 (1)(A) beyond the authority of the agency;

10 (2)(B) contrary to the intent of the legislature;

11 (3)(C) arbitrary; or

12 (4)(D) not necessitated by an imminent peril to public health, safety,
13 or welfare sufficient to justify adoption of an emergency rule.

14 (2) When objection is made under this subsection, on majority vote of
15 the entire committee, the committee may file the objection in certified form
16 with the secretary of state. The objection shall contain a concise statement of
17 the committee's reasons for its action. The secretary shall affix to each
18 objection a certification of its filing and as soon as practicable transmit a copy
19 to the agency. After a committee objection is filed with the secretary under
20 this subsection, to the extent that the objection covers a rule or portion of a
21 rule, the burden of proof thereafter shall be on the agency in any action for

1 ~~judicial review or for enforcement of the rule to establish that the part objected~~
2 to is within the authority delegated to the agency, is consistent with the intent
3 of the legislature, is not arbitrary, and is justified by an imminent peril to the
4 public health, safety, or welfare. If the agency fails to meet its burden of proof,
5 the court shall declare the whole or portion of the rule objected to invalid. The
6 failure of the committee to object to a rule is not an implied legislative
7 authorization of its substantive or procedural lawfulness.

8 (3) When the committee makes an objection to an emergency rule under
9 this subsection, the agency may withdraw the rule or portion of the rule to
10 which an objection was made. Prior to withdrawal, the agency shall give
11 notice to the committee of its intent to withdraw the rule or portion of the rule.
12 On withdrawal of the emergency rule, any agency rules amended by the
13 withdrawn emergency rule or portion shall revert to their original form, as
14 though the emergency rule or portion had never been adopted.

15 Sec. 2. 3 V.S.A. § 817 is amended to read:

16 § 817. LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

17 * * *

18 (d) In addition to its powers under section 842 of this title concerning rules,
19 the committee may, in a similar manner, conduct public hearings, object, and
20 file objections concerning existing rules. A rule reviewed under this
21 subsection shall remain in effect until amended or repealed.

1 ~~(c) In addition to its powers under section 842 of this title concerning rules,~~
2 ~~the committee may, at any time during its consideration of a final proposal~~
3 ~~under section 841 of this title or an emergency rule under subsection 844(c) of~~
4 ~~this title, vote to reject the filing if it finds that the filing is so incomplete that~~
5 ~~the committee cannot adequately make determinations under section 842 or~~
6 ~~844 of this title. After a filing is rejected under this subsection, the agency~~
7 ~~may choose to complete the filing and refile the final proposal or emergency~~
8 ~~rule directly with the committee within 30 days of the rejection. The period~~
9 ~~governing consideration of a final proposal found in subsection 842(a) shall~~
10 ~~cease to run on rejection of the filing and shall commence anew in full if the~~
11 ~~agency refiles the completed final proposal with the committee.~~

12 ~~(f) If the agency's final proposal is rejected as incomplete under subsection~~
13 ~~(e) of this section and the agency fails to refile the completed final proposal~~
14 ~~directly with the committee within 30 days of the rejection, then the rejected~~
15 ~~filing shall not be considered a properly filed final proposed rule under~~
16 ~~subsection 843(a) of this title.~~

*(e) At any time following its consideration of a final proposal under section
841 of this title, the committee, by majority vote of the entire committee, may
request that any standing committees of the general assembly review the issues
or questions presented therein which are outside the jurisdiction of the
committee but are within the jurisdiction of the standing committees. On*

~~receiving a request for review under this subsection, a standing committee may
at its discretion review the issues or questions and act on them. The
committee's request for review shall not affect the review or review period of a
final proposal.~~

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2012.

Sec. 1. 3 V.S.A. § 844 is amended to read:

§ 844. EMERGENCY RULES

* * *

(d) Emergency rules adopted under this section shall include:

*(1) as much of the information required for the filing of a proposed rule
as is practicable under the circumstances; and*

*(2) a signed and dated statement by the adopting authority explaining
the nature of the imminent peril to the public health, safety, or welfare and
approving of the contents of the rules.*

*(e)(1) On a majority vote of the entire committee, the committee may
object under this subsection if an emergency rule is:*

~~(1)~~(A) beyond the authority of the agency;

~~(2)~~(B) contrary to the intent of the legislature;

~~(3)~~(C) arbitrary; or

~~(4)(D)~~ *not necessitated by an imminent peril to public health, safety, or welfare sufficient to justify adoption of an emergency rule.*

(2) *When objection is made under this subsection, on majority vote of the entire committee, the committee may file the objection in certified form with the secretary of state. The objection shall contain a concise statement of the committee's reasons for its action. The secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy to the agency. After a committee objection is filed with the secretary under this subsection, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is not arbitrary, and is justified by an imminent peril to the public health, safety, or welfare. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.*

(3) *When the committee makes an objection to an emergency rule under this subsection, the agency may withdraw the rule to which an objection was made. Prior to withdrawal, the agency shall give notice to the committee of its intent to withdraw the rule. A rule shall be withdrawn upon the filing of a*

notice of withdrawal with the secretary of state and the committee. If the emergency rule amended an existing rule, upon withdrawal of the emergency rule, the existing rule shall revert to its original form, as though the emergency rule had never been adopted.

Sec. 2. 3. V.S.A. § 817 is amended to read:

§ 817 LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

* * *

(d) *In addition to its powers under section 842 of this title concerning rules, the committee may, in similar manner, conduct public hearings, object, and file objections concerning existing rules. A rule reviewed under this subsection shall remain in effect until amended or repealed.*

(e) At any time following its consideration of a final proposal under section 841 of this title, the committee, by majority vote of the entire committee, may request that any standing committees of the general assembly review the issues or questions presented therein which are outside the jurisdiction of the committee but are within the jurisdiction of the standing committees. On receiving a request for review under this subsection, a standing committee may at its discretion review the issues or questions and act on them. The committee's request for review shall not affect the review or review period of a final proposal.

Sec. 3. EFFECTIVE DATE

**BILL AS PASSED THE HOUSE AND SENATE
2012**

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This act shall take effect on July 1, 2012.