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H.17

Introduced by Representative Sweaney of Windsor

Referred to Committee on

Date:

Subject: Government operations; Administrative Procedure Act; Public
Records Act exemptions

Statement of purpose of bill as introduced: This bill proposes to amend the
Administrative Procedure Act to:

(1) require an agency filing a proposed rule to identify in the cover sheet
included in the filing whether the rule contains a Public Records Act
exemption;

(2) require that the Legislative Committee on Administrative Rules send
a copy of a final rule proposal to the House and Senate Committees on
Government Operations if the agency identifies a Public Records Act
exemption in the proposal;

(3) authorize the House and Senate Committees on Government
Operations to convene for the purpose of considering a recommended course
of action for the Legislative Committee on Administrative Rules with respect
to a Public Records Act exemption contained in a rule; and

1 (4) specify consequences for an agency's failure to identify a new or
2 broadened exemption in its cover sheet on and after the effective date of
3 this act.

4 An act relating to identification and notification of Public Records Act
5 exemptions in administrative rules

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

7 Sec. 1. 3 V.S.A. § 838 is amended to read:

8 § 838. FILING OF PROPOSED RULES

9 (a) Proposed rules shall be filed with the ~~secretary of state~~ Secretary of
10 State. The filing shall include the following:

11 (1) a cover sheet;

12 (2) an economic impact statement;

13 (3) an incorporation by reference statement, if the proposed rule
14 includes an incorporation by reference;

15 (4) an adopting page;

16 (5) the text of the proposed rule;

17 (6) an annotated text showing changes from existing rules;

18 (7) an explanation of the strategy for maximizing public input on the
19 proposed rule as prescribed by the ~~interagency committee on administrative~~

20 ~~rules~~ Interagency Committee on Administrative Rules; and

1 (8) a brief summary of the scientific information upon which the
2 proposed rule is based to the extent the proposed rule depends on scientific
3 information for its validity.

4 (b) The cover sheet shall be on a form prepared by the ~~secretary of state~~
5 Secretary of State containing at least the following information:

6 (1) the name of the agency;

7 (2) the title or subject of the rule;

8 (3) a concise summary explaining the effect of the rule;

9 (4) the specific statutory authority for the rule, and, if none exists, the
10 general statutory authority for the rule;

11 (5) an explanation of why the rule is necessary;

12 (6) an explanation of the people, enterprises, and government entities
13 affected by the rule;

14 (7) a brief summary of the economic impact of the rule;

15 (8) the name, address, and telephone number of an individual in the
16 agency able to answer questions and receive comments on the proposal;

17 (9) a proposed schedule for completing the requirements of this chapter,
18 including, if there is a hearing scheduled, the date, time, and place of that
19 hearing, and a deadline for receiving comments; ~~and~~

20 (10) whether the rule contains an exemption from inspection and
21 copying of public records, or otherwise contains a Public Records Act

1 exemption by designating information as confidential or limiting its public
2 release and, if so, the asserted statutory authority for the exemption and a brief
3 summary of the reason for the exemption; and

4 (11) a signed and dated statement by the adopting authority approving
5 the contents of the filing.

6 * * *

7 Sec. 2. 3 V.S.A. § 841 is amended to read:

8 § 841. FINAL PROPOSAL

9 (a) After considering public comment as required in section 840 of this
10 title, an agency shall file a final proposal with the ~~secretary of state~~ Secretary
11 of State and with the ~~legislative committee on administrative rules~~ Legislative
12 Committee on Administrative Rules.

13 (b) The filing of the final proposal shall include all information required to
14 be filed with the original proposal, suitably amended to reflect any changes
15 made in the rule and the fact that public hearing and comment has been
16 completed. Where an agency decides in a final proposal to overrule substantial
17 arguments and considerations raised for or against the original proposal or to
18 reject suggestions with respect to separate requirements for small businesses,
19 the final proposal shall include a description of the reasons for the agency's
20 decision.

1 (c) ~~The legislative committee on administrative rules~~ Legislative
2 Committee on Administrative Rules shall distribute, ~~by email or regular mail, a~~
3 ~~brief summary of final proposed rules~~ a copy of the final proposal to:

4 (1) ~~the chairs of the appropriate standing committees. In addition, upon~~
5 ~~request,;~~

6 (2) ~~each member of the appropriate standing committee shall be notified~~
7 ~~by email or in summary fashion that the final proposed rule has been filed, the~~
8 ~~date of filing, and, upon request, shall be provided with committees who~~
9 ~~requests~~ a copy of the filing; and

10 (3) the chairs of the House and Senate Committees on Government
11 Operations, if the cover sheet accompanying the filing identifies a Public
12 Records Act exemption in the rule.

13 (d) The chair of a standing committee ~~which~~ that considered legislation
14 delegating rulemaking authority and, in the case of rules that create or enlarge
15 the scope of a Public Records Act exemption, the chairs of the House and
16 Senate Committees on Government Operations, may convene the committee
17 for the purpose of considering a recommended course of action for the
18 ~~legislative committee on administrative rules~~ Legislative Committee on
19 Administrative Rules. The chair may convene such a meeting, pursuant to
20 2 V.S.A. § 406, while the ~~general assembly~~ General Assembly is not in
21 session. Any recommended course of action shall be filed with the ~~legislative~~

1 ~~committee on administrative rules~~ Legislative Committee on Administrative
2 Rules no later than five working days before the ~~committee~~ Committee has
3 scheduled a review of the proposed rule.

4 Sec. 3. 3 V.S.A. § 846 is amended to read:

5 § 846. REMEDIES FOR PROCEDURAL FAILURES

6 (a) The following shall prevent a rule from taking effect:

7 (1) failure to file with the ~~secretary of state~~ Secretary of State;

8 (2) failure to file with the ~~legislative committee on administrative rules~~
9 Legislative Committee on Administrative Rules;

10 (3) failure to file with the ~~interagency committee on administrative rules~~
11 Interagency Committee on Administrative Rules; or

12 (4) failure to respond to an objection of the ~~legislative committee on~~
13 ~~administrative rules~~ Legislative Committee on Administrative Rules as
14 required in section 842 of this title.

15 (b) The following shall not affect the validity of a rule after its adoption:

16 (1) inadvertent failure to make required assurances relating to an
17 incorporation by reference; or

18 (2) amendment after public hearing of the text of a proposed rule in a
19 manner that does not cause the published summary of the rule to become
20 misleading or inadequate; or

1 (3) failure to certify that all procedures required by this chapter have
2 been satisfied; or

3 (4) failure to meet the style requirements of section 833 of this title; or

4 (5) inadvertent failure to mail notice or copies of any rule.

5 (c) Failure to identify the creation or enlargement in scope of a Public
6 Records Act exemption in accordance with subsection 838(b) or 841(b) of this
7 title shall render invalid the provisions of the rule that create or enlarge the
8 exemption.

9 (d) For other violations of this chapter, the court may fashion appropriate
10 relief.

11 ~~(d)~~(e) An action to contest the validity of a rule for noncompliance with
12 any of the provisions of this chapter, other than those listed in ~~subsection~~
13 subsections (a) and (c) of this section, must be commenced within one year
14 after the effective date of the rule.

15 Sec. 4. EFFECTIVE DATE

16 This act shall take effect on July 1, 2015.