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STATE OF VERMONT
LEGISLATIVE COMMITTEE ON
ADMINISTRATIVE RULES

MEMORANDUM

To: Sen. Chris Bray, Chair, Senate Committee on Natural Resources and Energy
Rep. Pat Brennan, Chair, House Committee on Transportation
Rep. David Deen, Chair, House Committee on Fish, Wildlife and Water Resources
Rep. Tony Klein, Chair, House Committee on Natural Resources and Energy
Sen. Richard Mazza, Chair, Senate Committee on Transportation

From: Legislative Committee on Administrative Rules; Rep. Patsy French, Chair
PF (by ADM)

Date: December 18, 2015

Subject: Rule 15-P45 – Agency of Natural Resources/ATV Use Trails on State Lands

The Legislative Committee on Administrative Rules (LCAR) writes to provide an opportunity for standing committees of jurisdiction to review the above-referenced rule on all-terrain vehicle use of state lands and any related issues, including the authority of the agency to adopt the rule.

As you may know, LCAR objected to the adoption of rules on this topic in January 2010 (copy attached). The Agency of Natural Resources (ANR) adopted that rule over LCAR's objection. However, ANR also repealed the rule in 2012. ANR now has submitted a new rule on this topic.

Prior to LCAR's consideration of the new rule on December 17, 2015, LCAR received responses from Reps. Deen and Klein that raised concerns, including the authority for the rule, and sought an opportunity for standing committees to consider the overall issue. LCAR also received a response from Rep. Brennan indicating that the rule meets LCAR's statutory review criteria.

On December 17, LCAR heard substantial testimony both for and against the rule. Having received differing responses from committee chairs and requests for an opportunity for standing committee consideration, LCAR voted to postpone action on the rule to its meeting of January 14, 2016 in part so that such an opportunity could occur.

As you may know, LCAR must act on a proposed rule within 45 days of receipt unless the relevant agency agrees to extend that period. 3 V.S.A. § 842(a). In this case, that period ends on January 15, 2016. LCAR therefore is not able to provide more time without agreement from ANR. During the December 17 meeting, LCAR raised with ANR the issue of extending the period to allow more time for standing committee review and ANR declined to agree.

Under 3 V.S.A. §§ 842 and 843, LCAR's options on the rule at its January 14 meeting will be:

1. To approve the rule.

2. To decline to take action. Failure to take action within the 45-day period is deemed approval.
3. To vote to object to the rule. Grounds for LCAR objection include:
 - a. the rule is arbitrary,
 - b. the rule is beyond the authority delegated to the agency,
 - c. the rule is contrary to the intent of the legislature,
 - d. the agency did not adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules,
 - e. the rule is not written in a satisfactory style according to 3 V.S.A. § 833, or
 - f. the rule is not accompanied by an adequate economic impact statement.

If LCAR votes to object to the rule, it will have acted within the 45-day period. LCAR will then formally notify ANR of the objection and ANR will have 14 days to respond in writing to the committee. The committee may then vote to certify, withdraw, or modify its objection. If LCAR votes to certify the objection, then the burden of proof will be on ANR if it chooses to adopt the rule and the rule's validity is later challenged in court. 3 V.S.A. § 842(b).

Conversely, if the rule is approved or deemed approved, then the rule will be presumed valid in a subsequent court challenge, if one is made. 3 V.S.A. § 845(a).

Please feel free to contact me or committee counsel Aaron Adler if you have any questions or need more information.

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