

1 S.126

2 Introduced by Senator Flory

3 Referred to Committee on

4 Date:

5 Subject: Administrative procedure; rulemaking; Legislative Committee on

6 Administrative Rules; tie vote

7 Statement of purpose of bill as introduced: This bill proposes to provide that
8 the Legislative Committee on Administrative Rules shall be considered to have
9 objected to a rule if, within the required time frame, there was a tie vote on a
10 motion to approve or object to the rule and the Committee did not pass another
11 motion to approve or object to the rule.

12 An act relating to tie votes in the Legislative Committee on Administrative
13 Rules

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

15 Sec. 1. 3 V.S.A. § 842 is amended to read:

16 § 842. REVIEW BY LEGISLATIVE COMMITTEE

17 (a) Objection; time frame; process. Within 30 days of the date a rule is first
18 placed on the Committee's agenda but no later than 45 days after the filing of a
19 final proposal unless the agency consents to an extension of this review period,
20 the Legislative Committee on Administrative Rules, by majority vote of the

1 entire Committee, may object under subsection (b), ~~(c), or (d)~~, or (e) of this
2 section, and recommend that the agency amend or withdraw the proposal.
3 The agency shall be notified promptly of the objections. Failure to give timely
4 notice shall be deemed approval, except as provided in subsection (c) of this
5 section. The agency shall, within 14 days of receiving notice, respond in
6 writing to the Committee. After receipt of this response, the Committee may
7 withdraw or modify its objections.

8 (b) Objection; grounds. The Committee may object under this
9 subsection if:

- 10 (1) a proposed rule is beyond the authority of the agency;
11 (2) a proposed rule is contrary to the intent of the Legislature;
12 (3) a proposed rule is arbitrary; or
13 (4) the agency did not adhere to the strategy for maximizing public input
14 prescribed by the Interagency Committee on Administrative Rules.

15 (c) Certified objections; tie vote and deemed objections; legal effect.

16 (1) When objection is made under ~~this~~ subsection (b) of this section, and
17 the objection is not withdrawn after the agency responds, on majority vote of
18 the entire Committee, it may file the objection in certified form with the
19 Secretary of State. The objection shall contain a concise statement of the
20 Committee's reasons for its action. ~~The~~

1 (2) Notwithstanding any contrary provision of this section, the
2 Committee shall be considered to have objected to a rule if, within the time
3 frame described in subsection (a) of this section, there was a motion before the
4 Committee either to approve or object to the rule that did not pass because of a
5 tie vote and the Committee did not pass another motion to approve or reject the
6 rule.

7 (3) When the Committee files a certified objection, the Secretary shall
8 affix to each objection a certification of its filing and as soon as practicable
9 transmit a copy to the agency. When the Committee is considered to have
10 objected to a rule under subdivision (2) of this subsection (c), the Secretary
11 shall issue a certification to this effect and transmit a copy of this certification
12 to the agency.

13 (4) After a Committee objection is filed with the Secretary under this
14 subsection, or on the same grounds under subsection 817(d) of this title, to the
15 extent that the objection covers a rule or portion of a rule, the burden of proof
16 thereafter shall be on the agency in any action for judicial review or for
17 enforcement of the rule to establish that the part objected to is within the
18 authority delegated to the agency, is consistent with the intent of the
19 Legislature, is not arbitrary, and the agency did adhere to the strategy for
20 maximizing public input prescribed by the Interagency Committee on
21 Administrative Rules. The same burden of proof shall apply to the agency

1 when the Committee is considered to have objected to the rule under
2 subdivision (2) of this subsection (c). If the agency fails to meet its burden of
3 proof, the ~~Court~~ court shall declare the whole or portion of the rule objected to
4 invalid.

5 (5) The failure of the Committee to object to a rule is not an implied
6 legislative authorization of its substantive or procedural lawfulness.

7 ~~(e)~~(d) Objection; satisfactory style. The Committee may object under this
8 subsection if a proposed rule is not written in a satisfactory style according to
9 section 833 of this title.

10 ~~(d)~~(e) Objection; economic impact statement. The Committee may object
11 under this subsection if the economic impact statement fails to recognize a
12 substantial economic impact of the proposed rule that the Committee describes
13 in its notice of objection. The Committee may object one time under this
14 subsection and return the proposed rule to the agency as unacceptable for
15 filing. The agency may then cure the defect and adopt the rule, or it may adopt
16 the rule without change.

17 ~~(e)~~(f) Notice of objection; inclusion on rule copies. When an objection
18 is made under subsection (b) of this section and has been certified by the
19 Secretary of State or the Committee is considered to have objected to a rule
20 under subdivision (c)(2) of this section, notice of the objection shall be
21 included on all copies of the rule distributed to the public.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2017.