

H.688 · As Passed by House
“Vermont Global Warming Solutions Act of 2020”

Review of Secs. 5 -11
Delegation Doctrine & Rulemaking

Senate Committee on Natural Resources & Energy

MAY 22, 2020

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How Law Would Work / Key Steps

GHG reduction requirements
(2025, 2030, 2050)

Vermont Climate Council

Vermont Climate Action Plan

ANR Rulemaking to implement plan &
achieve GHG reductions

Cause of action if ANR fails to engage in
rulemaking / rules fail to achieve GHG reductions

Other provisions

- Sec. 5: Rulemaking process
- Sec. 6: Appointment of members to Council
- Secs. 7 & 8: State energy policy and plan
- Secs. 9 & 10: Appropriation & positions
- Sec. 11: Effective date

Summary of time frames

- Bill effective on passage
- Climate Council appointed w/in 60 days of bill becoming law and 1st meeting within 30 days. Council can therefore start meeting fall 2020?
- Council adopt Plan on or before Dec. 1, 2021
- ANR develop rules (Dec. 2021 – May 2022)
 - Rules to Council at least 45 days before filed with ICAR (early – mid May 2022)
 - Rules to House & Senate Committees at least 30 days before filed with ICAR (late May – June 1, 2022)
- Rules filed with ICAR July 1, 2022
 - ICAR / LCAR process July – Dec. 2022
- Rules adopted by Dec. 1, 2022 (to meet 2025 GHG reduction goals)

Other legal issues

- Delegation / non-delegation doctrine
- Rulemaking process & limits on authority
- Cause of action (next week)

Delegation doctrine

- ▶ Separation powers
- ▶ Delegation doctrine: General Assembly cannot delegate supreme legislative authority to another branch
 - But General Assembly can delegate rule making authority if sufficient guidance and criteria
- ▶ VT Supreme Court precedent
 - Waterbury v. Melendy, 109 Vt. 441 (1938)
 - Hunter v. State, 177 Vt. 339 (2004)
 - In re MVP Health Insurance Comp., 203 Vt. 274 (2016)
- ▶ Conclusion

Rulemaking: Background

- VT's Administrative Procedure Act
- Rules have “the force of law” (3 V.S.A. § 845)
- However, no implicit rulemaking authority and no agency may use rulemaking process to (3 V.S.A. § 845(c)):
 - Provide for penalties, fines or imprisonment not authorized by other law
 - Enlarge the authority of any agency to impose requirements on any member of the public
 - Allow an agency by rule to require permits licenses or fees unless authorized by other law

Rulemaking Process

- Agency prefiles rule with Interagency Committee on Administrative Rules (3 V.S.A. §§ 820, 837)
- File proposed rule with Secretary of State (3 V.S.A. § 838)
- SOS publishes notice of proposed rule online & in print (3 V.S.A. § 839)
- Agency holds public hearing(s) & provides reasonable opportunity to submit data and views (3 V.S.A. § 840)
- Agency file final proposed rule with SOS & LCAR (3 V.S.A. § 841)
- LCAR reviews rule (3 V.S.A. § 842)
- Filing adopted rule & rule becomes effective (3 V.S.A. § 843)

LCAR (3 V.S.A. § 842)

- LCAR can approve a rule, approve a rule with modifications agreed to by the agency, take no action, or object to a rule
- LCAR can object to a rule on 7 grounds, including rule beyond authority of the agency, contrary to intent of the legislature, arbitrary (which is defined in 3 V.S.A. § 801(13))
- LCAR can object and recommend that the agency amend or withdraw the rule
- Agency shall respond to objection and may revise the rule; agency does not have to amend or withdraw the rule
- If LCAR's objection is not withdrawn after the agency responds, LCAR can vote to certify its objection and file with the SOS
- However, rule can still be adopted; an objection switches the burden of proof

Time Frames & Cost

- Time frame
 - At least 4 months (not including time developing draft rule)
 - Complex rules often take longer
- Cost

Summary of deadlines in H.688

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