HB 1395 - AS INTRODUCED

2022 SESSION

22-2678
07/10

HOUSE BILL ***1395***

AN ACT relative to administrative rulemaking authority.

SPONSORS: Rep. Hough, Belk. 3; Rep. Gould, Hills. 7; Rep. Blasek, Hills. 21; Rep. Pauer, Hills. 26; Rep. Binford, Graf. 15; Rep. Gay, Rock. 8; Rep. Burt, Hills. 39; Rep. Verville, Rock. 2

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill requires that all items of business conducted by the joint legislative committee on administrative rules receive final legislative action by the general court in a joint resolution sponsored by the committee before the business items go into effect.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

22-2678
07/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to administrative rulemaking authority.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Administrative Procedure Act; Definitions; Final Legislative Action Clarified. Amend RSA 541-A:1, VI-a to read as follows:

VI-a. "Final legislative action" means the [~~defeat~~] ***outcome*** of a joint resolution sponsored by the legislative committee on administrative rules pursuant to RSA 541-A:13, VII(b) in either the house or the senate, or the [~~failure~~] ***outcome*** of the general [~~court to~~] ***court's*** override ***of*** the governor's veto of the joint resolution.

2 New Paragraph; Administrative Procedure Act; Joint Legislative Committee on Administrative Rules; Final Legislative Action Required. Amend RSA 541-A:2 by inserting after paragraph IV the following new paragraph:

V. The committee shall submit its meeting minutes in the form of a joint resolution under RSA 541-A:13, VIII. Only after final legislative action is taken on such resolution shall the contents of the resolution be final and any rules be adopted.

3 Administrative Procedure Act; Review by the Joint Legislative Committee on Administrative Rules; Joint Resolution Required for All Rules. Amend RSA 541-A:13 to read as follows:

541-A:13 Review by the Joint Legislative Committee on Administrative Rules.

I. The committee shall either approve the rule or enter a conditional approval or objection under paragraph V within 60 days of the filing of a final proposal under RSA 541-A:12, I, unless the deadline is waived for good cause pursuant to RSA 541-A:40. Objections to a rule may be made only once. The committee may not add or amend grounds for objection after a preliminary objection is made under paragraph V unless the agency's response to the objection creates the grounds or the agency requests a revised objection which includes them. ***The actions of the committee shall not go into effect until the joint resolution sponsored by the committee pursuant to 541-A:13, VIII receives final legislative action from the general court.***

II.(a) If an agency has filed a final proposal, the director of legislative services shall notify the agency of any potential bases for committee objection identified by the office of legislative services by forwarding a copy of the final proposal with the counsel's comments noted thereon.

(b) In response to the comments, or for other reasons in lieu of requesting a preliminary objection, an agency may then file a request for conditional approval with the director for review by the committee and request that the committee conditionally approve the rule with an amendment. Both the request and the amendment shall be in writing and shall be filed at least 7 days prior to the regularly scheduled meeting or special meeting for which the final proposal has been placed on the

agenda. An agency may request a waiver pursuant to RSA 541-A:40, IV of the 7-day deadline for good cause as established in the drafting and procedure manual under RSA 541-A:8, but the committee may for compelling reasons under the committee's rules pursuant to RSA 541-A:2, II accept a request for a conditional approval in the meeting under paragraph V.

(c) The committee may:

(1) Approve the rule as originally filed; or

(2) Act under paragraph V.

(d) If the committee approves the rule as filed pursuant to RSA 541-A:12, it shall notify the agency in writing of its approval.

(e) Failure to give notice of either approval, conditional approval, or objection at the end of the 60-day period under paragraph I shall be deemed approval.

III. If the rule is approved [~~under subparagraph II(c) or (e), the agency may adopt the rule~~]***, the rule shall appear on a joint resolution sponsored by the committee pursuant to RSA 541-A:13, VIII***.

IV. The committee may object to a proposed rule if the rule is:

(a) Beyond the authority of the agency;

(b) Contrary to the intent of the legislature;

(c) Determined not to be in the public interest; or

(d) Deemed by the committee to have a substantial economic impact not recognized in the fiscal impact statement.

V. The following procedures shall govern committee objections and conditional approvals:

(a) If the committee objects to the final proposal as filed, it shall so inform the agency. In lieu of a preliminary objection, and with or without a written request under subparagraph II(a), the committee may vote to conditionally approve the rule with an amendment, provided that the committee specifies in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its conditional approval. Within 30 days of the meeting, or in the case of a board or commission, 7 days following its next regularly scheduled meeting, the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary objection on the date of the conditional approval. If the office of legislative services determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the office of legislative services shall promptly send written confirmation of compliance to the agency. [~~The~~

~~agency may then adopt the rule as amended~~] ***The rule shall then appear on a joint resolution sponsored by the committee pursuant to RSA 541-A:13, VIII. The agency may adopt the rule after the general court affirms the joint resolution containing the conditional approval.***

(b) If the committee objects to the final proposal as filed or as amended pursuant to paragraph II, the committee shall send the agency a preliminary written objection stating the basis for the objection. A preliminary objection or conditional approval shall require the assent of a majority of the votes cast, a quorum being present. If a preliminary objection is made, the committee may send a copy of the preliminary objection to the appropriate house and senate standing policy committees and, if so, shall give notice to the agency. Within 30 days of the date the preliminary objection was entered, the standing policy committees at properly convened executive sessions shall review the proposed rules and the preliminary objection and shall adopt recommendations or comments relative to the basis for the preliminary objection and shall communicate the same to the committee.

(c) The agency shall respond to the preliminary objection by withdrawing the rule, by amending the rule to remove the basis for objection, or by making no change. The agency shall respond to a committee objection only once, and shall report its response in writing to the committee within 45 days of the committee's vote to make a preliminary objection. Failure to respond to the committee in accordance with this subparagraph shall mean the rulemaking procedure for that proposed rule is invalid; however, the agency is not precluded from initiating the process over again for a similar rule. After receipt of the agency response, the committee may modify its objections made under paragraph IV or approve the rule.

(d) After submitting its preliminary objection response and prior to the final committee vote on the final proposal, and in all cases, prior to the adoption of the rule by the agency, the agency may request that the committee approve the rule with further amendment or issue a revised objection. The committee may approve the rule with further amendment only if the agency submits the request and proposed amendment, in writing to the committee at least 7 days prior to the committee meeting at which the agency presents the rule. Submission of such a request shall not preclude the agency from requesting a revised objection if the committee does not approve the rule as requested.

(e) A revised objection may be made only once by the committee and may be made only at the request of the agency. The agency shall respond and the committee may review the response in the same manner as a preliminary objection. No further amendment may be made by the agency after it responds to the committee except as provided in RSA 541-A:14, II.

(f) If the agency responds but the basis for the committee's preliminary or revised objection has not been removed or the response creates a new basis for objection, the committee may, by majority vote of the entire committee, file a final objection. The final objection shall be filed in

certified form with the director of legislative services for publication in the next issue of the rulemaking register.

VI. After a final objection by the committee to a provision in the rule is filed with the director under subparagraph V(f), the burden of proof shall be on the agency in any action for judicial review or for enforcement of the provision to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is in the public interest, or does not have a substantial economic impact not recognized in the fiscal impact statement. If the agency fails to meet its burden of proof, the court shall declare the whole or a portion of the rule objected to invalid. The failure of the committee to object to a rule shall not be an implied legislative authorization of its substantive or procedural lawfulness.

VII.(a) The provisions of this paragraph may be used by the committee as an alternative to or in addition to the final objection procedure employed by the committee in paragraph V.

(b) If an agency responds to a preliminary or revised objection but the basis for objection has not been removed or the response creates a new basis for objection, the committee may, within 50 days from the date on which the objection response was due and by majority vote of the entire committee, recommend legislative action through sponsorship of a joint resolution to implement its recommendation. Such vote shall prevent the rule from being adopted and filed by the agency for the period of time specified in subparagraph VII(c).

(c) If the committee votes to sponsor a joint resolution pursuant to subparagraph VII(b), the joint resolution shall be introduced in the house of representatives or senate within 20 business days of such vote when the general court is in session and 20 business days of the start of the following legislative session if such vote occurs when the general court is not in session. If a joint resolution is not introduced within this time frame, the agency may adopt the rule. If a joint resolution is introduced within this time frame, the agency shall be prevented from adopting and filing such rule until final legislative action is taken on the resolution or the passage of 90 consecutive calendar days during which the general court shall have been in session, whichever occurs first. The 90 calendar day period shall commence on the date such joint resolution has been introduced. If the session of the general court adjourns prior to the sixtieth calendar day after such joint resolution has been introduced, then the agency shall be prevented from adopting and filing such rule until 90 calendar days, beginning with the next session of the general court, have passed.

(d) The provisions of this paragraph shall apply to only the specific portion of the agency's rule identified in the joint resolution. The provisions of this paragraph shall not prevent an agency from adopting and filing the remainder of the rules in the final proposal under RSA 541-A while the committee pursues legislative action under this paragraph, nor shall it prevent the committee from also voting to enter a final objection pursuant to paragraph V.

(e) Nothing in this section shall prevent the general court from introducing legislation which addresses any matter included in a joint resolution introduced under the provisions of this section.

(f) Notwithstanding any house or senate rules to the contrary, a joint resolution which the committee votes to sponsor under subparagraph VII(b) may be introduced at any time during the legislative session. It shall be subject to the same rules as any other bill introduced at the beginning of the legislative session.

VIII.(a) The meeting minutes of the committee shall be submitted to the house of representatives or the senate in the form of a joint resolution sponsored by the committee within 20 business days of such meeting when the general court is in session and 20 business days of the start of the following legislative session if such meeting occurs when the general court is not in session.

(b) Until the general court takes final legislative action on such resolution, the agency may not adopt the rule, but may operate with interim rules that are in accordance with the results of the meeting until such action is taken.

(c) Nothing in this section shall prevent the general court from introducing legislation which addresses any matter included in a joint resolution introduced under the provisions of this section.

(d) Notwithstanding any house or senate rules to the contrary, a joint resolution which the committee sponsors under paragraph VIII may be introduced at any time during the legislative session. It shall be subject to the same rules as any other bill introduced at the beginning of the legislative session.

4 Administrative Procedure Act; Final Adoption; Final Legislative Action Required. RSA 541-A:14, I is repealed and reenacted to read as follows:

I. An agency may adopt a properly filed final proposed rule after final legislative action, as defined in RSA 541-A:1, VI-a, is taken on the joint resolution sponsored pursuant to RSA 541-A:13, VII or RSA 541-A:13, VIII.

5 Administrative Procedure Act; Rules; Filing Required; Effective Date and Time Modified. Amend RSA 541-A:16, III to read as follows:

III. A rule shall become effective as of 12:01 a.m. on the day after the [~~filing of the adopted rule~~] ***final legislative action on the joint resolution submitted to the general court pursuant to RSA 541-A:13, VIII*** or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, RSA 541-A:14-a, III, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs before such effective date and time. Except as provided in RSA 541-A:14-a, a rule adopted under RSA 541-A:14, IV shall expire after the last day of the tenth year following its becoming effective, unless sooner amended, readopted, or repealed.

6 Effective Date. This act shall take effect 60 days after its passage.