

CHAPTER 234  
HB 425 – FINAL VERSION

04/30/2015 1273s  
11June2015... 2190EBA

2015 SESSION

15-0176  
10/03

HOUSE BILL **425**

AN ACT relative to procedures for the adoption of agency rules under the administrative procedures act.

SPONSORS: Rep. C. McGuire, Merr 29; Rep. P. Schmidt, Straf 19; Rep. Sytek, Rock 8; Rep. Ladd, Graf 4; Rep. Kidder, Merr 5; Sen. Reagan, Dist 17; Sen. Watters, Dist 4; Sen. Cataldo, Dist 6

COMMITTEE: Executive Departments and Administration

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ANALYSIS

This bill makes various changes in the procedure and requirements for adoption of rules including preparation of fiscal impact statements, adoption of forms, and the expedited amendment to a document or content incorporated by reference in a rule.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT                   relative to procedures for the adoption of agency rules under the administrative procedures act.

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

1           234:1 Fiscal Impact Statements; Intended Action. Amend RSA 541-A:5, II to read as follows:

2           II. The legislative budget assistant shall develop a form which shall specify the details and  
3 supporting data necessary to assess the fiscal impact of the [~~proposed rule~~] ***intended action***. ***The***  
4 ***fiscal impact of a proposed rule which was previously effective but has expired, or of a***  
5 ***proposed rule which adopts a current agency policy, procedure, or practice as a rule for***  
6 ***the first time, shall not be assessed as an existing rule but as a proposed rule which is not***  
7 ***yet effective.***

8           234:2 New Paragraph; Fiscal Impact Statements; Definition Added; Intended Action. Amend  
9 RSA 541-A:5 by inserting after paragraph VI the following new paragraph:

10           VII. In this section, "intended action" means the proposed adoption, amendment, readoption,  
11 readoption with amendment, or repeal of a rule pursuant to RSA 541-A, as described in the drafting  
12 and procedure manual for administrative rules pursuant to RSA 541-A:8.

13           234:3 Fiscal Impact Statements. Amend RSA 541-A:5, IV to read as follows:

14           IV. The fiscal impact statement issued by the legislative budget assistant shall not be  
15 limited to dollar amounts, but shall include a discussion of the methodology used to reach any stated  
16 amounts. In addition, the fiscal impact statement shall consist of:

17           (a) A narrative stating the costs and benefits to the citizens of the state and to the  
18 political subdivisions of the intended action.

19           (b) A conclusion as to the cost or benefit to the state general fund or any state special  
20 fund of taking the intended action.

21           (c) An explanation of, and citation to, the federal mandate for the [~~proposed rule~~]  
22 ***intended action***, if there is such a mandate, and how that mandate affects state funds.

23           (d) A comparison of the cost of the [~~proposed rule~~] ***intended action*** with the cost of the  
24 existing rule, if there is an existing rule, ***and, to the extent that the proposed rule had expired,***  
25 ***indicating the cost of the expired rule and, if applicable, the difference in cost of any***  
26 ***proposed change from the expired rule.***

27           (e) An analysis of the general impact of the [~~proposed rule~~] ***intended action*** upon any

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1 independently owned businesses, including a description of the specific reporting and recordkeeping  
2 requirements upon small businesses which employ fewer than 10 employees.

3 234:4 Drafting and Procedures Manual; Reference to Forms. Amend RSA 541-A:8 to read as  
4 follows:

5 541-A:8 Drafting and Procedure Manual. Each agency shall conform to a drafting and procedure  
6 manual for rules, **including agency forms**, developed by the director of legislative services and the  
7 commissioner of administrative services, subject to amendment and final approval by the committee.  
8 ~~[The manual shall be submitted for approval by the committee no later than March 31, 2000. If no~~  
9 ~~manual is submitted by such date, the committee shall have the authority to develop, amend, and~~  
10 ~~approve the manual. In either case, the committee shall provide final approval of the drafting and~~  
11 ~~procedure manual no later than June 30, 2000. After June 30, 2000, the committee may propose~~  
12 ~~further amendments to the manual. Any further amendments shall be subject to final approval by~~  
13 ~~the committee.]~~ The director may require any agency to rewrite any rule, **including any agency**  
14 **form**, submitted for filing to conform to this manual until that rule is adopted and filed under  
15 RSA 541-A:14 or RSA 541-A:19 **or the form is adopted pursuant to RSA 541-A:19-b**.

16 234:5 Filing Proposed Rule; Policy Committee Review. Amend RSA 541-A:10, I to read as  
17 follows:

18 I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the  
19 text of the proposed rule with the director of legislative services. The first time a rule is proposed  
20 under RSA 541-A:3 to implement newly-enacted state authority, the agency shall send an electronic  
21 copy of the notice and proposed rule to the chair of each house and senate standing policy committee,  
22 as defined in RSA 541-A:1, XVI, for distribution to the members of such standing policy committees.  
23 **“Newly enacted state authority” means a state statute or session law adopted or amended**  
24 **after July 30, 2011.** If the newly-enacted state authority was not referred originally to a standing  
25 policy committee, the agency shall send an electronic copy of the notice and proposed rule to the  
26 speaker of the house and senate president for appropriate distribution. ~~[If the agency does not have~~  
27 ~~the technology necessary to send an electronic copy, the agency shall send a paper copy.]~~ The  
28 members of the standing policy committees receiving proposed rules may review the proposed rules  
29 to determine whether the proposed rule is consistent with the intent of the authorizing legislation. If  
30 a standing policy committee concludes that the proposed rule is not consistent with the intent of the  
31 authorizing legislation, the standing policy committee shall send written notice to the agency, with a  
32 copy to the director of legislative services, identifying the provision or provisions the committee  
33 believes to be inconsistent with legislative intent. Such written notice may be sent to the agency via  
34 e-mail and shall be delivered so as to be received by the agency no later than the deadline for public  
35 comment specified in the rulemaking notice. If the agency does not receive notice from any standing  
36 policy committee by the end of the public comment period, the agency may proceed on the basis that

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1 the rule is consistent with the intent of the authorizing legislation. The text of the proposed rules as  
2 filed by the agency pursuant to RSA 541-A:3, III shall not be changed prior to the hearing held  
3 pursuant to RSA 541-A:11, I(a).

4 234:6 Extension of Rules; Filing. Amend RSA 541-A:14-a, III(a) to read as follows:

5 (a) Adopt **and file** the proposed rules **as required by RSA 541-A:14, III** no later than  
6 30 days after the date on which the agency is allowed to adopt the rules under RSA 541-A:14, I; and

7 234:7 New Section; Expedited Amendment to Incorporation by Reference. Amend RSA 541-A by  
8 inserting after section 19-c the following new section:

9 541-A:19-d Expedited Amendment to Incorporation by Reference.

10 I. An agency may amend any existing rules which incorporate by reference documents or  
11 Internet content pursuant to RSA 541-A:12, III-VII by using the expedited procedures of this section,  
12 and without meeting the requirements of RSA 541-A:5 and RSA 541-A:6 and RSA 541-A:9 through  
13 RSA 541-A:14 except as provided below, if:

14 (a) The proposed amendment has been approved by the official or the group of  
15 individuals with rulemaking authority.

16 (b) The proposed amendment only updates or changes the document or Internet content  
17 incorporated by reference, or amends related text, in the existing rule.

18 (c) The amended rule does not encompass more than a full rules section, as described in  
19 the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.

20 (d) The proposed amendment has no fiscal impact which would otherwise require a fiscal  
21 impact statement pursuant to RSA 541-A:5.

22 (e) The requirements of RSA 541-A:12, III-VII are met as they would be for final  
23 proposals as described in paragraph IV.

24 II. Notice of an agency's intent to amend a rule which incorporates by reference documents  
25 or Internet content shall include:

26 (a) The name and address of the agency.

27 (b) The statutory rulemaking authority for the rule.

28 (c) Whether the action is an amendment or readoption with amendment as described in  
29 the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.

30 (d) The rule number and title.

31 (e) A concise summary of the existing rule and the proposed amendment, and an  
32 explanation of the differences between the existing document or Internet content incorporated by  
33 reference and the document or Internet content in the amended rule.

34 (f) Identification of the state or federal statute or regulations which the rule is intended  
35 to implement pursuant to RSA 541-A:3-a.

36 (g) The deadline for receipt by the agency of written or electronic public comment, which

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1 shall be no sooner than the fourteenth calendar day after the date of publication of the notice in the  
2 rulemaking register.

3 (h) The name, address, electronic address, and telephone number of an individual in the  
4 agency able to answer questions about the amended rule.

5 III. The notice required by paragraph II shall be filed with the director of legislative services  
6 for publication in the rulemaking register.

7 IV. The agency shall file the amended rule with the notice filed pursuant to paragraph III,  
8 including an appendix pursuant to RSA 541-A:3-a, as described in the drafting and procedure  
9 manual for administrative rules pursuant to RSA 541-A:8. The agency shall also comply with  
10 RSA 541-A:12, III-VII as for filing final proposals, including filing of an incorporation by reference  
11 statement for each document or Internet content incorporated by reference.

12 V. Copies of the text of the amended rule shall be available to the public at the time the  
13 notice is filed, and a copy of the document or Internet content incorporated by reference shall also be  
14 available for inspection pursuant to RSA 541-A:12, VI.

15 VI. If on the basis of public comment the official or the group of individuals with rulemaking  
16 authority determines that the rule should not be amended by the expedited procedure, the agency  
17 shall so notify the director of legislative services and the rule shall not be amended under this  
18 section.

19 VII. The amended rule shall be placed on the agenda of the committee for review at the first  
20 regularly scheduled or special meeting at least 5 calendar days after the close of the period for  
21 written or electronic comment described in subparagraph II(g). The committee may approve,  
22 conditionally approve, or object to the amended rule pursuant to RSA 541-A:13, V-VII. The  
23 committee may object to the amended rule if the rule is:

24 (a) Beyond the authority of the agency;

25 (b) Contrary to the intent of the legislature;

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

27 (d) Deemed by the committee not to meet the requirements of paragraph I.

28 VIII. Subsequent review and adoption of the amended rule shall be as provided in RSA 541-  
29 A:13, V-VII and RSA 541-A:14 as for final proposed rules.

30 234:8 Validity of Rules; Expired Rules. Amend RSA 541-A:22, I and II to read as follows:

31 I. No agency rule is valid or effective against any person or party, nor may it be enforced by  
32 the state for any purpose, until it has been filed as required in this chapter **and has not expired**.

33 II. Rules shall be valid and binding on persons they affect, and shall have the force of law  
34 unless **they have expired or have been** amended or revised or unless a court of competent  
35 jurisdiction determines otherwise. Except as provided by RSA 541-A:13, VI, rules shall be prima  
36 facie evidence of the proper interpretation of the matter that they refer to.

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1           234:9 Effective Date. This act shall take effect 60 days after its passage.

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3           Approved: July 13, 2015

4           Effective Date: September 11, 2015