

HB 274 - AS AMENDED BY THE HOUSE

3Jan2024... 2293h

2023 SESSION

23-0138

05/10

HOUSE BILL

**274**

AN ACT                    relative to the administrative rulemaking process.

SPONSORS:            Rep. Sanborn, Hills. 2; Rep. Packard, Rock. 16; Rep. Steven Smith, Sull. 3; Rep. Shurtleff, Merr. 15; Rep. C. McGuire, Merr. 27; Rep. Goley, Hills. 21; Rep. Merchant, Sull. 6; Sen. Bradley, Dist 3; Sen. Birdsell, Dist 19

COMMITTEE:          Executive Departments and Administration

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AMENDED ANALYSIS

This bill directs agencies to notify legislative policy committees and known stakeholders of proposed rulemaking under RSA 541-A. The bill also directs the agency to pay attorneys fees in cases in which the agency adopted rules after final objection by the joint legislative committee on administrative rules and a finding by the court that the rule is invalid.

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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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT relative to the administrative rulemaking process.

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

1       1 Administrative Procedure Act; Notice of Rulemaking Proceedings. Amend RSA 541-A:6, III to  
2 read as follows:

3           III. The agency shall send notice to the director of legislative services, to all persons  
4 regulated by the proposed rules who hold occupational licenses issued by the agency, **to known**  
5 **stakeholders**, and to all persons who have made timely request for advance notice of rulemaking  
6 proceedings. Upon request, **or if the rule is required by new legislation**, the agency shall send  
7 notice to the president of the senate, to the speaker of the house of representatives, and to the  
8 chairpersons of the legislative committees having jurisdiction over the subject matter. Notice shall  
9 be made not less than 20 days before the first agency public hearing required by RSA 541-A:11, I.  
10 Notice to occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter,  
11 public notice advertisement in a publication of daily statewide circulation, or in such other manner  
12 that is reasonably calculated to inform such licensees of the proposed rulemaking. The committee  
13 may identify additional methods of notifying occupational licensees that are deemed sufficient.

14       2 Administrative Procedure Act; Public Hearing and Comment. Amend RSA 541-A:11, VIII to  
15 read as follows:

16           VIII. In addition to seeking information by other methods, an agency, before publication of a  
17 notice of proposed rulemaking under RSA 541-A:6, may solicit comments from the public, **and from**  
18 **the legislative policy committees**, on a subject matter of possible rulemaking under active  
19 consideration within the agency by causing notice to be published in the rulemaking register of the  
20 subject matter and indicating where, when, and how persons may provide comment on the rules  
21 under consideration.

22       3 Administrative Procedure Act; Review by the Joint Legislative Committee on Administrative  
23 Rules. Amend RSA 541-A:13, VI to read as follows:

24           VI. After a final objection by the committee to a provision in the rule is filed with the  
25 director under subparagraph V(f), the burden of proof shall be on the agency in any action for  
26 judicial review or for enforcement of the provision to establish that the part objected to is within the  
27 authority delegated to the agency, is consistent with the intent of the legislature, is in the public  
28 interest, or does not have a substantial economic impact not recognized in the fiscal impact  
29 statement. If the agency fails to meet its burden of proof, the court shall declare the whole or a  
30 portion of the rule objected to invalid, **and shall order the agency to pay the plaintiff's legal**

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1    ***expenses.*** The failure of the committee to object to a rule shall not be an implied legislative  
2    authorization of its substantive or procedural lawfulness.

3       4 Effective Date. This act shall take effect 60 days after its passage.