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Veto Message: Governor Snelling
1991 (S.157)

An act relating to the import and export of domestic animals.

STATE OF VERMONT
Executive Department.
Montpelier, Vt., June 28, 1991

The text of the communication from His Excellency, the Governor, whereby he vetoed and returned unsigned Senate Bill No. 157 to the Senate is as follows:

State Senate
Vermont General Assembly
ATTN: Robert H. Gibson, Secretary
State House
Montpelier, VT 05602

Dear Bob:

I herewith return unsigned and within the time limits set by Chapter II, Article 11 of the Constitution, S.157, a bill to provide the Commissioner of Agriculture more flexibility in dealing with livestock import and export issues and to otherwise update existing law.

I have no disagreements with the substance of this bill, which initially was proposed by the present Agriculture Commissioner. It is the process by which the Legislature has directed that it be implemented that causes me to veto it.

Section 13(c) of the bill requires that the Commissioner, before adopting rules to implement the proposed law, "consult with representatives of the horse industry and, by September 1, 1991, present draft proposed rules to the committees on agriculture of the House and Senate for their approval."

The procedure outlined above for adoption of rules differs from the procedures set forth in the state's Administrative Procedures Act, specifically 3 V.S.A. § 842. In that section, the Legislative Committee on Administrative Rules may object to administrative rulemaking for only certain specified reasons, and even if it does so object, the Executive may nevertheless still promulgate the rules. The consequence of properly objecting shifts the burden of proof to the Executive to demonstrate that the part of the rule objected to "is within the authority delegated to the agency, is consistent with the intent of the legislature, and is not arbitrary." 3 V.S.A. § 842(b).

As written, S.157 gives the respective agriculture committees of both houses a veto over proposed rules. There is no limit on the exercise of their disapproval powers, as found in the Administrative Procedures Act. There is no time limit by which neither house has to act. Thus section 13(c) of S.157 violates the established rulemaking procedure.

In addition, I believe section 13(c) is an Unconstitutional infringement on the powers of the Executive. Chapter II, Section 5 of our Constitution prohibits one branch of State government from exercising "the power properly belonging to the others." Inherent in the powers of the Executive is the power to implement the laws; rulemaking not in violation of those laws is a necessary tool.

While it has not been specifically addressed in Vermont to my knowledge, at the federal level it has been understood for several years that the Congress may not veto administrative rules. *INS v. Chadha*, 462 U.S. 919 (1983); *Process Gas Consumers Group v. Consumer Energy Council of America*, 463 U.S. 1216 (1983). Under these cases, it has been said that Congress remains free to overrule administrative rules by legislation, or by revoking the agency's rulemaking authority. It simply cannot interfere with the actual decision-making process. See 1 Koch, *Administrative Law and Practice*, Section 4.115 (1985).

The Commissioner of Agriculture has said that the State's interests will not be vitally impaired by the failure to enact S.157 this year. I invite the Legislature to correct Section 13(c) and to

resubmit it to me next January.

Sincerely,
/s/Richard A. Snelling
Richard A. Snelling,
Governor

Governor's Veto Sustained
S. 157, 1991

The Governor's veto was sustained in the Senate:

Yeas: 0 Nays: 29

*Note the veto was sustained, the necessary override two-thirds vote *not* having been attained.

Sources: *Journal of the Senate*, May 19, 1991 (pages 840-841); *Journal of the Senate*, January 9, 1992 (pages 14-16)