

1 H.157

2 Introduced by Representative Sharpe of Bristol

3 Referred to Committee on

4 Date:

5 Subject: Executive Branch; administrative procedure; rulemaking; notice; use
6 of electronic media

7 Statement of purpose of bill as introduced: This bill concerns increasing
8 public access to the development and adoption of administrative rules. The bill
9 proposes to require a report and recommendations from the Secretary of State
10 (the Secretary) on ways to improve public input and access to the development
11 of proposed rules before the formal rulemaking process begins. It also
12 proposes to require that agencies submit electronic copies of proposed and
13 final proposed rules to be posted on the web page of the Secretary and, in the
14 case of final proposed rules, the web page of the Legislative Committee on
15 Administrative Rules. It further proposes to amend the current requirement for
16 a consolidated newspaper advertisement of proposed rules by adding online
17 publication through Internet media and forums commonly used by Vermonters.

18 An act relating to public access to administrative rules

19 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. REPORT; RULE DEVELOPMENT; PUBLIC ACCESS

2 (a) Finding; purpose. The General Assembly finds that residents of the
3 State and other persons affected by proposed rules would benefit from greater
4 input and access to the formulation of those rules by agencies before the
5 agencies initiate rulemaking under the Vermont Administrative Procedure Act.
6 The purpose of this section is to require submission, for consideration by the
7 General Assembly during the 2016 session, of a report and recommendations
8 on how agencies could provide such input and access.

9 (b) Definitions. In this section:

10 (1) “Agency” means each agency, board, commission, department, or
11 other entity of the State that has authority to adopt rules.

12 (2) “Secretary” means the Secretary of State.

13 (c) Agency submission to Secretary. On or before September 15, 2015,
14 each agency shall submit the following to the Secretary in such form as the
15 Secretary may direct:

16 (1) the agency’s process for developing proposed rules;

17 (2) each measure, if any, the agency undertakes to include members of
18 the public in that process;

19 (3) the recommendations of the agency on how it could improve public
20 input and access to its development of proposed rules, including specific

1 consideration of posting meeting minutes and documents and of notifying and
2 soliciting input from the public; and

3 (4) any other relevant information that the Secretary may require.

4 (d) On or before December 15, 2015, the Secretary shall submit a report
5 and recommendations to the House and Senate Committees on Government
6 Operations. This submission shall:

7 (1) describe the current status of agency involvement and notification of
8 the public in the development of proposed rules, including those mechanisms
9 in most common use for this purpose;

10 (2) contain a chart that provides an overview of the submission of each
11 agency under subsection (c) of this section;

12 (3) describe the options available to increase public input and access to
13 the development of proposed rules prior to their filing with the Secretary;

14 (4) set forth the Secretary's recommendations on how to increase such
15 public input and access and identify which of these recommendations require
16 legislative action to implement; and

17 (5) include any other information and recommendations that the
18 Secretary considers relevant.

1 Sec. 2. 3 V.S.A. § 820 is amended to read:

2 § 820. INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

3 (a) For assistance in the review, evaluation, and coordination of programs
4 and activities of ~~state~~ State agencies, the development of strategies for
5 maximizing public input, and the promotion of consistent measures among
6 agencies for involving the public in the rulemaking process, subject to the
7 provisions of this chapter, an ~~interagency committee on administrative rules~~
8 Interagency Committee on Administrative Rules is created. Members of the
9 ~~committee~~ Committee shall be appointed by the ~~governor~~ Governor from the
10 ~~executive branch~~ Executive Branch and shall serve at his or her pleasure.

11 (b) The duties and responsibilities of the ~~committee~~ Committee shall be
12 those established under this section ~~or~~ and those directed by the ~~governor~~
13 Governor and shall include review of existing and proposed rules of agencies
14 designated by the ~~governor~~ Governor for style, consistency with the law,
15 legislative intent, and the policies of the ~~governor~~ Governor. The ~~committee~~
16 Committee shall make reports and recommendations concerning programs and
17 activities of designated agencies subject to this chapter.

18 (c) After a proposed rule is prefiled with the ~~committee~~ Committee, the
19 ~~committee~~ Committee shall work with the agency and prescribe a strategy for
20 maximizing public input on the proposed rule. The ~~committee~~ Committee shall
21 evaluate the current efforts and practices of agencies for including the public in

1 the development of proposed rules, and shall recommend an appropriate
2 process for maximizing public input, based on the ~~committee's~~ Committee's
3 evaluation of current agency practices and the importance of public
4 involvement, given the nature of the proposed rule. The ~~committee~~ Committee
5 shall prescribe a specific strategy regarding the location, time, and frequency
6 of public hearings, and advise the agency on specific provisions of 1 V.S.A.
7 chapter 5 of Title 1 and the consequences of failing to adhere to the prescribed
8 strategy.

9 (d) The Committee is a public body pursuant to 1 V.S.A. § 310. The
10 Agency of Administration shall post on its web page notice of the Committee's
11 regular and special meetings and copies of the Committee's minutes and
12 decisions.

13 Sec. 3. 3 V.S.A. § 838 is amended to read:

14 § 838. FILING OF PROPOSED RULES

15 (a) Proposed rules shall be filed with the ~~secretary of state~~ Secretary of
16 State. The filing shall include the following:

17 (1) a cover sheet;

18 (2) an economic impact statement;

19 (3) an incorporation by reference statement, if the proposed rule
20 includes an incorporation by reference;

21 (4) an adopting page;

1 (5) the text of the proposed rule;

2 (6) an annotated text showing changes from existing rules;

3 (7) an explanation of the strategy for maximizing public input on the
4 proposed rule as prescribed by the ~~interagency committee on administrative~~
5 ~~rules~~ Interagency Committee on Administrative Rules; and

6 (8) a brief summary of the scientific information upon which the
7 proposed rule is based to the extent the proposed rule depends on scientific
8 information for its validity; and

9 (9) an electronic file that includes each of these documents, in portable
10 document format or such other software format suitable for posting on a web
11 page as the Secretary may direct.

12 * * *

13 Sec. 4. 3 V.S.A. § 839 is amended to read;

14 § 839. PUBLICATION OF PROPOSED RULES

15 (a) ~~The Secretary of State shall publish online notice of a proposed rule~~
16 ~~within~~ Within two weeks of receipt of ~~the~~ a proposed rule, the Secretary of
17 State shall publish online the electronic file of the proposed rule with an online
18 notice of the rule. ~~Notice~~ The notice shall include the following information:

19 (1) the name of the agency;

20 (2) the title or subject of the rule;

21 (3) a concise summary of the effect of the rule;

1 (4) an explanation of the people, enterprises, and governmental entities
2 affected by the rule;

3 (5) a brief summary of economic impact;

4 (6) the name, telephone number, and address of an agency official able
5 to answer questions and receive comments on the proposal;

6 (7) the date, time, and place of the hearing or hearings; ~~and~~

7 (8) the deadline for receiving comments; and

8 (9) the electronic file of the rule for download.

9 (b) The Secretary of State may edit all notices for clarity, brevity, and
10 format and shall include a brief statement explaining how members of the
11 public can participate in the rulemaking process.

12 (c) The Secretary of State shall arrange for one formal publication, in a
13 consolidated advertisement in newspapers having general circulation in
14 different parts of the State as newspapers of record approved by the Secretary
15 of State and online in Internet media and fora of record approved by the
16 Secretary of State, of information relating to all proposed rules that includes
17 the following information:

18 (1) the name of the agency and its Internet address;

19 (2) the title or subject and a concise summary of the rule; and

1 (3) the office name, office telephone number, and office mailing address
2 of an agency official able to answer questions and receive comments on the
3 proposal.

4 (d) The Secretary of State shall be reimbursed by agencies making
5 publication in accordance with subsection (c) of this section so that all costs
6 are prorated among agencies publishing at the same time.

7 Sec. 5. PURPOSE

8 The purpose of the amendment to 3 V.S.A. § 839(c) in Sec. 4 of this act is
9 to disseminate the consolidated advertisement of proposed rules not only
10 through newspapers but also through online media and fora in common use by
11 residents of Vermont. Examples of these media and fora include VTDigger
12 and Front Porch Forum.

13 Sec. 6. 3 V.S.A. § 841 is amended to read:

14 § 841. FINAL PROPOSAL

15 (a) After considering public comment as required in section 840 of this
16 title, an agency shall file a final proposal with the ~~secretary of state~~ Secretary
17 of State and with the ~~legislative committee on administrative rules~~ Legislative
18 Committee on Administrative Rules.

19 (b) The filing of the final proposal shall include all information required to
20 be filed with the original proposal, suitably amended to reflect any changes
21 made in the rule, and the fact that public hearing and comment has been

1 completed. The filing shall include an electronic file encompassing all of the
2 documents that comprise the final proposal in the same software format as the
3 proposed rule. Where an agency decides in a final proposal to overrule
4 substantial arguments and considerations raised for or against the original
5 proposal or to reject suggestions with respect to separate requirements for
6 small businesses, the final proposal shall include a description of the reasons
7 for the agency's decision. The Secretary of State and the Legislative
8 Committee on Administrative Rules shall post the electronic file for the final
9 proposed rule on their respective web pages.

10 (c) ~~The legislative committee on administrative rules~~ Legislative
11 Committee on Administrative Rules shall distribute ~~, by email or regular mail,~~
12 ~~a brief summary of final proposed rules~~ a copy of the final proposal to the
13 chairs of the appropriate standing committees. ~~In addition, upon request, and~~
14 ~~to each member of the appropriate standing committee shall be notified by~~
15 ~~email or in summary fashion that the final proposed rule has been filed, the~~
16 ~~date of filing, and, upon request, shall be provided with~~ committees who
17 requests a copy of the filing.

18 (d) The chair of a standing committee ~~which~~ that considered legislation
19 delegating rulemaking authority may convene the standing committee for the
20 purpose of considering a recommended course of action for the ~~legislative~~
21 ~~committee on administrative rules~~ Legislative Committee on Administrative

1 Rules. The chair may convene such a meeting, pursuant to 2 V.S.A. § 406,
2 while the ~~general assembly~~ General Assembly is not in session. Any
3 recommended course of action shall be filed with the ~~legislative committee on~~
4 ~~administrative rules~~ Legislative Committee on Administrative Rules no later
5 than five working days before the ~~committee~~ Committee has scheduled a
6 review of the proposed rule.

7 Sec. 7. EFFECTIVE DATES

8 This section and Sec. 1 shall take effect on passage. The remaining sections
9 shall take effect on July 1, 2015.