

1 Introduced by Committee on Government Operations

2 Date:

3 Subject: Executive; administrative procedure; rulemaking

4 Statement of purpose of bill as introduced: This bill proposes to make various  
5 revisions to the Administrative Procedure Act, including authorizing the  
6 Secretary of State to create a centralized system to improve access to adopted  
7 rules and to the rulemaking process.

8 An act relating to the Administrative Procedure Act

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

10 Sec. 1. PURPOSE

11 The General Assembly adopts the changes in this act to:

12 (1) improve public participation in rulemaking and public access to the  
13 rulemaking process and to adopted rules;

14 (2) increase the efficiency of the rulemaking process; and

15 (3) ensure that rules are authorized, necessary, and reasonable and are  
16 subject to a thorough regulatory analysis.

17 Sec. 2. 3 V.S.A. chapter 25 is amended to read:

18 CHAPTER 25. ADMINISTRATIVE PROCEDURE

19 Subchapter 1. General Provisions

1 § 800. PURPOSE

2 The General Assembly intends that:

3 (1) ~~agencies~~ Agencies maximize the involvement of the public in the  
4 development of rules;

5 (2) ~~agency~~ Agency inclusion of public participation in the ~~rule-making~~  
6 ~~processes~~ rulemaking process should be consistent;

7 (3) Agencies write rules so that they are clear and accessible to the  
8 public.

9 (4) When an agency adopts rules, it subjects the rules to thorough  
10 regulatory analysis.

11 (5) ~~the~~ The General Assembly should articulate, as clearly as possible,  
12 the intent of any legislation ~~which that~~ delegates ~~rule-making~~ rulemaking  
13 authority;

14 (4)(6) ~~when~~ When an agency adopts policy ~~or~~, procedures, or guidance,  
15 ~~it should~~ shall not do so to supplant or avoid the adoption of rules.

16 § 801. SHORT TITLE AND DEFINITIONS

17 (a) This chapter may be cited as the “Vermont Administrative  
18 Procedure Act.”

19 (b) As used in this chapter:

20 \* \* \*

1 (7) “Practice” means a substantive or procedural requirement of an  
2 agency, affecting one or more persons who are not employees of the agency,  
3 ~~which~~ that is used by the agency in the discharge of its powers and duties. The  
4 term includes all such requirements, regardless of whether they are stated in  
5 writing.

6 (8) “Procedure” means a practice ~~which~~ that has been adopted in ~~the~~  
7 ~~manner provided in section 835 of this title~~ writing, either at the election of the  
8 agency or as the result of a request under subsection 831(b) of this title. The  
9 term includes any practice of any agency that has been adopted in writing,  
10 whether or not labeled as a procedure, except for a rule adopted under sections  
11 836 through 844 of this title or a written document issued in a contested case  
12 that imposes substantive or procedural requirements on the parties to the case.

13 \* \* \*

14 (13) “Arbitrary,” when applied to an agency rule or action, means that  
15 one or more of the following apply:

16 (A) There is no factual basis for the decision made by the agency.

17 (B) The decision made by the agency is not rationally connected to  
18 the factual basis asserted for the decision.

19 (C) The decision made by the agency would not make sense to a  
20 reasonable person.

1            (14) “Guidance document” means a written record of general  
2            applicability that has not been adopted in accordance with sections 836 through  
3            844 of this title but states an agency’s current approach to or interpretation of  
4            law or describes how and when an agency will exercise discretionary  
5            functions.

6            (15) “Index” means a searchable list of entries that contains subjects and  
7            titles with page numbers, hyperlinks, or other connects that link each entry to  
8            the text or document to which it refers.

9            \* \* \*

10          § 806. PROCEDURE TO REQUEST ADOPTION OF RULES OR  
11          PROCEDURES; GUIDANCE DOCUMENTS

12          (a) A person may submit a written request to an agency asking the agency  
13          to adopt, amend, or repeal a procedure or rule. Within 30 days of after  
14          receiving the request, the agency shall initiate ~~rule-making~~ rulemaking  
15          proceedings; shall adopt a, amend, or repeal the procedure; or shall deny the  
16          request, giving its reasons in writing.

17          (b) A person may submit a written request to an agency asking the agency  
18          to adopt a guidance document as a rule or amend or repeal the guidance  
19          document. Within 30 days after receiving the request, the agency shall initiate  
20          rulemaking proceedings, shall amend or repeal the guidance document, or shall  
21          deny the request, giving its reasons in writing.

1 \* \* \*

2 Subchapter 2. Contested Cases

3 § 809. CONTESTED CASES; NOTICE; HEARING; RECORDS

4 \* \* \*

5 (i) When a board or commission member who hears all or a substantial part  
6 of a case retires from office or completes his or her term before the case is  
7 completed, he or she may remain a member of the board or commission for the  
8 purpose of deciding and concluding the case. If the member who retires or  
9 completes his or her term is a chair, the member may also remain a member for  
10 the purpose of certifying questions of law if an appeal is taken, where such is  
11 required by law. For this service, the member may be compensated in the  
12 manner provided for active members.

13 \* \* \*

14 Subchapter 3. Rulemaking; Procedures; Guidance Documents

15 § 817. LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

16 \* \* \*

17 § 818. SECRETARY OF STATE; CENTRALIZED RULE SYSTEM

18 (a) The Secretary of State shall establish and maintain a centralized rule  
19 system that is open and available to the public. The system shall include all  
20 rules in effect or proposed as of July 1, 2019 and all rules proposed and  
21 adopted by agencies of the State after that date.

1           (b) The Secretary shall design the centralized rule system to:  
2                   (1) facilitate public notice of and access to the rulemaking process;  
3                   (2) provide the public with greater access to current and previous  
4           versions of adopted rules; and  
5                   (3) promote more efficient and transparent filing by State agencies of  
6           rulemaking documents and review by the committees established in this  
7           chapter.

8           (c) At a minimum, the records included in the system shall include all  
9           documents submitted to the Secretary of State under this subchapter.

10           (d) The centralized rule system may be digital, may be available online,  
11           and may be designed to support such other functions as the Secretary of State  
12           determines are consistent with the goals of this section and section 800 of this  
13           title.

14   \* \* \*

15           § 831. REQUIRED POLICY STATEMENTS AND RULES

16           (a) Where due process or a statute directs an agency to adopt rules, the  
17           agency shall initiate rulemaking and adopt rules in the manner provided by  
18           sections 836-844 of this title.

19           (b) An agency shall adopt a procedure describing an existing practice when  
20           so requested by an interested person.

1 (c) An agency shall initiate rulemaking to adopt as a rule an existing  
2 practice ~~or~~, procedure, or guidance document when so requested by 25 or more  
3 persons or by the Legislative Committee on Administrative Rules. An agency  
4 shall not be required to initiate rulemaking with respect to any practice ~~or~~,  
5 procedure, or guidance document, except as provided by this subsection.

6 (d) An agency required to hold hearings on contested cases as required by  
7 section 809 of this title shall adopt rules of procedure in the manner provided  
8 in this chapter.

9 (e) Except as provided in subsections (a)-(d) of this section, an agency shall  
10 not be required to initiate rulemaking or to adopt a procedure or a rule.

11 \* \* \*

12 § 832a. ~~RULES AFFECTING SMALL BUSINESSES~~

13 ~~(a) Where a rule provides for the regulation of a small business, an agency~~  
14 ~~shall consider ways by which a small business can reduce the cost and burden~~  
15 ~~of compliance by specifying less numerous, detailed or frequent reporting~~  
16 ~~requirements, or alternative methods of compliance.~~

17 ~~(b) An agency shall also consider creative, innovative, or flexible methods~~  
18 ~~of compliance with the rule when the agency finds, in writing, such action~~  
19 ~~would not:~~

20 ~~(1) significantly reduce the effectiveness of the rule in achieving the~~  
21 ~~objectives or purposes of the statutes being implemented or interpreted; or~~

1           ~~(2) be inconsistent with the language or purpose of statutes that are~~  
2 ~~implemented or interpreted by the rule; or~~

3           ~~(3) increase the risk to the health, safety, or welfare of the public or to~~  
4 ~~the beneficiaries of the regulation, or compromise the environmental standards~~  
5 ~~of the State.~~

6           ~~(c) This section shall not apply where the regulation is incidental to:~~

7           ~~(1) a purchase of goods or services by the State or an agency thereof; or~~

8           ~~(2) the payment for goods or services by the State or an agency thereof~~  
9 ~~for the benefit of a third party. [Repealed.]~~

10 § 832b. ~~ADMINISTRATIVE RULES AFFECTING SCHOOL DISTRICTS~~

11           ~~If a rule affects or provides for the regulation of public education and public~~  
12 ~~schools, the agency proposing the rule shall evaluate the cost implications to~~  
13 ~~local school districts and school taxpayers, clearly state the associated costs,~~  
14 ~~and report them in a local school cost impact statement to be filed with the~~  
15 ~~economic impact statement on the rule required by subsection 838(c) of this~~  
16 ~~title. An agency proposing a rule affecting school districts shall also consider~~  
17 ~~and include in the local school cost impact statement an evaluation of~~  
18 ~~alternatives to the rule, including no rule on the subject which would reduce or~~  
19 ~~ameliorate costs to local school districts while achieving the objectives or~~  
20 ~~purposes of the proposed rule. The Legislative Committee on Administrative~~  
21 ~~Rules may object to any proposed rule if a local school cost impact statement~~



1 ~~is not filed with the proposed rule, or the Committee finds the statement to be~~  
2 ~~inadequate, in the same manner in which the Committee may object to an~~  
3 ~~economic impact statement under section 842 of this title. [Repealed.]~~

4 § 833. STYLE OF RULES

5 (a) Rules and procedures shall be written in a clear and coherent manner  
6 using words with common and everyday meanings, consistent with the text of  
7 the rule or procedure.

8 (b)(1) When an agency proposes to amend an existing rule, it shall replace  
9 terms identified as potentially disrespectful by the study produced in  
10 accordance with 2012 Acts and Resolves No. 24, Sec. 1 with respectful  
11 language recommended therein or used in the Vermont Statutes Annotated,  
12 where appropriate.

13 (2) All new rules adopted by agencies shall use, to the fullest extent  
14 possible, respectful language consistent with the Vermont Statutes Annotated  
15 and the respectful language study produced in accordance with 2012 Acts and  
16 Resolves No. 24, Sec. 1, where appropriate.

17 (c) The Secretary of State may issue a guidance document suggesting how  
18 agencies may draft rules and procedures in accordance with this section. The  
19 guidance document may include suggestions on style, numbering, and drafting  
20 the content of the filings required under this subchapter.

21 \* \* \*

1 § 835. COMPILATION OF PROCEDURES AND GUIDANCE

2 DOCUMENTS

3 (a) Compilation; index. Procedures and guidance documents shall be  
4 maintained by the agency in an official current compilation that ~~is indexed by~~  
5 subject includes an index. Each addition, change, or deletion to the official  
6 compilation shall also be dated, indexed, and recorded. ~~The compilation shall~~  
7 ~~be a public record.~~ The agency shall publish the compilation and index on its  
8 Internet website and make all procedures and guidance documents available to  
9 the public. The agency may not rely on a procedure or guidance document or  
10 cite it against any party to a proceeding, unless the procedure or guidance  
11 document is included in a compilation maintained and published in accordance  
12 with this subsection.

13 (b) Use in proceedings. A procedure or guidance document shall not have  
14 the force and effect of law. An agency that proposes to rely on a procedure or  
15 guidance document to the detriment of a person in any contested case or other  
16 administrative proceeding shall afford the person an adequate opportunity to  
17 contest the legality or wisdom of a position taken in the document. The agency  
18 may not use the document to foreclose consideration of issues raised in the  
19 document.

20 (c) Instructions to staff. A procedure or guidance document may contain  
21 binding instructions to agency staff members other than those hearing or deciding  
22 a contested case if, at an appropriate stage in the administrative process, the

1 agency provides an affected person an adequate opportunity to contest the legality  
2 or wisdom of a position taken in the document.

3 (d) Advocacy at variance with document. If an agency proposes to act or  
4 advocate in a contested case or other proceeding at variance with a position  
5 expressed in a procedure or guidance document of the agency, it shall provide a  
6 reasonable explanation for the variance. If an affected person in an adjudication  
7 may have relied reasonably on the agency's position, the explanation must include  
8 a reasonable justification for the agency's conclusion that the need for the variance  
9 outweighs the affected person's reliance interest.

10 (e) Nonbinding on decision-maker. A procedure or guidance document may be  
11 considered by a hearing officer or final decision maker in a contested case, but it  
12 does not bind the officer or the decision maker.

13 \* \* \*

14 § 838. FILING OF PROPOSED RULES

15 (a) Filing; information. Proposed rules shall be filed with the Secretary of  
16 State. ~~The filing shall include~~ in a format determined by the Secretary that  
17 includes the following information:

18 (1) ~~a cover sheet;~~ The name of the agency and the subject or title of the  
19 rule.

20 (2) ~~an~~ An explanation of economic impact statement;

1           (3) ~~an incorporation~~ An explanation of all material incorporated by  
2 reference statement, if ~~the proposed rule includes an incorporation by~~  
3 ~~reference; any.~~

4           ~~(4) an adopting page;~~

5           ~~(5)(4) the~~ The text of the proposed rule;

6           ~~(6)(5) an~~ An annotated text showing changes from existing rules; The  
7 annotated text of the rule shall include markings to indicate clearly changed  
8 wording from any existing rule.

9           ~~(7)(6) an~~ An explanation of the strategy for maximizing public input on  
10 the proposed rule as prescribed by the Interagency Committee on  
11 Administrative Rules; ~~and.~~

12           ~~(8)(7) a~~ A brief summary of the scientific information upon which the  
13 proposed rule is based to the extent the proposed rule depends on scientific  
14 information for its validity. The summary shall refer to the scientific studies  
15 on which the proposed rule is based and shall explain the procedure for  
16 obtaining such studies from the agency.

17           ~~(b) The cover sheet shall be on a form prepared by the Secretary of State~~  
18 ~~containing at least the following information:~~

19           ~~(1) the name of the agency;~~

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

1           ~~(3)~~(8) a A concise, plain language summary explaining ~~the effect of the~~  
2 rule; and its effect.

3           ~~(4)~~(9) ~~the~~ The specific statutory authority for the rule, and, if none  
4 exists, the general statutory authority for the rule;

5           ~~(5)~~(10) ~~an~~ An explanation of why the rule is necessary;

6           ~~(6)~~(11) ~~an~~ An explanation of the people, enterprises, and government  
7 entities affected by the rule;

8           ~~(7)~~ a brief summary of the economic impact of the rule;

9           ~~(8)~~(12) ~~the~~ The name, address, and telephone number of an individual in  
10 the agency able to answer questions and receive comments on the proposal;

11           ~~(9)~~(13) a A proposed schedule for completing the requirements of this  
12 chapter, including, if there is a hearing scheduled, the date, time, and place of  
13 that hearing and a deadline for receiving comments;

14           ~~(10)~~(14) ~~whether~~ Whether the rule contains an exemption from  
15 inspection and copying of public records; or otherwise contains a Public  
16 Records Act exemption by designating information as confidential or limiting  
17 its public release and, if so, the asserted statutory authority for the exemption  
18 and a brief summary of the reason for the exemption; ~~and~~

19           ~~(11)~~(15) a A signed and dated statement by the adopting authority  
20 approving the contents of the filing.

1        ~~(e)~~(b) Economic impact explanation; rules affecting small businesses and  
2        school districts.

3            (1) General requirements. The economic impact ~~statement~~ explanation  
4        shall analyze the anticipated costs and benefits to be expected from adoption of  
5        the rule. Specifically, each economic impact ~~statement~~ explanation shall, for  
6        each requirement in the rule:

7            (A) ~~List~~ list categories of people, enterprises, and government entities  
8        potentially affected and estimate for each the costs and benefits  
9        anticipated; and

10          (B) ~~Compare~~ compare the economic impact of the rule with the  
11        economic impact of other alternatives to the rule, including no rule on the  
12        subject or a rule having separate requirements for small ~~business~~ businesses.

13          (C) ~~Include a flexibility statement.~~ The flexibility statement shall  
14        ~~compare the burden imposed on small businesses by compliance with the rule~~  
15        ~~to the burden which would be imposed by alternatives considered under~~  
16        ~~section 832a of this title.~~

17          (D) ~~Include a greenhouse gas impact statement.~~ The greenhouse gas  
18        ~~impact statement shall explain how the rule has been crafted to reduce the~~  
19        ~~extent to which greenhouse gases are emitted.~~ The Secretary of  
20        ~~Administration, in conjunction with the Secretaries of Agriculture, Food and~~  
21        ~~Markets, of Natural Resources, and of Transportation, and the Commissioner~~

1 ~~of Public Service shall provide a checklist which shall be used in the adoption~~  
2 ~~of rules to assure the full consideration of greenhouse gas impacts, direct and~~  
3 ~~indirect.~~

4 (2) Small businesses. Where a rule provides for the regulation of a  
5 small business, the economic impact explanation shall include a specific and  
6 clearly demarcated evaluation of ways by which a small business can reduce  
7 the cost and burden of compliance by specifying less numerous, detailed, or  
8 frequent reporting requirements or alternative methods of compliance.

9 (A) An agency shall also include in this evaluation its consideration  
10 of creative, innovative, or flexible methods of compliance with the rule when  
11 the agency finds, in writing, that these methods of compliance would not:

12 (i) significantly reduce the effectiveness of the rule in achieving  
13 the objectives or purposes of the statutes being implemented or interpreted; or

14 (ii) be inconsistent with the language or purpose of statutes that  
15 are implemented or interpreted by the rule; or

16 (iii) increase the risk to the health, safety, or welfare of the public  
17 or to the beneficiaries of the regulation or compromise the environmental  
18 standards of the State.

19 (B) This subdivision (2) shall not apply when the regulation is  
20 incidental to:

1                    (i) a purchase of goods or services by the State or an agency  
2                    thereof; or

3                    (ii) the payment for goods or services by the State or an agency  
4                    thereof for the benefit of a third party.

5                    (3) School districts. If a rule affects or provides for the regulation of  
6                    public education and public schools, the economic impact explanation shall  
7                    include a specific and clearly demarcated evaluation of the cost implications to  
8                    local school districts and school taxpayers, and clearly state the associated  
9                    costs. This evaluation also shall include consideration of alternatives to the  
10                   rule, including no rule on the subject, that would reduce or ameliorate costs to  
11                   local school districts while achieving the objectives or purposes of the  
12                   proposed rule.

13                   (4) Most appropriate method. In addition, each economic impact  
14                   statement shall conclude that the rule is the most appropriate method of  
15                   achieving the regulatory purpose ~~and, with respect to small businesses, contain~~  
16                   ~~any findings required by section 832a of this title.~~ Only employees of the  
17                   agency and information either already available to the agency or available at  
18                   reasonable cost shall be used in preparing economic impact statements.

19                   ~~(d) Any required incorporation by reference statement shall include a~~  
20                   ~~separately signed statement by the adopting authority:~~



1           ~~(1) certifying that the text of the matter incorporated has been reviewed~~  
2           ~~by the agency, with the name of the reviewing official;~~

3           ~~(2) explaining how the text of the matter incorporated can be obtained~~  
4           ~~by the public, and at what cost;~~

5           ~~(3) explaining any modifications to the matter incorporated;~~

6           ~~(4) discussing the comparative desirability of reproducing the~~  
7           ~~incorporated matter in full in the text of the rule; and~~

8           ~~(5) certifying that the agency has the capability and the intent to enforce~~  
9           ~~the rule.~~

10           (c) Incorporation by reference. A rule may incorporate by reference all  
11           or any part of a code, standard, or rule that has been adopted by an agency of  
12           the United States, this State, or another state or by a nationally recognized  
13           organization or association, if:

14           (1) repeating verbatim the text of the code, standard, or rule in the  
15           rule would be unduly cumbersome, expensive, or otherwise inexpedient;

16           (2) the reference in the rule fully identifies the incorporated code,  
17           standard, or rule by citation, place of inspection, and date;

18           (3) the code, standard, or rule is readily available to the public in  
19           written or electronic form at no charge or for a reasonable charge;

20           (4) the rule states where copies of the code, standard, or rule are  
21           available from the agency adopting the rule for a reasonable charge, if any, or

1 where copies are available from the agency of the United States, this State,  
2 another state, or the organization or association originally issuing the code,  
3 standard, or rule; and

4 (5) the agency maintains a copy of the code, standard, or rule readily  
5 available for public inspection at the principal office of the agency.

6 ~~(e) The adopting page shall be on a form prepared by the Secretary of State~~  
7 ~~and shall contain the name of the agency, the subject of the proposed rule, an~~  
8 ~~explanation of the effect of the proposal on existing rules, and any internal~~  
9 ~~reference number assigned by the agency.~~

10 ~~(f) The annotated text of the rule shall include markings to clearly indicate~~  
11 ~~changed wording from any existing rule.~~

12 ~~(g) The brief summary of scientific information shall refer to scientific~~  
13 ~~studies upon which the proposed rule is based and shall explain the procedure~~  
14 ~~for obtaining such studies from the agency.~~

15 § 839. PUBLICATION OF PROPOSED RULES

16 (a) Online. The Secretary of State shall publish online notice of a proposed  
17 rule within two weeks ~~of~~ after receipt of the proposed rule. Notice shall  
18 include the following information:

19 (1) the name of the agency;

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

1 (3) a concise, plain language summary of the effect of the rule and its  
2 effect;

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

5 (5) a brief summary of the economic impact;

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

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

9 (8) the deadline for receiving comments.

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

13 (c) Newspaper publication. The Secretary of State shall arrange for one  
14 formal publication, in a consolidated advertisement in newspapers having  
15 general circulation in different parts of the State as newspapers of record  
16 approved by the Secretary of State, of information relating to all proposed rules  
17 that includes 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 the Internet  
20 address at which the rule may be viewed; 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) Reimbursement. The Secretary of State shall be reimbursed by  
5 agencies making publication in accordance with subsection (c) of this section  
6 so that all costs are prorated among agencies publishing at the same time.

7 \* \* \*

8 § 841. FINAL PROPOSAL

9 (a) After considering public comment as required in section 840 of this  
10 title, an agency shall file a final proposal with the Secretary of State and with  
11 the Legislative Committee on Administrative Rules. The Committee may  
12 require that the agency include an electronic copy of the final proposal with its  
13 filing.

14 (b) The filing of the final proposal shall include all information required to  
15 be filed with the original proposal, suitably amended to reflect any changes  
16 made in the rule and the fact that public hearing and comment ~~has~~ have been  
17 completed.

18 (1) With the final proposal, the agency shall include a statement that  
19 succinctly and separately addresses each of the following:

20 (A) how the proposed rule is within the authority of the agency;

1                   (B) why the proposed rule is not contrary to the intent of the

2                   Legislature;

3                   (C) why the proposed rule is not arbitrary;

4                   (D) the strategy for maximizing public input that was prescribed by  
5                   the Interagency Committee on Administrative Rules and the actions taken by  
6                   the agency that demonstrate compliance with that strategy; and

7                   (E) why the economic impacts evaluated in the economic impact  
8                   statement constitute all of the substantial economic impacts of the rule.

9                   (2) Where an agency decides in a final proposal to overrule substantial  
10                  arguments and considerations raised for or against the original proposal or to  
11                  reject suggestions with respect to separate requirements for small businesses,  
12                  the final proposal shall include a description of the reasons for the agency's  
13                  decision.

14    \* \* \*

15                   § 842. REVIEW BY LEGISLATIVE COMMITTEE

16                  (a) ~~Within 30 days of the date a rule is first placed on the Committee's~~  
17                  ~~agenda but no later than~~ 45 days after the filing of a final proposal unless the  
18                  agency consents to an extension of this review period, the Legislative  
19                  Committee on Administrative Rules, by majority vote of the entire Committee,  
20                  may object under subsection (b), (c), or (d) of this section, and recommend that  
21                  the agency amend or withdraw the proposal. The agency shall be notified

1 promptly of the objections. Failure to give timely notice shall be deemed  
2 approval. The agency shall within 14 days ~~of~~ after receiving notice respond in  
3 writing to the Committee and send a copy to the Secretary of State. In its  
4 response, the agency may include revisions to the proposed rule or filing  
5 documents that seek to cure defects noted by the Committee. After receipt of  
6 this response, the Committee may withdraw or modify its objections.

7 (b) The Committee may object under this subsection if:

8 (1) a proposed rule is beyond the authority of the agency;

9 (2) a proposed rule is contrary to the intent of the Legislature;

10 (3) a proposed rule is arbitrary; ~~or~~

11 (4) the agency did not adhere to the strategy for maximizing public input  
12 prescribed by the Interagency Committee on Administrative Rules;

13 (5) a proposed rule is not written in a satisfactory style in accordance  
14 with section 833 of this title; or

15 (6) the economic impact explanation fails to recognize a substantial  
16 economic impact of the proposed rule, fails to include an evaluation and  
17 statement of costs to local school districts required under section 838 of this  
18 title, or fails to recognize a substantial economic impact of the rule to such  
19 districts.

20 (c) When objection is made under this ~~subsection~~ section, and the objection  
21 is not withdrawn after the agency responds, on majority vote of the entire

1 Committee, it may file the objection in certified form with the Secretary of  
2 State. The objection shall contain a concise statement of the Committee's  
3 reasons for its action. The Secretary shall affix to each objection a certification  
4 of its filing and as soon as practicable transmit a copy to the agency. After a  
5 Committee objection is filed with the Secretary under this subsection, or on the  
6 same grounds under subsection 817(d) of this title, to the extent that the  
7 objection covers a rule or portion of a rule, the burden of proof thereafter shall  
8 be on the agency in any action for judicial review or for enforcement of the  
9 rule to establish that the part objected to is within the authority delegated to the  
10 agency, is consistent with the intent of the Legislature, is not arbitrary, and the  
11 agency did adhere to the strategy for maximizing public input prescribed by  
12 the Interagency Committee on Administrative Rules, is written in a satisfactory  
13 style in accordance with section 833 of this title, and does not fail to recognize  
14 a substantial economic impact. If the agency fails to meet its burden of proof,  
15 the ~~Court~~ court shall declare the whole or portion of the rule objected to  
16 invalid. The failure of the Committee to object to a rule is not an implied  
17 legislative authorization of its substantive or procedural lawfulness.

18 ~~(c) The Committee may object under this subsection if a proposed rule is~~  
19 ~~not written in a satisfactory style according to section 833 of this title.~~

20 ~~(d) The Committee may object under this subsection if the economic~~  
21 ~~impact statement fails to recognize a substantial economic impact of the~~

1 ~~proposed rule that the Committee describes in its notice of objection. The~~  
2 ~~Committee may object one time under this subsection and return the proposed~~  
3 ~~rule to the agency as unacceptable for filing. The agency may then cure the~~  
4 ~~defect and adopt the rule, or it may adopt the rule without change.~~

5 (e) When an objection is made under subsection (b) of this section and has  
6 been certified by the Secretary of State, notice of the objection shall be  
7 included on all copies of the rule distributed to the public.

8 \* \* \*

9 § 844. EMERGENCY RULES

10 (a) Where an agency believes that there exists an imminent peril to public  
11 health, safety, or welfare, it may adopt an emergency rule. The rule may be  
12 adopted without having been prefiled or filed in proposed or final proposed  
13 form, and may be adopted after whatever notice and hearing that the agency  
14 finds to be practicable under the circumstances. The agency shall make  
15 reasonable efforts to ensure that emergency rules are known to persons who  
16 may be affected by them.

17 (b) Emergency rules adopted under this section shall not remain in effect  
18 for more than ~~120~~ 180 days. An agency may propose a permanent rule on the  
19 same subject at the same time that it adopts an emergency rule.

20 (c) Emergency rules adopted under this section shall be filed with the  
21 Secretary of State and with the Legislative Committee on Administrative



1 Rules. The Legislative Committee on Administrative Rules shall distribute  
2 copies of emergency rules to the appropriate standing committees.

3 (d) Emergency rules adopted under this section shall include:

4 (1) as much of the information required for the filing of a proposed rule  
5 as is practicable under the circumstances; and

6 (2) a signed and dated statement by the adopting authority explaining  
7 the nature of the imminent peril to the public health, safety, or welfare and  
8 approving of the contents of the rules.

9 (e)(1) On a majority vote of the entire Committee, the Committee may  
10 object under this subsection if an emergency rule is:

11 (A) beyond the authority of the agency;

12 (B) contrary to the intent of the Legislature;

13 (C) arbitrary; or

14 (D) not necessitated by an imminent peril to public health, safety, or  
15 welfare sufficient to justify adoption of an emergency rule.

16 (2) When objection is made under this subsection, on majority vote of  
17 the entire Committee, the Committee may file the objection in certified form  
18 with the Secretary of State. The objection shall contain a concise statement of  
19 the Committee's reasons for its action. The Secretary shall affix to each  
20 objection a certification of its filing and as soon as practicable transmit a copy  
21 to the agency. After a Committee objection is filed with the Secretary under

1 this subsection, to the extent that the objection covers a rule or portion of a  
2 rule, the burden of proof thereafter shall be on the agency in any action for  
3 judicial review or for enforcement of the rule to establish that the part objected  
4 to is within the authority delegated to the agency, is consistent with the intent  
5 of the Legislature, is not arbitrary, and is justified by an imminent peril to the  
6 public health, safety, or welfare. If the agency fails to meet its burden of proof,  
7 the ~~Court~~ court shall declare the whole or portion of the rule objected to  
8 invalid. The failure of the Committee to object to a rule is not an implied  
9 legislative authorization of its substantive or procedural lawfulness.

10 (3) When the Committee makes an objection to an emergency rule under  
11 this subsection, the agency may withdraw the rule to which an objection was  
12 made. Prior to withdrawal, the agency shall give notice to the Committee of its  
13 intent to withdraw the rule. A rule shall be withdrawn upon the filing of a  
14 notice of withdrawal with the Secretary of State and the Committee. If the  
15 emergency rule amended an existing rule, upon withdrawal of the emergency  
16 rule, the existing rule shall revert to its original form, as though the emergency  
17 rule had never been adopted.

18 (f) In response to an expressed concern of the Legislative Committee on  
19 Administrative Rules, an agency may make a germane change to an emergency  
20 rule that is approved by the Committee. A change under this subsection shall

1 not be considered a newly adopted emergency rule and shall not extend the  
2 period during which the emergency rule remains in effect.

3 § 845. EFFECT OF RULES

4 (a) Rules shall be valid and binding on persons they affect, and shall have  
5 the force of law unless amended or revised or unless a court of competent  
6 jurisdiction determines otherwise. Except as provided by subsections 842(b)  
7 and 844(e) of this title, rules shall be prima facie evidence of the proper  
8 interpretation of the matter ~~that~~ to which they refer ~~to~~.

9 (b) No agency shall grant ~~routine~~ waivers of or variances from any  
10 provisions of its rules without either amending the rules, or providing by rule  
11 for a process and specific criteria under which the agency may grant a waiver  
12 or variance ~~procedure~~ in writing. The duration of the waiver or variance may  
13 be temporary if the rule so provides.

14 \* \* \*

15 § 847. AVAILABILITY OF ADOPTED RULES; RULES BY SECRETARY

16 OF STATE

17 (a) Register; code.

18 (1) The Secretary of State (Secretary) shall keep open to public  
19 inspection a permanent register of rules. The Secretary may satisfy this  
20 requirement by incorporating the register into the centralized rule system  
21 created pursuant to section 818 of this title.

1           (2) The Secretary ~~also~~ shall publish a code of administrative rules that  
2           contains the rules adopted under this chapter. The requirement to publish a  
3           code shall be considered satisfied if a commercial publisher offers such a code  
4           in print at a competitive price and at no charge online. However, if the  
5           Secretary establishes the centralized rule system under section 818 of this title  
6           as a digital system, then the system shall include the online publication of  
7           this code.

8           (b) ~~The Secretary of State shall publish not less than quarterly a bulletin~~  
9           ~~setting forth the text of all rules filed since the immediately preceding~~  
10           ~~publication and any objections filed under subsection 842(b) or 844(e) of this~~  
11           ~~title.~~

12           ~~(e) The bulletin may omit any rule if either:~~

13                   ~~(1) a commercial publisher offers a comparable publication at a~~  
14           ~~competitive price; or~~

15                   ~~(2) all three of the following apply:~~

16                           ~~(A) its publication would be unduly cumbersome or~~  
17           ~~expensive; and~~

18                           ~~(B) the rule is made available on application to the adopting~~  
19           ~~agency; and~~

1           ~~(C) the bulletin contains a notice stating the general subject matter~~  
2           ~~of the omitted rule and stating how a copy of the rule and any objection filed~~  
3           ~~under subsection 842(b) or 844(e) of this title may be obtained.~~

4           ~~(d) Bulletins shall be made available upon request to agencies and officials~~  
5           ~~of this State free of charge and to other persons at prices fixed by the Secretary~~  
6           ~~of State to cover mailing and publication costs.~~

7           ~~(e) Rules for administration. The Secretary of State shall adopt rules for~~  
8           ~~the effective administration of this chapter. These rules shall be applicable to~~  
9           ~~every agency and shall include uniform procedural requirements, style,~~  
10           ~~appropriate forms, and a system for compiling and indexing rules.~~

11           § 848. RULES REPEAL; ~~OPERATION OF LAW~~ AMENDMENT OF  
12           AUTHORITY; NOTICE BY AGENCY

13           (a) Repeal by operation of law. A rule shall be repealed without formal  
14           proceedings under this chapter if:

15           (1) the agency that adopted the rule is abolished and its authority,  
16           specifically including its authority to implement its existing rules, has not been  
17           transferred to another agency; ~~or~~

18           (2) a court of competent jurisdiction has declared the rule to be  
19           invalid; or

1 (3) the statutory authority for the rule, as stated by the agency under  
2 subdivision 838(b)(4) of this title, is repealed by the General Assembly or  
3 declared invalid by a court of competent jurisdiction.

4 (b) Notice to Secretary of State; deletion. When a rule is repealed by  
5 operation of law under this section, the agency that adopted the rule shall  
6 notify the Secretary of State in such manner as the Secretary may prescribe by  
7 rule or procedure, and the Secretary of State shall delete the rule from the  
8 published code of administrative rules.

9 (c) Repeal for nonpublication.

10 (1) On July 1, 2018, a rule shall be repealed without formal proceedings  
11 under this chapter if:

12 (A) as of July 1, 2016, the rule was in effect but not published in the  
13 code of administrative rules; and

14 (B) the rule is not published in such code before July 1, 2018.

15 (2) An agency seeking to publish a rule described in subdivision (1) of  
16 this subsection may submit a digital copy of the rule to the Secretary of State  
17 with proof acceptable to the Secretary that as of July 1, 2016 the rule was  
18 adopted and in effect under this chapter and the digital copy consists of the text  
19 of such rule without change.

20 (d) Amendment of authority for rule.

1           (1) If the statutory authority for a rule, as stated by the agency under  
2           subdivision 838(b)(4) of this title, is amended by the General Assembly, and  
3           the amendment does not transfer authority from the adopting agency to another  
4           agency, the agency within 30 days following the effective date of the statutory  
5           amendment shall review the rule and make a written determination whether  
6           such statutory amendment repeals the authority upon which the rule is based,  
7           or requires revision of the rule and shall, within 60 days of the effective date of  
8           the statutory amendment, inform in writing submit a copy of this written  
9           determination to the Secretary of State and the Legislative Committee on  
10           Administrative Rules ~~whether repeal or revision of the rule is required by the~~  
11           statutory amendment, in such manner as the Secretary may prescribe by rule or  
12           procedure.

13           (2) If the statutory authority for a rule, as stated by the agency under  
14           subdivision 838(b)(4) of this title, is transferred by act of the General  
15           Assembly to another agency, the agency to which the authority is transferred  
16           shall provide notice of the transfer, in such manner as the Secretary of State  
17           may prescribe by rule or procedure, within 30 days following the effective date  
18           of the statutory amendment, to the Secretary and the Legislative Committee on  
19           Administrative Rules.

1        § 849. ~~BOARDS AND COMMISSIONS; RETIRING MEMBERS~~

2            ~~When a board or commission member, who hears all or a substantial part of~~  
3            ~~a case, retires from office or completes his or her term before the case is~~  
4            ~~completed, he or she may remain a member of the board or commission for the~~  
5            ~~purpose of deciding and concluding the case. If the member who retires or~~  
6            ~~completes his or her term is a chair, he or she may also remain a member for~~  
7            ~~the purpose of certifying questions of law if appeal is taken, where such is~~  
8            ~~required by law. For this service, the member may be compensated in the~~  
9            ~~manner provided for active members. [Repealed.]~~

10        Sec. 3. REDESIGNATION

11            Within 3 V.S.A. chapter 25 (administrative procedure):

12            (1) §§ 800–808 shall be within subchapter 1.

13            (2) §§ 809–816 shall be within subchapter 2.

14            (3) §§ 817–849 shall be within subchapter 3.

15        Sec. 4. APPROPRIATION

16            In fiscal year 2019, \$800,000.00 is appropriated from the General Fund to  
17            the Secretary of State for the purpose of establishing a centralized rule system  
18            pursuant to Sec. 2 of this act.



1       Sec. 5. EFFECTIVE DATE; IMPLEMENTATION

2               This act shall take effect on July 1, 2018. The Secretary of State shall  
3       complete establishment of the centralized rule system pursuant to Sec. 2 on or  
4       before June 30, 2019.

DRAFT