

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

YELLOW: NEW OR SUBSTANTIVE CHANGE

BLUE: REORGANIZATION WITH LEGAL EFFECT

NO COLOR: REORGANIZATION OR STYLE CHANGE

BOLD: CHANGE FROM DRAFT 2.2

Introduced by Committee on Government Operations

Date:

Subject: Executive; administrative procedure; rulemaking

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

An act relating to the Administrative Procedure Act

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

Sec. 1. PURPOSE

The General Assembly adopts the changes in this act to:

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

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

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

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

4 CHAPTER 25. ADMINISTRATIVE PROCEDURE

5 Subchapter 1. General Provisions

6 § 800. PURPOSE

7 The General Assembly intends that:

8 (1) ~~agencies~~ Agencies maximize the involvement of the public in the
9 development of rules;_

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

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

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

16 (5) ~~the~~ The General Assembly should articulate, as clearly as possible,
17 the intent of any legislation ~~which~~ that delegates ~~rule-making~~ rulemaking
18 authority;_

19 (4)(6) ~~when~~ When an agency adopts policy ~~or,~~ procedures, or guidance,
20 it should shall not do so to supplant or avoid the adoption of rules.

1 § 801. SHORT TITLE AND DEFINITIONS

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

4 (b) As used in this chapter:

5 * * *

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

11 (8) “Procedure” means a practice ~~which~~ that has been adopted in ~~the~~
12 ~~manner provided in section 835 of this title~~ writing, either at the election of the
13 agency or as the result of a request under subsection 831(b) of this title. The
14 term includes any practice of any agency that has been adopted in writing,
15 whether or not labeled as a procedure, except for a rule adopted under sections
16 836 through 844 of this title or a written document issued in a contested case
17 that imposes substantive or procedural requirements on the parties to the case.

18 * * *

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

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

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

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

5 (14) “Guidance document” means a written record of general
6 applicability that has not been adopted in accordance with sections 836 through
7 844 of this title but states an agency’s current approach to or interpretation of
8 law or describes how and when an agency will exercise discretionary
9 functions.

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

13 (16) “Ecosystem services” includes each of the following
14 contributions of ecosystems to human well-being:

15 (A) goods or products, such as food, timber, and fresh water;

16 (B) control of natural processes, such as climate regulation, air
17 and water purification, water flow regulation, and erosion prevention;

18 (C) nonmaterial contributions, such as recreational values,
19 education, scientific discovery, and scenic beauty, and

1 **(D) the natural processes that maintain the other services**
2 **described in this subdivision (16), such as soil formation and nutrient**
3 **cycling.**

4 * * *

5 § 806. PROCEDURE TO REQUEST ADOPTION OF RULES OR
6 PROCEDURES; **GUIDANCE DOCUMENTS**

7 (a) A person may submit a written request to an agency asking the agency
8 to adopt, amend, or repeal a procedure or rule. Within 30 days ~~of~~ after
9 receiving the request, the agency shall initiate ~~rule-making~~ rulemaking
10 proceedings; shall adopt **a, amend, or repeal the** procedure; or shall deny the
11 request, giving its reasons in writing.

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

17 * * *

18 Subchapter 2. Contested Cases

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

20 * * *

1 (d) **Within 30 days after discovering that the text of a finally adopted**
2 **rule deviates from the text of a final proposed rule as approved by the**
3 **Legislative Committee on Administrative Rules, an agency shall initiate**
4 **rulemaking to correct the rule.**

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

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

10 * * *

11 § 832a. ~~RULES AFFECTING SMALL BUSINESSES~~

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

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

19 (1) ~~significantly reduce the effectiveness of the rule in achieving the~~
20 ~~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.

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

20 (2) This subsection shall not apply to a procedure if a statute that
21 specifically enables the procedure states that it has the force of law.

1 (c) Instructions to staff. A procedure or guidance document may contain
2 binding instructions to agency staff members other than those hearing or
3 deciding a contested case if, at an appropriate stage in the administrative
4 process, the agency provides an affected person an adequate opportunity to
5 contest the legality or wisdom of a position taken in the document.

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

13 (d) Nonbinding on decision maker. A procedure or guidance document may be
14 considered by a hearing officer or final decision maker in a contested case, but it
15 does not bind the officer or the decision maker.

16 § 836. PROCEDURE FOR ADOPTION OF RULES

17 (a) Except for emergency rules, rules shall be adopted by taking the
18 following steps:

- 19 (1) prefiling, when required;
- 20 (2) filing proposed rule;
- 21 (3) publishing proposed rule;
- 22 (4) holding public hearing and receiving comments;

1 (5) filing final proposal;

2 (6) responding to Legislative Committee on Administrative Rules when
3 required; and

4 (7) filing adopted rule.

5 **(b) During the rulemaking process, the agency proposing the rule shall**
6 **post on its website information concerning the proposal.**

7 **(1) The agency shall post the information on a separate page that is**
8 **readily accessible from a prominent link on its main web page and that**
9 **lists proposed rules by title and topic.**

10 **(2) For each rulemaking, the posted information shall include:**

11 **(A) the proposed rule as filed under section 838 of this title;**

12 **(B) the date by which comments may be submitted on the**
13 **proposed rule and the address for such submission;**

14 **(C) the date and location of any public hearing;**

15 **(D) the final proposed rule as filed under section 841 of this**
16 **title; and**

17 **(E) each document submitted by the agency to the Legislative**
18 **Committee on Administrative Rules.**

19 **(3) The agency shall maintain the information required by this**
20 **subsection on its website until the earliest of the following dates: filing of**
21 **a finally adopted rule under section 843 of this title; withdrawal of the**

1 **proposed rule; or expiration of the period for final adoption under**
2 **subsection 843(c) of this title.**

3 * * *

4 § 838. FILING OF PROPOSED RULES

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

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

10 (2) ~~an~~ An analysis of economic impact statement;

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

14 (4) ~~an adopting page;~~

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

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

19 (7) ~~an~~ An explanation of the strategy for maximizing public input on
20 the proposed rule as prescribed by the Interagency Committee on
21 Administrative Rules; and.

1 ~~(8)(7)~~ a A brief summary of the scientific information upon which the
2 proposed rule is based to the extent the proposed rule depends on scientific
3 information for its validity. The summary shall refer to the scientific studies
4 on which the proposed rule is based and shall explain the procedure for
5 obtaining such studies from the agency.

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

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

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

10 ~~(3)(8)~~ a A concise, plain language summary explaining the effect of the
11 rule; and its effect.

12 ~~(4)(9)~~ the The specific statutory authority for the rule, and, if none
13 exists, the general statutory authority for the rule;

14 ~~(5)(10)~~ an An explanation of why the rule is necessary;

15 ~~(6)(11)~~ an An explanation of the people, enterprises, and government
16 entities affected by the rule;

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

18 ~~(8)(12)~~ the The name, address, and telephone number of an individual in
19 the agency able to answer questions and receive comments on the proposal;

1 ~~(9)~~(13) a A proposed schedule for completing the requirements of this
2 chapter, including, if there is a hearing scheduled, the date, time, and place of
3 that hearing and a deadline for receiving comments;

4 ~~(10)~~(14) ~~whether~~ Whether the rule contains an exemption from
5 inspection and copying of public records; or otherwise contains a Public
6 Records Act exemption by designating information as confidential or limiting
7 its public release and, if so, the asserted statutory authority for the exemption
8 and a brief summary of the reason for the exemption; ~~and~~.

9 ~~(11)~~(15) a A signed and dated statement by the adopting authority
10 approving the contents of the filing.

11 ~~(e)~~(b) Economic impact **analysis**; rules affecting small businesses and
12 school districts.

13 (1) General requirements. The economic impact ~~statement~~ **analysis**
14 shall analyze the anticipated costs and benefits to be expected from adoption of
15 the rule. Specifically, each economic impact ~~statement~~ **analysis** shall, for each
16 requirement in the rule:

17 (A) List list categories **each category** of people, enterprises, ~~and~~
18 government entities, **and ecosystem services** potentially affected and estimate
19 for each the costs and benefits anticipated; ~~and~~

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

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

8 ~~(D) Include a greenhouse gas impact statement. The greenhouse gas~~
9 ~~impact statement shall explain how the rule has been crafted to reduce the~~
10 ~~extent to which greenhouse gases are emitted. The Secretary of~~
11 ~~Administration, in conjunction with the Secretaries of Agriculture, Food and~~
12 ~~Markets, of Natural Resources, and of Transportation, and the Commissioner~~
13 ~~of Public Service shall provide a checklist which shall be used in the adoption~~
14 ~~of rules to assure the full consideration of greenhouse gas impacts, direct and~~
15 ~~indirect.~~

16 (2) Small businesses. When a rule provides for the regulation of a small
17 business, the economic impact analysis shall include a specific and clearly
18 demarkated evaluation of ways by which a small business can reduce the cost
19 and burden of compliance by specifying less numerous, detailed, or frequent
20 reporting requirements or alternative methods of compliance.

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

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

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

8 (iii) increase the risk to the health, safety, or welfare of the public
9 or to the beneficiaries of the regulation or compromise the environmental
10 standards of the State.

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

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

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

17 (3) School districts. If a rule affects or provides for the regulation of
18 public education and public schools, the economic impact **analysis** shall
19 include a specific and clearly demarcated evaluation of the cost implications to
20 local school districts and school taxpayers, and clearly state the associated
21 costs. This evaluation also shall include consideration of alternatives to the

1 rule, including no rule on the subject, that would reduce or ameliorate costs to
2 local school districts while achieving the objectives or purposes of the
3 proposed rule.

4 (4) Most appropriate method. In addition, each economic impact
5 **statement analysis** shall conclude that the rule is the most appropriate method
6 of achieving the regulatory purpose and, with respect to small businesses,
7 ~~contain any findings required by section 832a of this title.~~ Only employees of
8 the agency and information either already available to the agency or available
9 at reasonable cost **shall need** be used in preparing economic impact
10 **statements analyses.**

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

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

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

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

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

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

1 (c) Incorporation by reference.

2 (1) A rule may incorporate by reference all or any part of a code,
3 standard, or rule that has been adopted by an agency of the United States, this
4 State, or another state or by a nationally recognized organization or
5 association, if:

6 (1)(A) repeating verbatim the text of the code, standard, or rule in the
7 rule would be unduly cumbersome, expensive, or otherwise inexpedient; and

8 (2)(B) the reference in the rule fully identifies the incorporated code,
9 standard, or rule by citation, ~~place of inspection, and~~ date, and ~~place where~~
10 ~~copies are available.~~

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

13 ~~(4) the rule states where copies of the code, standard, or rule are~~
14 ~~available from the agency adopting the rule for a reasonable charge, if~~
15 ~~any, or where copies are available from the agency of the United States,~~
16 ~~this State, another state, or the organization or association originally~~
17 ~~issuing the code, standard, or rule; and~~

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

20 (2) Materials incorporated by reference shall be readily available to
21 the public. As used in this subsection, “readily available” means:

1 **(A) each filing states where copies of the incorporated code,**
2 **standard, or rule are available in written or electronic form from the**
3 **agency adopting the rule or the agency of the United States, this State,**
4 **another state, or the organization or association originally issuing the**
5 **code, standard, or rule;**

6 **(B) a copy of the code, standard, or rule is readily available for**
7 **public inspection and copying at the principal office of the agency in the**
8 **manner set forth in 1 V.S.A. § 316(a); and**

9 **(C) the incorporated code, standard, or rule is made available for**
10 **free public access online unless the agency is prevented from providing**
11 **such access by law or the size of the incorporated material.**

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

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

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

1 § 839. PUBLICATION OF PROPOSED RULES

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

5 (1) the name of the agency;

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

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

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

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

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

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

15 (8) the deadline for receiving comments.

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

19 (c) Newspaper publication. The Secretary of State shall arrange for one
20 formal publication, in a consolidated advertisement in newspapers having
21 general circulation in different parts of the State as newspapers of record

1 approved by the Secretary of State, of information relating to all proposed rules
2 that includes the following information:

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

4 (2) the title or subject and a concise summary of the rule and the Internet
5 address at which the rule may be viewed; and

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

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

12 * * *

13 § 841. FINAL PROPOSAL

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

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

1 made in the rule and the fact that public hearing and comment ~~has~~ have been
2 completed.

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

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

6 (B) why the proposed rule is not contrary to the intent of the
7 Legislature;

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

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

12 (E) ~~why the economic impacts evaluated in the sufficiency of the~~
13 economic impact analysis ~~constitute all of the substantial economic impacts~~
14 of the rule.

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

20 * * *

1 § 842. REVIEW BY LEGISLATIVE COMMITTEE

2 (a) Within ~~30 days of the date a rule is first placed on the Committee's~~
3 ~~agenda but no later than~~ 45 days after the filing of a final proposal unless the
4 agency consents to an extension of this review period, the Legislative
5 Committee on Administrative Rules, by majority vote of the entire Committee,
6 may object under subsection (b), (c), or (d) of this section, and recommend that
7 the agency amend or withdraw the proposal. The agency shall be notified
8 promptly of the objections. Failure to give timely notice shall be deemed
9 approval. The agency shall within 14 days ~~of~~ after receiving notice respond in
10 writing to the Committee and send a copy to the Secretary of State. In its
11 response, the agency may include revisions to the proposed rule or filing
12 documents that seek to cure defects noted by the Committee. After receipt of
13 this response, the Committee may withdraw or modify its objections.

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

- 15 (1) a proposed rule is beyond the authority of the agency;
16 (2) a proposed rule is contrary to the intent of the Legislature;
17 (3) a proposed rule is arbitrary; ~~or~~
18 (4) the agency did not adhere to the strategy for maximizing public input
19 prescribed by the Interagency Committee on Administrative Rules;

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

1 (6) the economic impact analysis fails to recognize a substantial
2 economic impact of the proposed rule, fails to include an evaluation and
3 statement of costs to local school districts required under section 838 of this
4 title, or fails to recognize a substantial economic impact of the rule to such
5 districts.

6 (c) When objection is made under this ~~subsection~~ section, and the objection
7 is not withdrawn after the agency responds, on majority vote of the entire
8 Committee, it may file the objection in certified form with the Secretary of
9 State. The objection shall contain a concise statement of the Committee's
10 reasons for its action. The Secretary shall affix to each objection a certification
11 of its filing and as soon as practicable transmit a copy to the agency. After a
12 Committee objection is filed with the Secretary under this subsection, or on the
13 same grounds under subsection 817(d) of this title, to the extent that the
14 objection covers a rule or portion of a rule, the burden of proof thereafter shall
15 be on the agency in any action for judicial review or for enforcement of the
16 rule to establish that the part objected to is within the authority delegated to the
17 agency, is consistent with the intent of the Legislature, is not arbitrary, ~~and~~ the
18 agency did adhere to the strategy for maximizing public input prescribed by
19 the Interagency Committee on Administrative Rules, is written in a satisfactory
20 style in accordance with section 833 of this title, and does not fail to recognize
21 a substantial economic impact. If the agency fails to meet its burden of proof,

1 the ~~Court~~ court shall declare the whole or portion of the rule objected to
2 invalid. The failure of the Committee to object to a rule is not an implied
3 legislative authorization of its substantive or procedural lawfulness.

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

6 ~~(d) The Committee may object under this subsection if the economic~~
7 ~~impact statement fails to recognize a substantial economic impact of the~~
8 ~~proposed rule that the Committee describes in its notice of objection. The~~
9 ~~Committee may object one time under this subsection and return the proposed~~
10 ~~rule to the agency as unacceptable for filing. The agency may then cure the~~
11 ~~defect and adopt the rule, or it may adopt the rule without change.~~

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

15 * * *

16 § 844. EMERGENCY RULES

17 (a) Where an agency believes that there exists an imminent peril to public
18 health, safety, or welfare, it may adopt an emergency rule. The rule may be
19 adopted without having been prefiled or filed in proposed or final proposed
20 form, and may be adopted after whatever notice and hearing that the agency
21 finds to be practicable under the circumstances. The agency shall make

1 reasonable efforts to ensure that emergency rules are known to persons who
2 may be affected by them.

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

6 (c) Emergency rules adopted under this section shall be filed with the
7 Secretary of State and with the Legislative Committee on Administrative
8 Rules. The Legislative Committee on Administrative Rules shall distribute
9 copies of emergency rules to the appropriate standing committees.

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

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

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

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

18 (A) beyond the authority of the agency;

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

20 (C) arbitrary; or

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

3 (2) When objection is made under this subsection, on majority vote of
4 the entire Committee, the Committee may file the objection in certified form
5 with the Secretary of State. The objection shall contain a concise statement of
6 the Committee's reasons for its action. The Secretary shall affix to each
7 objection a certification of its filing and as soon as practicable transmit a copy
8 to the agency. After a Committee objection is filed with the Secretary under
9 this subsection, to the extent that the objection covers a rule or portion of a
10 rule, the burden of proof thereafter shall be on the agency in any action for
11 judicial review or for enforcement of the rule to establish that the part objected
12 to is within the authority delegated to the agency, is consistent with the intent
13 of the Legislature, is not arbitrary, and is justified by an imminent peril to the
14 public health, safety, or welfare. 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 (3) When the Committee makes an objection to an emergency rule under
19 this subsection, the agency may withdraw the rule to which an objection was
20 made. Prior to withdrawal, the agency shall give notice to the Committee of its
21 intent to withdraw the rule. A rule shall be withdrawn upon the filing of a

1 notice of withdrawal with the Secretary of State and the Committee. If the
2 emergency rule amended an existing rule, upon withdrawal of the emergency
3 rule, the existing rule shall revert to its original form, as though the emergency
4 rule had never been adopted.

5 (f) In response to an expressed concern of the Legislative Committee on
6 Administrative Rules, an agency may make a germane change to an emergency
7 rule that is approved by the Committee. A change under this subsection shall
8 not be considered a newly adopted emergency rule and shall not extend the
9 period during which the emergency rule remains in effect.

10 § 845. EFFECT OF RULES

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

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

21 * * *

1 § 847. AVAILABILITY OF ADOPTED RULES; RULES BY SECRETARY
2 OF STATE

3 (a) Availability from agency. An agency shall make each rule it has
4 finally adopted available to the public online and for physical inspection
5 and copying. Online, the agency shall post its adopted rules on a separate
6 page that is readily accessible from a prominent link on its main web page,
7 that lists proposed rules by title and topic, and that is searchable.

8 (b) Register; code.

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

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

20 (b) The Secretary of State shall publish not less than quarterly a bulletin
21 setting forth the text of all rules filed since the immediately preceding

1 ~~publication and any objections filed under subsection 842(b) or 844(e) of this~~
2 ~~title.~~

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

4 ~~(1) a commercial publisher offers a comparable publication at a~~
5 ~~competitive price; or~~

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

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

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

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

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

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

1 § 848. RULES REPEAL; ~~OPERATION OF LAW~~ AMENDMENT OF
2 AUTHORITY; NOTICE BY AGENCY

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

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

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

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

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

18 (c) Repeal for nonpublication.

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

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

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

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

9 (d) Amendment of authority for rule.

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

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

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

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

17 Sec. 3. REDESIGNATION

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

19 (1) §§ 800–808 shall be within subchapter 1.

20 (2) §§ 809–816 shall be within subchapter 2.

21 (3) §§ 817–849 shall be within subchapter 3.

1 **Sec. 4. APPROPRIATION**

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

5 **Sec. 4. EFFECTIVE DATES; IMPLEMENTATION**

6 **This act shall take effect on July 1, 2018, except that in Sec. 2, 3 V.S.A. §§**
7 **818 and 847(b) and (c) shall take effect on July 1, 2019. The Secretary of**
8 **State shall complete establishment of the centralized rule system pursuant**
9 **to Sec. 2 on or before June 30, 2019.**

DRAFT